



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

**Docket Number USCG-2017-0223**

**RIN 1625-AA08**

**Special Local Regulation; Zimovia Strait, Wrangell, AK.**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard proposes to establish a temporary special local regulation to enable vessel movement restrictions for certain waters of the Zimovia Strait. This action is necessary to provide for the safety of life on these navigable waters near Wrangell Harbor during power boat races on July 4, 2017. This regulation would prohibit persons and vessels from transiting through, mooring, or anchoring within the specified race area unless authorized by the Captain of the Port Southeast Alaska or a designated representative.

**DATES:** This rule is effective from 3 p.m. on July 4, 2017 through 7 p.m. on July 4, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0223 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email LT Kristi Sloane, Sector Juneau, Waterways Management Division, Coast Guard: telephone 907-463-2846, email [D17-SMB-Sector-Juneau-WWM@uscg.mil](mailto:D17-SMB-Sector-Juneau-WWM@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

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

CFR	Code of Federal Regulations
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

### **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 would be impracticable. The Wrangell Chamber of Commerce will be conducting power boat races from 3 p.m. to 7 p.m. on July 4, 2017 for the Wrangell 4<sup>th</sup> of July Celebration. The boat races will be taking place approximately 100 yards off of the city dock in Wrangell, AK. The event organizers did not finalize the location of the power boat races in sufficient time for the Coast Guard to solicit public comments.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable for the reasons described above.

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

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Commander, Seventeenth District has determined that potential risks of collision, allision, and wake damage associated with power boat racing will be a safety concern for any vessels (other than the

participants) entering the race course. Boat races typically result in vessel and spectator congestion in the proximity of the race course. Vessel movement restrictions are necessary to ensure spectators remain an adequate distance from the specified race area thereby providing unencumbered access for emergency response craft in the event of a race-related emergency. This rule establishes a specified race area and ensure the safety of this marine event by prohibiting persons and vessel operators from entering, transiting or remaining within the designated race zone during times of enforcement.

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

This rule establishes a special local regulation to restrict vessel movement within the race area from 3 p.m. to 7 p.m. on July 4, 2017 to include Wrangell Harbor entrance and an area extending north along the shoreline approximately 600 yards. No vessel or person would be permitted to enter the special local regulation 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**

E.O.s 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) 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 including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O.13563 emphasizes the importance of quantifying both costs

and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. Vessel traffic would be able to safely transit around the proposed race area which would impact a small designated area in Wrangell Harbor for 4 hours. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the race area, and the rule would allow vessels to seek permission to enter the race area.

#### 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 would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the race area may be small entities, for the reasons stated in section V.A above this rule would 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 contact 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 would 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### 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 proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, 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 implementation of a special local regulation lasting 4 hours that would prohibit entry within 100 yards of the event area. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of Commandant Instruction M16475.ID. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under ADDRESSES. 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 contact 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 100**

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### **PART 100-SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C 1233.

2. Add § 100.35T17-0223 to read as follows:

#### **§ 100. 35T17-0223 Special Local Regulation; Wrangell 4<sup>th</sup> of July Celebration**

#### **Boat Races, Wrangell, AK.**

- (a) Regulated area. The following area is specified as a race area: All waters of Zimovia

Straits, Wrangell, AK North of Wrangell Harbor entrance connecting the following points: 56°28.055N 132°23.154W and 56°28.077N 132°23.074W until reaching the northwestern most end of Wrangell City pier at a line connecting the following points: 56°28.299N 132°23.454W and 56°28.276N 132°23.495W.

- (b) Regulations. In accordance with the general regulations in 33 CFR part 100, the regulated area shall be closed immediately prior to, during and immediately after the event to all persons and vessels not participating in the event and authorized by the event sponsor.
- (c) Authorization. All persons or vessels who desire to enter the designated race area created in this section while it is enforced must obtain permission from the on-scene patrol craft on VHF Ch 9.
- (d) Enforcement period. This section will be enforced from 3 p.m. to 7 p.m. on July 4, 2017.

Dated: June 15, 2017

M. F. McAllister,  
RADM, U.S. Coast Guard,  
Commander, Seventeenth Coast Guard District.

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