

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165****[USCG-2008-0103]****RIN 1625-AA87****Security Zone; Cape Fear River, Wilmington, NC****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard will establish a temporary security zone on the waters of the Cape Fear River off the North Carolina State Port Authority facilities, Wilmington, North Carolina during the USS NORTH CAROLINA Commissioning ceremony. The security zone is necessary to provide for the security of the USS NORTH CAROLINA and the safety of life of event participants, spectators and mariners on U.S. navigable waters during the event. Entry into the zone is prohibited unless authorized by the Captain of the Port or a designated representative.

**DATES:** This rule is effective from 8 a.m. on May 3, 2008, through 1 p.m. May 3, 2008.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0103 and are available online at <http://www.regulations.gov>. This material is also available for inspection or copying at two locations: The Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the United States Coast Guard Marine Safety Unit, 721 Medical Center Drive, Suite 100, Wilmington, North Carolina 28401 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning this rule, phone CWO4 Stephen Lyons, Waterways Management Division Chief, Sector North Carolina, at (252) 247-4525.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. The USS NORTH CAROLINA will be the subject of an official United States Navy commissioning ceremony, a military

function within the meaning of 5 U.S.C. 553(a)(1), and as such the Coast Guard will not conduct a notice and comment period for this regulation. Safely and securely navigating the narrow Cape Fear River will prove challenging with a submarine in the water. This regulation is necessary to protect the public, the christening event's attendees, and to secure the submarine.

**Background and Purpose**

This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities.

The Navy will conduct the USS NORTH CAROLINA's Commissioning ceremony at the North Carolina State Port Wilmington, North Carolina. To address the aforementioned security concerns, the Captain of the Port, Cape Fear River is establishing a security zone upon certain waters of the Cape Fear River. This security zone will prevent vessels or persons from engaging in waterborne terrorist actions during the USS NORTH CAROLINA's Commissioning ceremony. A security zone is prudent for this type of event.

**Discussion of Rule**

On Saturday May 3, 2008, the USS NORTH CAROLINA's Commissioning ceremony will be held at North Carolina State Port. The security zone is required from 8 a.m. through 1 p.m. on May 3, 2008 to safeguard the USS NORTH CAROLINA and event participants during the commissioning ceremony. The security zone will encompass the waters of the Cape Fear River from 1/2 nautical mile south of the North Carolina State Port Wilmington, North Carolina to 1/2 nautical mile north of the North Carolina State Port Wilmington, North Carolina. U.S. Coast Guard patrol vessels will be on scene to control the movement of persons and vessels in the security zone.

No person or vessel may enter or remain in the security zone at any time without the permission of the Captain of the Port, Cape Fear River. Each person or vessel operating within the security zone will obey any direction or order of the Captain of the Port, Cape Fear River. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from this security zone.

Persons desiring to transit the area of the security zone may contact the Captain of the Port via the Sector North Carolina Command Center via telephone at (252) 247-4570 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted,

all persons and vessels must comply with the instructions of the Captain of the Port, Cape Fear River or a designated representative.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation restricts access to certain waters of the Cape Fear River, the effect of this regulation will not be significant because: (i) The Captain of the Port or a representative may authorize access to the security zone, (ii) the security zone will be enforced for limited duration, and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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.

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The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor on certain waters of the Cape Fear River.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Although the security zone will apply to certain waters of the Cape Fear River, traffic will be allowed to pass through the zone with the permission of the Captain of the Port or a designated representative. The duration of the security zone will be limited to five hours. Before the effective period, we will issue maritime advisories widely available to users of the river.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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.

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### 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 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.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

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.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their

regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded under figure 2–1, paragraph (34)(g) of the Instruction from further environmental documentation. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where indicated under **ADDRESSES**.

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

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

#### Words of Issuance and Proposed Regulatory Text

■ 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:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–011 to read as follows:

#### § 165.T05–011 Security Zone; Cape Fear River, Wilmington, North Carolina.

(a) *Location.* The following area is a security zone: The waters of the Cape Fear River, from surface to bottom,

encompassed by a line connecting the following points, beginning at 34°10'56" N, 077°57'18" W; thence west to position 34°10'56" N, 077°57'30" W; thence north along the western edge of the Cape Fear River to position 34°12'53" N, 077°57'36" W; thence east to position 34°12'53" N, 077°57'18" W; thence south along the eastern edge of the Cape Fear River to the starting point. These coordinates are based upon NAD 1983.

(b) *Definitions.* As used in this section, for purposes of enforcing the security zone identified in paragraph (a) of this section, *designated representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by the Captain of the Port Cape Fear.

(c) *Regulations.* (1) Under general regulations in § 165.33, entry into, anchoring, mooring, or transiting this zone by persons or vessels is prohibited without the prior permission of the Captain of the Port Cape Fear River or a designated representative.

(2) U.S. Coast Guard patrol vessels will be on scene to control the movement of persons and vessels in the security zone.

(3) No person or vessel may enter or remain in the security zone at any time without the permission of the Captain of the Port, Cape Fear River. Each person or vessel operating within the security zone must obey any direction or order of the Captain of the Port, Cape Fear River. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from this security zone.

(4) Persons desiring to transit the area of the security zone may contact the Captain of the Port via the Sector North Carolina Command Center via telephone at (252) 247-4570 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Cape Fear River or a designated representative.

(d) *Effective period.* This section is effective on May 3, 2008 from 8 a.m. through 1 p.m.

Dated: February 25, 2008.

**J.P. Nadeau,**

*Commander, U.S. Coast Guard, Captain of the Port, Cape Fear River.*

[FR Doc. E8-5125 Filed 3-13-08; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

[FWS-R7-SM-2008-0021; 70101-1335-0064L6]

RIN 1018-AU71

### Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2008-09 Subsistence Taking of Fish and Shellfish Regulations

**AGENCIES:** Forest Service, Agriculture; Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes regulations for seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2008-09 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. This rulemaking replaces the fish and shellfish taking regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart D—2007-08 Subsistence Taking of Fish and Wildlife Regulations," which expire on March 31, 2008.

**DATES:** This rule is effective April 1, 2008, through March 31, 2009.

**ADDRESSES:** The Board meeting transcripts are available for review at the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, AK 99503, or on the Office of Subsistence Management Web site (<http://alaska.fws.gov/asm/home.html>).

**FOR FURTHER INFORMATION CONTACT:** Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786-3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786-3592.

#### SUPPLEMENTARY INFORMATION:

##### Background

In Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126), Congress found that "the situation in Alaska is unique in that, in most cases, no practical alternative means are

available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses \* \* \*" and that "continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened \* \* \*." As a result, Title VIII requires, among other things, that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA.

The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from its subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, on July 1, 1990, the Department of the Interior and the Department of Agriculture (Departments) assumed responsibility for implementation of Title VIII of ANILCA on public lands and waters. In anticipation of carrying out this responsibility, the Departments published temporary subsistence management regulations for public lands in Alaska in the **Federal Register** on June 29, 1990 (55 FR 27114). Because the State was unable to create a program in compliance with Title VIII, the Departments published final subsistence management regulations in the **Federal Register** in 1992 (57 FR 22940, May 29, 1992).

As a result of this joint process between Interior and Agriculture, these regulations can be found in two titles of the Code of Federal Regulations (CFR): Title 36, "Parks, Forests, and Public Property," and title 50, "Wildlife and Fisheries," at 36 CFR 242.1-28 and 50 CFR 100.1-28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; subpart B, Program Structure; subpart C, Board Determinations; and subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with subparts A, B, and C of these regulations, as revised May 7,