



## **DEPARTMENT OF DEFENSE**

### **Department of the Army, Corps of Engineers**

#### **33 CFR Part 334**

**[COE-2022-0009]**

### **Danger Zone; Waters of Carr Creek and Whitehall Bay in the vicinity of the Naval Support Activity Annapolis**

**AGENCY:** United States Army Corps of Engineers, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** The United States Army Corps of Engineers (Corps) is amending its regulations to establish three danger zones in the waters of Carr Creek and Whitehall Bay in the vicinity of the Naval Support Activity Annapolis. The danger zone in Carr Creek is necessary to enable safe operation of the United States Naval Academy firing range and to reflect the routine and periodic usage of the firing range for training Sailors, Midshipmen, and law enforcement personnel. The two danger zones in Whitehall Bay are necessary to enable the safe operation of the United States Naval Academy firing range and to reflect irregular and infrequent usage of the range for training Sailors, Midshipmen, and law enforcement personnel. The firing range faces Carr Creek and, during times of operation, may present a danger to vessels located in the proposed danger zones.

**DATES:** Effective 30 days after date of publication in the Federal Register.

**ADDRESSES:** U.S. Army Corps of Engineers, Attn: CECW-CO (Linda Speerstra)  
Operations and Regulatory Division, 441 G Street NW, Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Speerstra, Headquarters,  
Operations and Regulatory Division, Washington, D.C. at  
[Linda.Speerstra@usace.army.mil](mailto:Linda.Speerstra@usace.army.mil) or 202-945-2101, or

Ms. April E. Sparkman, Corps of Engineers, Baltimore District, Regulatory Branch, at 410-962-0148.

**SUPPLEMENTARY INFORMATION:** In response to a request by the Naval Support Activity Annapolis (NSAA), and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending its regulations in 33 CFR Part 334 to establish three danger zones in the waters of Carr Creek and Whitehall Bay, Annapolis, Maryland. The danger zones are necessary to enable the safe operation of the United States Naval Academy firing range.

The proposed rule was published in the December 5, 2022 (88 FR 74348) edition of the *Federal Register*. The regulations.gov docket number was COE-2022-0009. Concurrently, a local public notice for the proposed danger zone was sent out from the Baltimore District. Comments received during the initial 30-day public notice focused on the physical location and siting of the firing range, the general need for the danger zones and enforcement mechanisms if established, effects of the danger zones on public access to Greenbury Point, and consideration of alternatives such as relocating the firing range. Several commenters requested an extension of the comment period for the proposed rule. Recognizing the considerable interest in the proposed action, the Baltimore District re-opened the public notice comment period from 19 January 2023 until 5 March 2023 to coincide with the re-opened comment period for the proposed rule in the January 19, 2023, edition of the *Federal Register* (88 FR 3372), Docket Number COE-2022-0009. Approximately 142 comments were received. Those comments are summarized below, with the Corps' response to those comments.

Many commenters questioned the location of the existing danger zones and the firing range's conformity with range regulations.

At the time of creation in 1963, the partially baffled 50-year rifle range was sited properly with existing regulations and this request is an effort to conform with DOD range design criteria that was not published at the time of design and creation of the outdoor range. Unified Facilities Criteria 4-179-02, require surface danger zones for non-fully baffled ranges like the one at NSAA. These requirements are outlined at relevant sections of UFC 4-179-02. Further, there are no regulations currently in place giving the Navy the legal authority to prohibit individuals from entering, or removing individuals from waters of Carr Creek and Whitehall Bay during range operations. The establishment of these danger zones would give Navy the legal authority to ensure public safety during periods when the range is active. The Corps also recognizes that the NSAA safety team is taking steps to modernize the safety precautions at the range, such as the design of a fully baffled 50-yard firing range on NSA Annapolis. On September 29, 2023, the Naval Facilities Engineering Systems Command Washington awarded a contract to Raymond Pond Full-Service Solutions, Conyers, Georgia, to design the fully baffled range. If the design is eventually funded, this regulation would serve as a temporary measure to ensure public safety and to comply with existing regulation until the range is fully baffled.

Several commenters questioned the need for the danger zones and wanted clarification on what enforcement mechanisms would be in place once the danger zones are established. Many commenters stated that United States Coast Guard (USCG) firing range announcements only occur on certain channels and many mariners do not receive the local notice to mariners.

Concerning the need for the danger zones, this request comes in response to a safety deficiency that was identified by NSAA's Safety Department in 2019 due to a lack of established surface danger zones around a non-fully baffled firing range and continued issues with members of the public disregarding current safety precautions. The Corps has determined that the safety deficiency identified around a non-fully baffled firing range

and concerns regarding public safety are sufficient justification for the establishment of the danger zones. NSAA is making a good faith effort to come into compliance with the Unified Facilities Criteria 4-179-02, Small Arm Ranges, which notes that surface danger zones are required for non-fully baffled ranges. Further, the enforcement measures and procedures for the proposed danger zones are the same process that NSAA currently uses and no changes in enforcement will occur as a result of this regulation. NSAA will advertise the firing schedule for each danger zone in the weekly Fifth CG District's Local Notice to Mariners. In addition, the NSAA will post the danger zones closure schedule on its official Navy website and Facebook page. If the danger zones are established, they will be charted on NOAA Nautical Charts to ensure that the public is aware of their location in Carr Creek and Whitehall Bay.

Many commenters questioned the effects of the danger zone on public access to Greenbury Point and voiced concerns about additional closures to Greenbury Point because of this proposed regulation. A few commenters stated that this proposal is an attempt to find a work around for a new golf course that is proposed and vocally opposed by local citizens.

The Corps is not evaluating any restrictions in place on Greenbury Point, or any other area that is not waters of the U.S. area, as our regulatory authority is limited to the proposed establishment of danger zones in Carr Creek and Whitehall Bay, per DA regulations 33 CFR 334.4. The proposed Danger Zones will allow the Commanding Officer at NSAA to continue to safeguard personnel, both military and civilian, and will be a benefit to public safety.

Several commenters were concerned about Danger Zones 2 and 3 in the proposed regulation, with few commenters opposed to the restrictions in Carr Creek. The comments in reference to Danger Zones 2 and 3 expressed concerns related to

recreational and commercial boating access and safety concerns in a narrower navigation channel during times when Danger Zones 2 and 3 are active.

The proposed regulation will allow NSAA to legally engage with watercraft, which they have been doing without formal authority/regulation for the last 50 years. This regulation will have minimal effect, if any effect, on navigation through Whitehall Bay and access to Carr Creek. The proposed regulation will limit the closure of Danger Zones 2 and 3 to no more than 10 times per calendar year. When the range is not operational, persons, vessels, and other craft can enter, transit, drift, moor and anchor in the designated danger zones without permission of NSAA.

Many commenters questioned the environmental impacts from the firing range, specifically, the range's compliance with environmental and EPA standards, lead contamination from discharged munitions, and impacts to water quality that may affect drinking water.

The Corps regulates the discharge of dredged or fill material into waters of the United States under Section 404 of the Clean Water Act. The inadvertent firing of errant ammunition into the water does not meet the definition of fill, i.e., it is expected that the very limited amount of errant ammunition inadvertently fired into the water would not change the bottom elevation of Carr Creek or Whitehall Bay, or any aquatic resources located on Greenbury Point. The discharge of ammunition is regulated by the DOD's Munitions Response Program, and investigations would occur if the range closed. EPA also has regulations to protect health and human safety when discharging hazardous ammunitions; however, that is not an authority that has been delegated to USACE. Furthermore, NSAA has indicated that the risk of projectiles leaving the range is extremely small given the impact berm and use of small arms ammunitions; therefore, it is unlikely that the range has resulted in a major quantity of ammunition entering into the waters of Carr Creek and Whitehall Bay or onto Greenbury Point.

A few commenters questioned if the NSAA had evaluated alternative range sites rather than implementing the danger zones. Other commenters questioned if NSAA could use an indoor or local firing range, recommended that the NSAA fully baffle the firing range, and asked if NSAA could create a downrange perm to prevent bullets from exiting the range.

Alternatives to implementation of the danger zones and other outdoor range safety precautions are continuously evaluated by NSAA. Relocation of the range is not feasible, as proximity to the brigade of midshipmen is of paramount importance to ensure they receive mandatory firearms training in a timely and efficient manner. Alternate range locations are not readily available in the local area. Personnel from several federal and state agencies, such as the Secret Service, FBI, Reserve Units, and Maryland State Police, regularly utilize NSAA's outdoor ranges for training and qualification purposes due to the lack of other options in the local area. Further, NSAA continues to request funds for a fully baffled shooting range. Since relocation is not feasible, indoor and digital ranges are not readily available, and funds are not yet available to construct a fully baffled range, the Corps has determined that the establishment of danger zones in the waters of Carr Creek and Whitehall Bay are reasonable and necessary to ensure public safety and to ensure that NSAA is in compliance with DOD outdoor range design, such as the Unified Facilities Criteria 4-179-02, Small Arms Ranges, which states danger zones are required for non-fully baffled ranges as a risk mitigation measure.

Many commenters stated that the restrictions in Danger Zones 2 and 3 would affect crabbers and commercial fishermen. Other commenters stated that the closures would create a financial hardship for watermen, stated that the range will need to coordinate with local watermen to avoid significant economic impact, and questioned if firing could be limited to times when crabbing is closed.

NSAA has a responsibility to provide safe public access while balancing the operational use of the outdoor range. Per the regulation, closure of Danger Zones 2 and 3 is limited to no more than 10 times per calendar year and NSAA is responsible for furnishing in advance the firing schedule to the Commander, Fifth Coast Guard District, for publication in a local notice to mariners. The regulation cannot contain a detailed description of the times, dates and extent of restriction as various factors sometimes preclude the establishment of firing schedules, including weather and environmental factors, shifting military operational schedules, and ongoing maintenance on the impact berm at the range. It is therefore unreasonable to restrict range operations to only the period of December through March. The proposed approximate frequency of closures in Whitehall Bay and the comprehensive notification of danger zone activation schedules will minimize any major economic impact if crabbers and commercial fisherman are aware of restrictions in these danger zones ahead of time. When the range is not operational, persons, vessels, and other craft can enter, transit, drift, moor and anchor in the designated danger zones without permission of NSAA. Further, Department of the Army (DA) regulations state the USACE should ensure that the danger zones should not unreasonably interfere or restrict the food fishing industry. Danger Zones 2 and 3 are to be operational no more than 10 times per calendar year, which means that the waterway will be open for unfettered access and fishing approximately 97% of the year. Given the frequency of closures in Danger Zones 2 and 3 (restricted to no more than 10 times per calendar year), the local notice to mariners, and other areas of Whitehall Bay that will be available for fishing and crabbing even when the range is operational, the Corps has determined that the proposed danger zones will not unreasonably interfere or restrict the food fishing industry.

A few commenters stated that there were deficiencies in the Corps PN and that it did not include sufficient information to give a clear understanding of the proposed

action. Other commenters stated that the public notice comment period should be extended, and that the applicant's request does not comply with 33 CFR 334.4 establishment and amendment procedures.

According to 33 CFR 334.4, the Corps PN must include sufficient information to give a clear understanding of the proposed actions and should include the following: applicable statutory authority, a reasonable comment period, applicant name, name and telephone number of the Corps employee whom additional information concerning the proposal may be obtained, project description and purpose, and a map of sufficient detail to show the boundaries of the areas and its relationship to the surrounding area.

On 5 December 2022, the Baltimore District issued an initial 30-day PN. In addition, as part of proposed rulemaking, HQ USACE posted the proposed regulation concurrently in the Federal Register for public comment, Docket Number COE-2022-0009, with a comment period ending 4 January 2023. The Corps recognizes that there was a typo in our PN, which stated that the PN comment period ended on 4 January 2022, however, this did not interfere with the public's ability to submit comments. In response to public comments received and recognizing the considerable interest in the proposed action, the Baltimore District re-opened the PN comment period from 19 January 2023 until 5 March 2023 to coincide with the re-opened comment period for the proposed rule in the Federal Register. The Corps reviewed the initial PN and extended PN and has determined that the information in the PN gives a clear understanding of the proposed actions and all other requirements listed above were included in both PN's. The PN clearly describes the purpose and need to enable safe operation of the United States Naval Academy firing range and to reflect the routine and periodic usage of the firing range for training Sailors, Midshipmen, and law enforcement personnel. The map included in the PN clearly shows the boundaries of the proposed danger zones and the language in the

proposed regulation further clarifies the waterbodies where Danger Zones 1, 2, and 3 will occur.

The Corps is not evaluating closures at the US Naval property at Greenbury Point as that is an independent decision by the installation. Therefore, it is not part of the danger zone action being reviewed by the Corps and not required to be labeled on the map. Further, the Corps PN was distributed in accordance with 33 CFR 325.3 (d)(1), which states that PNs should be sent to the applicant, to appropriate city and county officials, adjoining property owners, tribal representatives, concerned federal agencies, conservation organizations, River Basin Commissions, and United States Senators and Representatives. In addition to the Corps PN mailing list, which contains over 460 interested parties, to include several River Basin Commissions, federal agencies, city and county officials, tribal representatives, and conservation organizations, the PN was also distributed to Congressman John Sarbanes, Senator Benjamin Cardin, and Senator Chris Van Hollen, the Annapolis Mayor, nearby commercial marinas, homeowner associations, and several Anne Arundel County officials. In addition, the proposal was coordinated directly with the USFWS, Maryland DNR, NMFS, Maryland Department of the Environment, Maryland Historical Trust, the Delaware Tribe, and EPA. Any comments received from these agencies are summarized in Section B. In an effort to reach more than just adjoining property owners, the Corps sent PN postcards describing the proposal and where to find more information to over 300 waterfront property owners on Mill Creek, portions of the Severn River and portions of Whitehall Bay. The waterfront property owners were those that the Corps determined would be most affected by this proposal.

A few commenters questioned NSAA's plan to hold public meetings, stated concerns about the installation's encroachment into public waters, and requested that the Corps review specific inspection reports that have been publicly denied by NSAA. Other

commenters wanted to know how much NSAA would spend on patrol boats and expressed concern about the effects of firing range noise within the community and on downtown businesses.

Throughout the comment period, NSAA responded to the public's comments and concerns in an attempt to clarify misconceptions and answer questions regarding the proposed regulation. NSAA emphasized that the surface danger zones in Whitehall Bay, which were the majority of the concern, would only be in effect one to four times a year and has provided that information to all parties who have contacted NSAA to discuss the proposed regulation.

The establishment of danger zones in the waters of Carr Creek and Whitehall Bay are reasonable and necessary to ensure public safety and to ensure that NSAA is in compliance with DOD outdoor range design, such as the Unified Facilities Criteria 4-179-02, Small Arms Ranges, which states danger zones are required for non-fully baffled ranges as a risk mitigation measure. NSAA is responsible for furnishing the firing schedule in advance to the Commander, Fifth Coast Guard District, for publication in a local notice to mariners. The Corps is not evaluating any restrictions and effects outside of 33 CFR 334, as our Regulatory authority is limited to the proposed establishment of danger zones in Carr Creek and Whitehall Bay, per DA regulations located in 33 CFR 334.4. The Corps has determined that this regulation will have minimal effect on noise as the use of the range facility has not changed and this request is an effort to conform with DOD range design criteria. The proposed danger zones will allow the Commanding Officer at NSAA to continue to safeguard personnel, both military and civilian and will be a benefit to public safety.

After receipt of the June 24, 2022 proposal, the Corps made a preliminary determination that the proposed rule does not require the preparation of an Environmental Impact Statement, and that an environmental assessment would be prepared for the final

rule. The regulations governing the National Environmental Policy Act do not require draft environmental assessments to be available for public comment. Federal agencies are only required to solicit public comments during the preparation of Environmental Impact Statements. Given the administrative nature of the proposed rule and the substance of the comments received, we have determined that an environmental assessment is the appropriate mechanism for complying with National Environmental Policy Act requirements. Public input on the proposed action was solicited using Federal Register noticing and local public noticing. Public comments received in response to the notices were documented and fully considered during final agency decision making.

#### Procedural Requirements

a. Review Under Executive Order 12866. This rule is issued with respect to a military function of the Department of Defense and the provision of the Executive Order 12866 do not apply.

b. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.* This rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps determined that the establishment of the new danger zones will not have a significant economic impact on a substantial number of small entities. For an analysis of potential economic impacts of this rule, please see the regulatory analysis in the environmental assessment.

c. Review under the National Environmental Policy Act. An environmental assessment (EA) has been prepared. We have concluded that the establishment of three danger zones in the vicinity of the Naval Support Activity Annapolis will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental

impact statement is not required. The final EA and Finding of No Significant Impact may be reviewed at the Baltimore District Office.

d. Unfunded Mandates Act. This rule does not impose an enforceable duty among the private sector and, therefore, is not a federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Public Laws 104-4, 109 Stat. 48, 2 U.S.C. 1501 et seq.). We have also found, under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

e. Congressional Review Act. The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Corps will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. The rule will take effect 30 days after it is published in the Federal Register. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 33 CFR Part 334**

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons stated in the preamble, the United States Army Corps of Engineers amends 33 CFR part 334 as set forth below:

#### **PART 334--DANGER ZONE AND RESTRICTED AREA REGULATIONS**

1. The authority citation for part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.205 to read as follows:

**§ 334.205 Carr Creek and Whitehall Bay, in vicinity of Naval Support Activity Annapolis, United States Naval Academy firing range danger zones.**

(a) *The danger zones*—(1) *Danger Zone 1*. Designated by waters of Carr Creek located north of the line drawn southeasterly from latitude 38°59'3", longitude 76°27'35" to latitude 38°58'53" longitude 76°27'15" across the mouth of Carr Creek, located near Annapolis, MD.

(2) *Danger Zone 2*. Designated by the rectangular area enclosed by a line beginning at latitude 38°58'53", longitude 76°26'57", thence to latitude 38°58'37", longitude 76°26'10", thence to latitude 38°58'16", longitude 76°26'28", thence to latitude 38°58'45", longitude 76°27'4", thence along the shoreline to the point of beginning.

(3) *Danger Zone 3*. Designated by the rectangular area enclosed by a line beginning at latitude 38°58'28", longitude 76°26'17", thence to latitude 38°58'14", longitude 76°25'53", thence to latitude 38°58'0", longitude 76°26'9", thence to latitude 38°58'16", longitude 76°26'28", thence to the point of beginning.

(4) *Coordinates*. All coordinates reference 1983 North American Datum (NAD 83). All danger zones have been charted on NOAA nautical charts.

(b) *The regulations*. (1) All persons, boats, vessels, or other craft are prohibited from entering, transiting, or remaining within the danger zones described in paragraphs (a)(1) through (3) of this section during range operations.

(2) Before and during range operations, range spotters will be on duty to watch for vessels nearing the danger zone(s), and warning lights will be activated on the shoreline. If necessary, the enforcing agency will coordinate with local patrol craft to alert persons or boats of the active danger zone. Prior to and following firing exercises, the Coast Guard Sector Maryland-NCR Command Center must be notified on VHF channel 16 or at 410-576-2525 to deconflict any active search and rescue cases.

(3) In addition to the above precautions, closure of the danger zone will be indicated by the weekly Fifth Coast Guard District's Local Notice to Mariners. The enforcing agency must submit a Local Notice to Mariners article to Sector Maryland-NCR

Waterways Management Division at least one week prior to firing exercises. Sector Maryland's Waterways Division may be reached at MDNCRWaterways@uscg.mil. The enforcing agency will also post the danger zone closure schedule on its official Navy website, <https://ndw.cnid.navy.mil/Installations/NSA-Annapolis/>, and Facebook page, <https://www.facebook.com/NSAAnnapolis/>.

(4) Consistent with paragraph (b)(2) of this section, the enforcing agency is authorized to prohibit access into the danger zone by anyone, and all willful violations of the enforcing agency's prohibitions are punishable under 33 U.S.C. section 3.

(5) Closures of Danger Zones 2 and 3 will be limited to 10 times per calendar year.

(c) *The enforcing agency.* The regulations in this section shall be enforced by the Superintendent, United States Naval Academy, or the Commanding Officer of Naval Support Activity Annapolis, and such agencies as they may designate.

**Stephen L. Hill,**

*Chief, Operations and Regulatory Division,*

*Directorate of Civil Works.*

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