



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2023-0606]

RIN 1625-AA00

### Safety Zone; Swim for Alligator Lighthouse, Islamorada, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone on certain navigable waters of the Atlantic Ocean near Islamorada, Florida during the Swim for Alligator Lighthouse, open water swim event. A safety zone for recurring marine events exists; however, for this year's event the date has changed. The safety zone is necessary to ensure the safety of event participants and spectators. Persons and non-participant vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port (COTP) Key West or a designated representative.

**DATES:** This rule is effective from 7:30 a.m. until 4 p.m., on September 9, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0606 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Hailye Wilson, Chief, Waterways Management Division, Sector

Key West, FL U.S. Coast Guard; telephone 305-292-8768, email

Hailye.m.wilson@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. The Coast Guard has an existing safety zone for this recurring marine event at 33 CFR 165.786, Table to § 165.786, Item No. 9.1; however, the existing regulation only covers the event when it is scheduled on the third Saturday of September. The primary justification for this action is that the Coast Guard received final details of the event without sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. It would be impracticable and contrary to the public interest to delay promulgating this rule, as it is necessary to protect the safety of participants, spectators, the public, and vessels transiting in the area.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Delaying the effective date of this rule would be impracticable because the event is taking place on September 9, 2023, and immediate action is needed to respond to the potential safety hazards associated with this event.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. The Captain of the Port Key West (COTP) has determined that potential hazards associated with this open water swim event will be a safety concern for persons and vessels in the safety zone. This rule is needed to ensure the safety of the event participants, the general public, vessels and the marine environment in the navigable waters within the safety zone during the Swim for Alligator Lighthouse open water swim event.

### **IV. Discussion of the Rule**

This rule establishes a safety zone on September 9, 2023 for a period of 8.5 hours, from 7:30 a.m. to 4:00 p.m. The safety zone will cover all waters of the Atlantic Ocean, between Amara Cay, and Alligator Lighthouse, beginning at a point Latitude 24°54.82' N, longitude 080°38.03' W, thence to latitude 24°54.36' N, longitude 080°37.72' W, thence to latitude 24°51.07' N, longitude 080°37.14' W, thence to latitude 24°54.36' N, longitude 080°37.72' W, thence to point of origin at latitude 24°54.82' N, longitude 080°38.03' W. The event course begins and ends at Amara Cay Resort in Islamorada, Florida, and extends through Hawks Channel, with a turnaround at Alligator Lighthouse. Approximately 500 swimmers with kayak escorts and eight safety vessels are anticipated to participate in the event. The size and duration of the safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the open water swim. Persons and non-participant vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone without obtaining permission from the COTP Key West or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP Key West or

a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration and available exceptions to the enforcement of the safety zone. The regulated area will impact small designated areas of the Atlantic Ocean between Islamorada, Florida, and the Alligator Lighthouse for only 8.5 hours and thus is limited in time and scope.

Furthermore, the rule will allow vessels to seek permission to enter the safety zone. Non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated area during the enforcement periods if authorized by the COTP or a designated representative. Vessels not able to enter, transit through, anchor in, or remain within the regulated area without authorization from the COTP or a designated representative may operate in the surrounding areas during the 8.5 hour enforcement period. The Coast

Guard will issue a Local Notice to Mariners and a Broadcast Notice to Mariners, allowing mariners to make alternative plans or seek permission to transit the safety zone.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the

National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 8.5 hours that will prohibit entry into the area being used by swimmers and safety craft for the Alligator Lighthouse swim. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T07-0606 to read as follows:

**§ 165.T07-0606 Safety Zone; Swim for Alligator Lighthouse, Islamorada, FL.**

(a) *Location.* The following regulated area is a safety zone: All waters of the Atlantic Ocean beginning at a point Latitude 24°54.82' N, longitude 080°38.03' W, thence to latitude 24°54.36' N, longitude 080°37.72' W, thence to latitude 24°51.07' N, longitude 080°37.14' W, thence to latitude 24°54.36' N, longitude 080°37.72' W, thence to point of origin at latitude 24°54.82' N, longitude 080°38.03' W. The event course begins and ends at Amara Cay Resort in Islamorada, Florida, extending through Hawks Channel with a turnaround point at Alligator Lighthouse. All coordinates are North American Datum 1983.

(b) *Definition.* As used in this section, the term “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Key West (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the COTP Key West or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP Key West by telephone at (305) 292-8772, or a designated representative via VHF-FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners via VHF-FM channel 16, or the COTP’s designated representative.

(d) *Enforcement period.* This rule will be enforced from 7:30 a.m. until 4:00 p.m., on September 9, 2023.

Dated: August 22, 2023.

J. Ingram,

Captain, U.S. Coast Guard,  
Captain of the Port Key West.

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