

Dated: April 11, 2011.

Kevin J. Wolf,

*Assistant Secretary for Export
Administration.*

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG-2008-0852]

RIN 1625-AA01

Disestablishing Special Anchorage Area 2; Ashley River, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is disestablishing the special anchorage, referred to as Ashley River Anchorage 2, in Charleston, South Carolina. The removal of Ashley River Anchorage 2 would accommodate an expansion of the Ripley Light Yacht Club.

DATES: This rule is effective July 18, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2008-0852 and are available online by going to <http://www.regulations.gov>, inserting USCG-2008-0852 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Julie Blanchfield, Sector Charleston Office of Waterways Management, Coast Guard; telephone 843-740-3184, e-mail Julie.E.Blanchfield@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 5, 2009, we published a notice of proposed rulemaking (NPRM) entitled Disestablishing Special Anchorage Area 2; Ashley River,

Charleston, SC in the **Federal Register** (74 FR 27000). We received six submissions, with a total of 24 comments on the proposed rule. No public meetings were requested, and a public meeting was not held.

Basis and Purpose

Under 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 33 CFR 1.05-1; and the Department of Homeland Security Delegation No. 0170.1, the Coast Guard may establish special anchorage areas. A special anchorage area is a designated water area within which vessels sixty-five feet (20 meters) or less in length are not required to: (1) Sound signals required by Rule 35 of the Inland Navigation Rules (33 U.S.C. 2035); or (2) exhibit the white anchor lights or shapes required by Rule 30 of the Inland Navigation Rules (33 U.S.C. 2030).

Ashley River Properties and the Ripley Light Yacht Club submitted a permit application to the Army Corps of Engineers to construct an additional 200 slips for pleasure craft at the Ripley Light Yacht Club in Charleston, South Carolina. The proposed expansion would encompass most of the area currently designated as Ashley River Anchorage 2. Removal of Ashley River Anchorage 2 would be necessary before the Ripley Light Yacht Club expansion can commence. There are, however, several other locations where vessels currently anchored at Ashley River Anchorage 2 may relocate.

Background

In 1983, the Port of Charleston had no designated special anchorage areas. Subsequently, two anchorage areas were designated. However, no distinction was made between anchorage for commercial and recreational vessels; either type of vessel could anchor in the two designated anchorages. These two anchorage areas did not provide a sufficient area for large commercial vessels, and they did not prevent both large commercial vessels and small recreational vessels from competing for the same anchorage grounds.

In 1984, the Coast Guard published a final rule (49 FR 26587) establishing the four currently designated commercial anchorage areas in the Port of Charleston under 33 CFR 110.173. The Coast Guard also established a special anchorage area adjacent to the Charleston Peninsula on the Ashley River. This special anchorage area on the Ashley River existed until the Coast Guard issued a final rule in 1996 (61 FR 40993) converting the special anchorage area into two special anchorage areas: Ashley River Anchorage 1 and Ashley

River Anchorage 2. The special anchorage area was converted to accommodate an expansion to the George M. Lockwood Municipal Marina, currently known as The City Marina. Ashley River Anchorage 2 is the smaller of the two special anchorage areas established in 1996.

In 2008, Ashley River Properties and the Ripley Light Yacht Club submitted a permit to the Army Corps of Engineers to construct 200 additional boat slips at the Ripley Light Yacht Club. The proposed expansion encompasses most of the area currently designated as Ashley River Anchorage 2. The Ripley Light Yacht Club expansion will accommodate significantly more vessels than can currently safely anchor in Ashley River Anchorage 2.

The Ripley Light Yacht Club intends to reserve several of the 200 additional slips for transient recreational boaters. Additionally, transient slips are available at the Ripley Light Yacht Club, The City Marina, and Anchorage 1 remains a viable and convenient location for recreational vessels to anchor. Finally, recreational vessels may anchor in other areas of the Port of Charleston so long as they comply with applicable Navigation Rules and do not pose a navigational hazard while anchored.

Discussion of Comments and Changes

The Coast Guard received six submissions, containing a total of 24 comments, regarding the NPRM.

Abandoned and Sunken Vessels

One comment stated that due to the considerable amount of abandoned and sunken vessels within the larger remaining anchorage, Ashley River Anchorage 1 will not be able to accommodate vessels currently anchored in Ashley River Anchorage 2. Three comments recommended Ashley River Anchorage 2 not be disestablished until abandoned and sunken vessels in the two special anchorage areas were removed. The Coast Guard understands that Ashley River Properties will remove all abandoned and sunken vessels in both special anchorage areas prior to commencing the Ripley Light Yacht Club expansion. The removal of abandoned and sunken vessels would provide additional space in Ashley River Anchorage 1. After abandoned and sunken vessels have been removed from Ashley River Anchorage 1, Ashley River Anchorage 1 will be able to accommodate all of the vessels currently in Ashley River Anchorage 2. Additionally, this rule does not require vessels to leave the location where they are currently anchored. This rule merely

disestablishes Ashley River Anchorage 2. Vessels may still remain anchored in their current location so long as they comply with applicable Navigation Rules and do not pose a navigational hazard while anchored. Therefore, the Coast Guard made no changes to the final rule based on these comments.

One comment suggested that by disestablishing Ashley River Anchorage 2, the Coast Guard would be encouraging the abandonment of vessels in alternate locations. The Coast Guard does not establish special anchorage areas to facilitate the abandonment of vessels, nor should special anchorage areas be used in such a manner. Additionally, there are several other locations where vessels currently anchored at Ashley River Anchorage 2 may relocate, including Ashley River Anchorage 1. Therefore, the Coast Guard made no changes to the final rule based on this comment.

Two comments expressed concern that: (1) Some persons who currently anchor their vessels at Ashley River Anchorage 2 may not be able to afford to pay for a slip rental in the Port of Charleston; (2) there are few inexpensive places in the Charleston area to anchor; and (3) Ashley River Anchorages 1 and 2 should be protected. The Coast Guard is not reducing the number of free or low-cost anchoring locations by removing Ashley River Anchorage 2. The Coast Guard understands that, as part of the Ripley Light Yacht Club expansion project, Ashley River Properties will be removing abandoned and sunken vessels from both special anchorage areas. Removal of these abandoned and sunken vessels in Ashley River Anchorage 1 will provide additional space for those vessels currently anchored at Ashley River Anchorage 2. Moreover, vessels may still anchor in other areas in the Port of Charleston at no cost so long as they comply with applicable Navigation Rules and do not pose a navigational hazard while anchored. Therefore, the Coast Guard does not believe that disestablishing Ashley River Anchorage 2 will prevent mariners from anchoring their boats nearby. There are several nearby locations where vessels currently anchored in Ashley River Anchorage 2 may relocate, including Ashley River Anchorage 1. Therefore, the Coast Guard made no changes to the final rule based on these comments.

One comment stated that Ashley River Anchorage 1 is much more exposed to prevailing wind and weather than Ashley River Anchorage 2 and, therefore, is more suitable to larger vessels than Ashley River Anchorage 2.

The Coast Guard disagrees with this comment. Ashley River Anchorage 1 is not much more exposed to prevailing wind and weather than Ashley River Anchorage 2. In fact, the two anchorages are within 200 yards of one another. Therefore, the Coast Guard made no changes to the final rule based on this comment.

Two comments stated that the area between Ripley Light Yacht Club and the Ashley River Marina will become overly congested by vessel traffic because of the Ripley Light Club expansion. The Coast Guard believes that disestablishing Ashley River Anchorage 2 will not increase vessel congestion in this area. The removal of Ashley River Anchorage 2 and the abandoned and sunken vessels contained in the anchorage will actually increase space for vessels to maneuver. Therefore, the Coast Guard made no changes to the final rule based on these comments.

Ripley Light Yacht Club Marina Expansion

Two comments stated that because the proposed expansion extends into the anchorage, the construction permit should have been denied. The Coast Guard does not have authority to approve or disapprove the Ripley Light Club expansion, and the Ripley Light Yacht Club marina expansion permitting process is not within the scope of this final rule. Comments regarding the issuance of the Ripley Light Yacht Club marina expansion permit should be submitted to Federal, State, and local agencies handling the permit application, including the Army Corps of Engineers and the South Carolina Office of Coastal Resource Management. Therefore, the Coast Guard made no changes to the final rule based on these comments.

One comment stated that the Ripley Light Yacht Club is not similar to other yacht clubs and is more like a business. The name and business practices of the Ripley Light Yacht Club are outside the scope of this rulemaking. Therefore, the Coast Guard made no changes to the final rule based on this comment.

One comment stated that the proposed rule benefits the private financial gain of the developer at the expense of numerous small entities. The Coast Guard disagrees that disestablishing Ashley River Anchorage 2 would impose costs on small entities. There are several nearby locations where vessels currently anchored in Ashley River Anchorage 2 may relocate at no additional cost.

One comment stated that the developer has no riparian rights to the

land beneath Ashley River Anchorage 2, and that the proposed rule would give Federal property to a private entity. This comment is outside the scope of the final rule. By disestablishing Ashley River Anchorage 2, the Coast Guard is not conferring any Federal property rights on any private entity. Therefore, the Coast Guard made no changes to the final rule based on this comment.

One comment stated that an environmental study should be conducted to analyze the environmental effects of the marina expansion. While the permit process for the marina expansion may require an environmental review, the Coast Guard has determined that the disestablishment of the Ashley River Anchorage 2 is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f). The Environment section below discusses this categorical exclusion determination in detail. Therefore, the Coast Guard made no changes to the final rule based on these comments.

One comment stated that under the Background and Purpose and Discussion of Proposed Rule sections of the NPRM, the Coast Guard indicated that the proposed marina expansion will “extend into” Ashley River Anchorage 2, when the expansion actually completely encompasses the existing anchorage. The Coast Guard disagrees with the comment that the expansion will completely encompass Ashley River Anchorage 2. However, the Coast Guard has amended the preamble to state that the expansion will “encompass most of the area currently designated as Ashley River Anchorage 2.”

Local Enforcement of Anchorage

One comment suggested the creation of an association of interested citizens that could monitor and assist in maintaining Ashley River Anchorage 2. This comment is outside the scope of the regulation. Therefore, the Coast Guard made no changes to the final rule based on this comment.

Two comments recommended that jurisdiction over Ashley River Anchorage 1 and 2 should be turned over to the local government to establish and enforce. To the extent this comment suggests the creation of local ordinances, the suggestion is outside the Coast Guard's authority, and the Coast Guard does not believe this recommendation affects the disestablishment of Ashley River Anchorage 2. Additionally, a proposal to disestablish Ashley River Anchorage

1 would require a separate rulemaking. At this time, the Coast Guard does not have any intention of disestablishing Ashley River Anchorage 1. Therefore, the Coast Guard made no changes to the final rule based on these comments.

Relocation of the Ashley River Channel

Two comments stated that The City Marina may attempt to have the existing channel relocated westward due to insufficient water depths at The City Marina. As such, The City Marina will soon be submitting a permit that would affect both anchorages. These commenters recommended the Coast Guard abandon this rulemaking until The City Marina submits the permit. The Coast Guard does not believe the proposal by The City Marina should have any impact on disestablishing Ashley River Anchorage 2. While relocation of the channel could impact the location of part of Ashley River Anchorage 1, it should not reduce the overall anchorage space. In any event, the Coast Guard will consider proposals affecting Ashley River Anchorage 1 separately. Therefore, the Coast Guard made no changes to the final rule based on these comments.

Notice and Comments Regarding the Proposed Rule

One comment stated that Marine Safety Information Bulletin (MSIB) 31–09, announcing the proposed rule, was not distributed to every vessel currently moored in Ashley River Anchorage 2 until July 10, 2009. The Coast Guard provided notice of the NPRM by several means. First, on June 1, 2009, the Coast Guard posted MSIB 31–09 on the Internet at <http://homeport.uscg.mil>. Second, on June 1, 2009, the Coast Guard e-mailed MSIB 31–09 to subscribers of a Coast Guard sponsored e-mail list server, which is available for free to the public at <http://cgls.uscg.mil/mailman/listinfo/secchas-msib>. Third, the NPRM was published in the **Federal Register** on June 5, 2009 (74 FR 27000). Fourth, the Coast Guard distributed MSIB 31–09 to all vessels in Ashley River Anchorage 2. Such notification efforts exceed standard outreach efforts for **Federal Register** publications and satisfy the notice requirement set forth in the Administrative Procedure Act (5 U.S.C. 553).

One comment requested that the Coast Guard consider extending the August 4, 2009 deadline for public comments. The Coast Guard did not receive this request to extend the comment period until August 3, 2009, the day prior to the end of the comment period, and did not believe it necessary to extend the comment period.

After considering all the comments, the Coast Guard made no changes to the proposed rule.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, 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.

The economic impact of this rule is not significant because of the following reasons: (1) The limited geographic area impacted by disestablishing Ashley River Anchorage 2 will not restrict or otherwise significantly impact the movement or routine operation of a large number of commercial or recreational vessels in the Ashley River; and (2) vessels currently located in Ashley River Anchorage 2 may relocate to Ashley River Anchorage 1, a larger anchorage nearby, or other areas of the Port of Charleston, where they may anchor at no cost, so long as they comply with applicable Navigation Rules and do not pose a navigational hazard while anchored.

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. This rule may affect the following entities, some of which may be small entities: the owners or operators of recreational vessels intending to anchor in the Port of Charleston, Ripley Light Yacht Club, and The City Marina. This rule would not have a significant impact on a substantial number of small entities for the following reasons: (1) Ashley

River Anchorage 2 is small and cannot accommodate many vessels; (2) recreational vessels that currently anchor at Ashley River Anchorage 2 may anchor at many other nearby locations, including Ashley River Anchorage 1, Ripley Light Yacht Club, or The City Marina, all of which are located nearby; and (3) after the expansion is completed, the Ripley Light Yacht Club will be able to accommodate significantly more transient vessels than could fit in Ashley River Anchorage 2.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could 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 cause 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 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 (NEPA) (42 U.S.C. 4321-4370f), and have concluded 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 is categorically excluded, under figure 2-1, paragraph (34)(f), of the Instruction, because it involves disestablishing a special anchorage area. Under figure 2-1, paragraph (34)(f), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

- 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

- 2. Revise § 110.72d to read as follows:

§ 110.72d Ashley River, SC.

All waters on the southwest portion of the Ashley River encompassed within the following points: beginning at 32°46'42.7" N, 79°57'19.3" W; thence southwest to 32°46'38.0" N, 79°57'24.0" W; thence southeast to 32°46'32.0" N, 79°57'15.5" W; thence southeast to 32°46'29.0" N, 79°57'00.9" W; thence back to origin following the southwest

boundary of the Ashley River Channel. All coordinates are North American Datum 1983.

Dated: March 10, 2011.

William D. Baumgartner,
Rear Admiral, U.S. Coast Guard, Commander,
Seventh Coast Guard District.

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BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG-2011-0243]

RIN 1625-AA09

Drawbridge Operation Regulation; Illinois Waterway, Joliet, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Cass Street Drawbridge across the Illinois Waterway, mile 288.1, at Joliet, Illinois. The deviation is necessary to allow participants in an 8K run to cross the bridge. This deviation allows the bridge to be maintained in the closed-to-navigation position for three hours.

DATES: This deviation is effective from 8:30 a.m. to 11:30 a.m. on May 14, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG-2011-0243 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0243 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Eric A. Washburn, Bridge Administrator, Coast Guard; telephone (314) 269-2378, e-mail Eric.Washburn@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION: The Illinois Department of Transportation requested a temporary deviation for the