



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0466]

RIN 1625-AA00

Safety Zone; Wilmington River, Savannah, GA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is revising a temporary safety zone encompassing the Causton Bluff Bridge, on the Wilmington River, Savannah, GA. This action is necessary to provide for the safety of life on these navigable waters for the planned demolition and removal of structural components of the original bridge, in preparation of the construction of a new span. This rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Savannah or a designated representative.

DATES: This temporary interim rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through November 30, 2023. For the purposes of enforcement, actual notice will be used from October 2, 2023, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments and related material must reach the Coast Guard on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number **USCG-2023-0466** using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the

“Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG Anthony Harris, Office of Waterways Management, Marine Safety Unit Savannah, U.S. Coast Guard; telephone 912-652-4353 ext. 240, Anthony.E.Harris@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
ESA	Endangered Species Act
FR	Federal Register
GA DOT	Georgia Department of Transportation
NPRM	Notice of proposed rulemaking
TIR	Temporary Interim Rule
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On September 15, 2023, the Coast Guard published a temporary interim rule (TIR)¹ with requests for comment. The TIR established a temporary safety zone encompassing the Causton Bluff Bridge, on the Wilmington River, Savannah, GA. When the rule was published, the Coast Guard immediately began receiving comments on the safety zone posted on the docket and emails sent directly to the Coast Guard.² In order to address the concerns raised by the commenters, the Coast Guard made the determination not to enforce the original TIR until an updated enforcement schedule could be published through a new TIR. This new TIR takes into consideration the 23 comments received thus far and revises the existing safety zone to provide the public with a schedule that equitably balances the needs of the Georgia Department of Transportation (GA DOT) and

¹ 88 FR 63527.

² The emailed comments have been posted to the docket folder. These comments are accessible at: www.regulations.gov/docket/USCG-2023-0466/comments.

the waterway users.

The Coast Guard is issuing this TIR 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 TIR because doing so would be impracticable. This revised safety zone must be established by October 2, 2023, in order to protect vessels and waterway users from the potential hazards associated with demolition operations on the Causton Bluff Bridge. We lack sufficient time to provide a reasonable comment period and then to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this TIR effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this TIR would be contrary to the public’s interest because we must ensure the protection of vessels and waterway users during the demolition operations.

We are soliciting comments on this rulemaking. If we determine that changes to this rulemaking action are necessary, the Coast Guard will consider comments received in a subsequent TIR or temporary final rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Savannah (COTP) has determined that potential hazards associated with the demolition operations of the Causton Bluff Bridge. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the demolition project continues.

IV. Discussion of Comments, Changes and the Rule

As noted above, we received 23 comment submissions on our TIR that published in the Federal Register on September 15, 2023. The commenters expressed concerns regarding the timing and duration of the demolition operations, the restrictions on daylight hour transit for recreational and commercial vessel traffic and related economic impacts, potential dangers to recreational vessels in the designated anchorage area during tropical storms and hurricanes, and the Coast Guard's notification process. These concerns are discussed below.

Several commenters expressed concerns about the timing of the demolition project, particularly about scheduling the work during peak “snowbird” season, when seasonal recreational boaters transit from northern states to warmer southern states, and the economic impact on recreational vessel owners, along with other economic impacts to shoreside docks and marinas.

The project sponsor and the Coast Guard are unable to further delay the project, as proposed by the commenters because of restrictions related to the Federal Endangered Species Act (ESA)³ and related Georgia State regulations. The project location coincides with the habitat of the Atlantic sturgeon and shortnose sturgeon, which are protected as an Endangered species by the Federal ESA. The National Oceanic and Atmospheric Administration (NOAA) and Georgia State regulations prevent in-water work, which would be required for this project, from December 1 through April 30, which is the combined spawning migration season for the Atlantic sturgeon and the shortnose sturgeon. Therefore, the bridge project must occur before that date.

Several commenters expressed concerns about restrictions on daylight hour transit for recreational and commercial vessel traffic through the safety zone, and where particularly concerned with congestion and delays transiting the waterway, limits of

³ 15 U.S.C. 1531 *et seq.*

designated anchorage areas where vessels may safely wait for vessel traffic to clear, and challenges of navigating the safety zone at night. The Coast Guard is taking significant actions to minimize, to the extent possible, the impact on commercial and recreational waterway use. The restrictions on vessel traffic through the safety zone is intended to facilitate the performance of the demolition project, mitigate the dangers associated with the project, and to protect personnel, vessels, and the marine environment in these navigable waters while the demolition project continues. To address this concern, the Coast Guard has modified the enforcement period to allow three hours a day for vessels to transit during daylight.

Two commenters inquired about the dangers tropical storms and hurricanes would pose to the temporary safety zone. The COTP Savannah has the authority to enact swift and detailed requirements during tropical storms and hurricanes to safeguard the safety of all vessel traffic and ensure the safe transit of the waterway.

Several commenters expressed concerns about prior notice. In section **II. Background Information and Regulatory History**, the Coast Guard explains its legal basis for issuing this TIR without prior notice and opportunity to comment pursuant to authority under section 4(a) of the APA (5 U.S.C. 553(b)). The Coast Guard has the authority to publish TIRs to address situations like this. At all times we were acting within the scope of authority and are making the changes here to address this concern.

Demolition operations will take place Monday through Sunday during daylight hours. Periodically while the safety zone is implemented, all vessel traffic will be permitted as reflected in Table 1 below. Notwithstanding the below table, all commercial traffic, with width clearances greater than 40 feet will be permitted passage outside the prescribed windows listed in Table 1 below with prior coordination with the demolition project contractor.

Table 1

Open Times	Width Clearance Limitations
10:00 am to 10:30 am	Vessels 40 feet or less
12:00 pm to 2:00 pm	No limitations
4:30 pm to 5:00 pm	Vessels 40 feet or less
7:00 pm to 7:00 am	No limitations

The existing safety zone in 33 CFR 165.T07-0466 is being revised to include Table 1 in the regulatory text. No further changes are being made to the safety zone regulations.

The duration of the revised safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the demolition project continues. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

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, and duration of the safety zone. The duration of the zone is intended to ensure the safety of vessels

through the duration of the vessel's inbound and outbound transit and offload. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the 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 several hours daily that would prohibit entry within 300 yards of the Causton Bluff Bridge. The zone will prohibit entry while in effect. 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type **USCG-2023-0466** in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. Also, if you click on the Dockets tab and then the rule, you should see a "Subscribe" option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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 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. Revise § 165.T07-0466 to read as follows:

§ 165. T07-0466 Safety Zone; Wilmington River, Savannah, GA.

(a) *Location.* All navigable waters, from surface to bottom, of the Wilmington River within a 300-yard radius of position: 32° 3.73'N, 81° 1.78'W in the vicinity of the Causton Bluff Bridge, Savannah, GA.

(b) *Definitions.* As used in this section, 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 Savannah (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling (912) 247-0073. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* The safety zone in paragraph (a) of this section is in effect from 12:01 a.m. on October 2, 2023, through 11:59 p.m. on November 30, 2023. This section will be subject to enforcement periodically during daylight hours as needed by the project manager to safely remove all remaining bridge structural components. The

approximate enforcement schedule is reflected in Table 1 to § 165.T07-0466. Mariners will be informed of enforced zone and enforcement periods by Broadcast Notice to Mariners and the presence of Myrick Marine’s safety boat on scene during working hours.

Table 1 to § 165.T07-0466

Open Times	Width Clearance Limitations
10:00 am to 10:30 am	Vessels 40 feet or less
12:00 pm to 2:00 pm	No limitations
4:30 pm to 5:00 pm	Vessels 40 feet or less
7:00 pm to 7:00 am	No limitations

Dated: September 27, 2023

Nathaniel. L. Robinson
Commander, U.S. Coast Guard,
Captain of the Port
Savannah, GA

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