

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Southern Division)**

**CANOE CRUISERS ASSOCIATION OF
GREATER WASHINGTON DC**
1105 Highwood Road
Rockville, MD 20851

Plaintiff,

v.

Case No. 8:18-cv-2914

KARL L. SCHULTZ, Commandant of the United
States Coast Guard, in His Official Capacity
2703 Martin Luther King Jr. Avenue, SE
Washington, DC 20593-7000

UNITED STATES COAST GUARD,
2703 Martin Luther King Jr. Avenue, SE
Washington, DC 20593-7000

KIRSTJEN M. NIELSEN, Secretary of Homeland
Security, in Her Official Capacity
3801 Nebraska Avenue, NW
Washington, DC 20016

**UNITED STATES DEPARTMENT OF
HOMELAND SECURITY**
3801 Nebraska Avenue, NW
Washington, DC 20016

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Canoe Cruisers Association of Greater Washington, D.C. hereby sues
Defendants Karl L. Schultz, Commandant of the U.S. Coast Guard, and Kirstjen M. Nielsen,
Secretary of Homeland Security, in their official capacities, and the U.S. Coast Guard and U.S.
Department of Homeland Security, and allege as follows.

INTRODUCTION

1. On July 10, 2017, without any prior notice, in order to facilitate President Donald Trump's frequent visits to the Trump National Golf Club ("Trump National" or "Golf Club"), a private club located in Loudoun County, Virginia, the U.S. Coast Guard, a component of the U.S. Department of Homeland Security ("DHS"), issued an interim final rule establishing a "permanent security zone" encompassing the entire width of a two-mile stretch of the Potomac River in an area in Montgomery County, Maryland, near Trump National. Ex. A at 2, 82 Fed. Reg. 31,719 (July 10, 2017) ("the Rule"). During those times when the permanent security zone is being enforced, "entry into or remaining in the security zone . . . is prohibited unless authorized by the Coast Guard Captain of the Port Maryland-National Capital Region." *Id.* This action challenges the Rule, which revokes the public's legal right to access and enjoy a popular section of the Potomac River whenever President Trump visits Trump National.

2. The Coast Guard has publicly acknowledged that recreational River traffic poses no security threat when it passes Trump National on the side of the River adjacent to the Maryland shore. Nevertheless, the Coast Guard has refused to revise the rule to accommodate recreational River traffic while also addressing legitimate national security interests.

3. Previous Presidential Administrations—and this Administration, prior to enacting the Rule—addressed Presidential security during leisure travel by enacting temporary, time-limited security zones that only lasted for the duration of the travel, and that required publication in the Federal Register for each instance in which the security zone was activated.

4. The Rule was effective immediately upon providing actual notice to affected persons, without actual notice upon publication in the Federal Register, and with no end date.

The Coast Guard failed to provide the public with notice and an opportunity for comment prior to implementing its Rule.

5. In an after-the-fact comment period, hundreds of local citizens, nonprofit groups, and businesses expressed concerns with the Rule. Among the commenters was Plaintiff Canoe Cruisers Association of Greater Washington DC (“Canoe Cruisers”), a nonprofit organization that, since 1956, has promoted and fostered recreational use of this very section of the River. The comments noted that the closure area is popular and important for recreational River users and suggested an alternative approach—closing the half of the River closer to the Virginia shore and adjacent to the Golf Club, while leaving the Maryland shore side open for recreational traffic—that would permit continued recreational River use while also addressing national security needs.

6. DHS was legally required to address these comments and revise the rule—and it promised that it would do so. Nevertheless, the Rule has been in place for well more than one full year and DHS has taken no steps to revise the Rule or otherwise respond to comments in any way. Meanwhile, the Rule continues to harm many River users, including Plaintiff and its Members.

NATURE OF ACTION

7. This action challenges the Rule under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706.

8. The Rule is unlawful because DHS did not provide notice or solicit comment prior to issuing the Rule, and DHS lacked good cause to dispense with the APA’s notice-and-comment requirements. It is also unlawful because DHS failed to establish and follow a public process required by 33 U.S.C. § 1231(b). The Rule is arbitrary and capricious because it does not meaningfully consider and respond to comments received from the community. It is also

arbitrary and capricious because it is overbroad, fails to provide adequate notice to the affected community regarding when it will be in force, lacks an end date, and exceeds the scope of DHS's statutory authority. DHS's continued enforcement of the Rule more than one year after its issuance further underscores the absence of good cause to proceed without notice and comment. And DHS's failure to implement a new rule addressing community concerns for more than a year constitutes agency action unlawfully withheld or unreasonably delayed.

9. Accordingly, DHS is required by law to rescind the Rule, or, in the alternative, to promptly replace the Rule through a new rulemaking that considers and meaningfully addresses the concerns raised by hundreds of concerned groups and citizens.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the claims arise under the laws of the United States.

11. Venue is proper under 28 U.S.C. § 1391(e). Defendants are agencies of the United States and officials of those agencies sued in their official capacities. A substantial part of the events or omissions giving rise to the claims occurred within the District of Maryland. In addition, Plaintiff resides within the District of Maryland.

PARTIES

12. Plaintiff Canoe Cruisers Association of Greater Washington, D.C. ("Canoe Cruisers") is a nonprofit organization founded in 1956. Canoe Cruisers is based in Montgomery County, Maryland, and is the leading canoe and kayak club in the Greater National Capital Region. Its mission is to unite and serve people interested in canoeing and kayaking (together referred to as "paddling") in the Potomac River Basin. Canoe Cruisers organizes paddling trips, provides instruction on canoeing, kayaking, and swift water rescue, and engages in conservation

outreach and advocacy. Many of these activities take place on the very section of the Potomac River between Sharpshin Island and Pond Island that is the subject of the Rule.

13. Canoe Cruisers has more than two hundred and fifty dues-paying members who reside throughout Maryland, Virginia, and the District of Columbia (“Members”). The Members are active paddlers who frequently canoe and kayak on the Potomac River, including the section of the River that is subject to the Rule. Members participate in Canoe Cruisers’ organized outings, educational activities, and conservation efforts.

14. Members elect Canoe Cruisers’ Chairperson, Secretary, Membership Chair, and Treasurer, who are primarily responsible for governance and other decisions on behalf of the organization. The Chairperson appoints a five-member Steering Committee, which also participates in governance decisions. The Chairperson also appoints Committee Chairs as needed to coordinate and manage Canoe Cruisers activities.

15. Defendant Karl L. Schultz is Commandant of the U.S. Coast Guard. His principal place of business is 2703 Martin Luther King Jr. Avenue, SE, Washington, D.C. 20593-7000.

16. Defendant U.S. Coast Guard is a component of the U.S. Department of Homeland Security and is an agency within the meaning of 5 U.S.C. § 551(1). Its principal place of business is 2703 Martin Luther King Jr. Avenue, SE, Washington, D.C. 20593-7000.

17. Defendant Kirstjen M. Nielsen is the Secretary of Homeland Security. Her principal place of business is 3801 Nebraska Avenue, NW, Washington, D.C. 20016.

18. Defendant U.S. Department of Homeland Security is an agency within the meaning of 5 U.S.C. § 551(1). Its principal place of business is 3801 Nebraska Avenue, NW, Washington, D.C. 20016.

FACTUAL ALLEGATIONS

Background

19. The section of the Potomac River between Sharpshin Island and Pond Island is one of the most popular canoeing and kayaking sites, both for adults and children, in the entire Potomac River Basin. *See Ex. C at 2 (map).*

20. This section of the Potomac River is within the State of Maryland to the low-water mark on the River's southern shore.¹

21. This section consists primarily of an area of the River commonly called "Seneca Lake" in recognition of its unusually tranquil waters, and is unique in providing large areas of calm waters and in being bordered on the downstream side by moving water features that make it an ideal area for recreational boating as well as teaching and training basic whitewater skills. Accordingly, it is extremely popular with beginning paddlers and for instructional classes.

22. Seneca Lake is formed by an earthen dam commonly referred to as the Seneca Breaks rapids. The Seneca Breaks are navigable by experienced whitewater paddlers, but not by motorized boats.

23. The Seneca Breaks also direct water flow into a feeder lock at Violette's Lock, which then flows downstream through the Chesapeake & Ohio Canal, commonly called the C&O Canal.

24. This section of the River features two points of access on its Maryland shore, which are unique for the features they possess and benefits they offer the recreational public. Riley's Lock is named for an historic C&O Canal lift lock and aqueduct; there, a boat launch provides access to the gentle waters of Seneca Creek, perfect for beginner instruction and

¹ *See Virginia v. Maryland*, 540 U.S. 56, 62-63 (2003).

paddling. The access area is part of Seneca Landing Special Park, which is administered by Montgomery County; it offers ample parking and is the headquarters of a popular recreational youth camp. Violette's Lock is the next lock downstream from Riley's Lock and its premises include parking and a picnic area. Both sites provide convenient launching points for access to Seneca Lake, the Seneca Breaks rapids, and the Potowmack Canal, also called the George Washington Canal, on the Virginia side.

25. The George Washington Canal is a uniquely aesthetically pleasing and historic passageway that is frequently used for moving water skills training, swift water rescue training, and recreational family day trips. It is known for its abundant wildlife, including turtles and birds.

26. The public has enjoyed its legal right to access, use, and enjoy the River for recreational purposes for many decades.²

27. Since its founding in 1956, Plaintiff Canoe Cruisers has played an instrumental role in facilitating paddling and other recreational activities on this very segment of the Potomac River. Canoe Cruisers and its members use this segment of the River on a weekly basis. Canoe Cruisers offers weekly paddling trips; kid- and family-friendly outings; classes for beginner, intermediate, and advanced paddlers; instructor training courses; and swift water rescue and safety classes. Canoe Cruisers also coordinates conservation and River clean-up efforts.

28. Many of Canoe Cruisers' Members have frequented this section of the River for many years.

² See *Anne Arundel County, Md. v. City of Annapolis, Md.*, 721 A.2d 217, 224-24 (Md. 1998) (“The navigable waterways within Maryland’s boundaries and the lands beneath them generally are ‘held’ by the State for the benefit of the inhabitants of Maryland.”).

29. This segment of the River is extremely important to other organizations and individuals as well. A nonprofit organization that operates educational outdoor summer camp programs for youths runs its paddling programs from Riley's Lock. Another nonprofit organization that provides veterans and their families with opportunities to find health, healing, community purpose, and new challenges through adventure and adaptive paddle sports on this section of the River.

30. This segment of the River is adjacent to two golf courses that are part of Trump National.

31. Trump National is an 800-acre private golf club in Loudoun County, Virginia.

32. Trump National was previously known as the Lowes Island Club. Lowes Island Club originally opened in 1999. It was purchased by a corporate entity affiliated with President Trump in 2009 for approximately \$13 million and thereafter given its current name.

33. Membership in Trump National requires payment of an initiation fee, which, according to published reports, can amount to \$10,000 to \$300,000, as well as hundreds of dollars per month in continuing fees.³

34. Trump National features two eighteen-hole golf courses; a brand-new indoor tennis center; an aquatics facility; a fitness center; and a newly renovated indoor clubhouse that offers event space for up to three hundred guests.

35. Trump National is currently managed by Eric Trump, one of President Trump's sons.

36. Although some of the holes on two of Trump National's golf courses abut the River, the clubhouse and other facilities are several hundred yards from shore.

³ Eric Lipton & Susanne Craig, *With Trump in White House, His Golf Properties Prosper*, N.Y. Times, Mar. 9, 2017, <https://www.nytimes.com/2017/03/09/us/politics/trump-golf-courses.html>.

The Rule

37. In past Presidential Administrations, when it was necessary for the Coast Guard to implement a security zone for purposes of Presidential security, the Coast Guard would establish a temporary, time-limited security zone for the particular duration of time that the President would be visiting the given area. Notice of the establishment of the temporary security zone would be published in the Federal Register.⁴

38. The Trump Administration followed the same practice until June 22, 2017. Until that date, when President Trump visited his Golf Club, the Coast Guard established a temporary security zone encompassing the waters adjacent to Trump National. It published notice in the Federal Register for each occasion on which the temporary security zone was established.

39. On June 22, 2017, without any advance notice, the Coast Guard implemented the Rule, which was subsequently published in the Federal Register on July 10, 2017. *See Ex. A.*

40. The Rule adds a new provision to the Code of Federal Regulations at 33 C.F.R. § 165.557, establishing a “permanent security zone” on the entire width (“shore to shore”) of the River in the area between Sharpshin Island and Pond Island, a distance of approximately two miles. The Rule provides that “entry into or remaining in the security zone . . . is prohibited” without the authorization of the Coast Guard Captain of the Port Maryland-National Capital Region.

41. As authority, the Rule cites 33 U.S.C. § 1231; 50 U.S.C. §§ 191 and 195; 33 C.F.R. §§ 1.05-1, 6.04-1, 6.04-6, and 160.5; and Department of Homeland Security Delegation No. 0170.1.

⁴ *See, e.g.*, 81 Fed. Reg. 88,115 (Dec. 7, 2016) (establishing temporary security zone in waters of Kailua Bay, Oahu, Hawaii, during President Obama’s holiday vacation).

42. The Rule acknowledges that notice and comment would ordinarily be required for the Rule, but asserts that good cause exists to bypass those requirements with respect to the Rule.

43. Accordingly, the Rule effectively rescinds the public's long-held and continuously exercised legal right to access the section of the River subject to the Rule during those times the "permanent security zone" is in effect. In enacting the Rule, the Coast Guard revoked the public's legal right to access a public, navigable waterway with no notice and with no public process, including an opportunity for the public to comment or provide input. And it provided no end date for the restoration of the public's legal right to access the River.

The Comment Period

44. Concurrently with publication of the Rule, the Coast Guard opened a one-month comment period.

45. The Coast Guard received 636 comments during the comment period.

46. Every comment expressed concern with the Rule.

47. A commenter who is a Canoe Cruisers Member noted that he "lead[s] an outing across these waters every Sunday morning that attracts about a dozen kayakers and canoeists." He stated that the "proposed zone is too wide" and "need be no wider than mid-river." The commenter further requested advance notice and improvements in the Coast Guard's proposed manner of informing recreational River users of closures.

48. Another Canoe Cruisers Member commented that the Rule "will have a major impact on paddlers and fishermen in the DC area." The commenter noted the importance of Violette's Lock for access to the George Washington Canal and the Seneca Breaks.

49. Another Canoe Cruisers Member stated, "Over the years I have joined countless boaters in enjoying the natural beauty around the Seneca Dam area and in navigating the George

Washington Canal.” The commenter proposed closing the portion of the River closest to the Virginia shore and allowing continued access along the Maryland shore.

50. One commenter noted that his son has “gained skills in leadership, outdoor work, and collaboration” through the summer camp that operates on that segment of the River, and noted that the Rule would require the camp to relocate a large number of their campers.

51. Another commenter noted that the River closure “will have a serious impact on paddling schools, children’s summer camps that teach paddling, members of the US Whitewater Team who are training for the Olympics, disabled veterans who paddle with Team River Runner, fishermen, and recreational canoeist[s], kayakers, and paddle boarders.”

52. A commenter noted that the “Riley’[s] Lock area is a great favorite with kayakers and fishing persons living near the adjacent shores,” and proposed “to set the boundary of the security zone in the middle of the river.”

53. Another commenter stated:

Our children have enjoyed attending summer camps and having use of the Potomac in this area for years. It is a quintessential Washington DC experience that promotes some of the singular benefits our region has to offer in terms of beauty, nature and recreation. PLEASE do not limit access to this area from multitudes of DC/MD/VA area residents and tourists to accommodate the occasional use of a nearby golf course. There are so many options for golf courses and only a unique and treasured handful of options for Potomac River access for kayaking, paddling, rapids swimming, boating, summer camps, and general river appreciation.

54. Another commenter noted that he has accessed this part of the River at Violette’s Lock many times. He noted that “[t]his is a very popular spot for paddlers,” and asked, “How will kayakers and canoeists reach the GW Canal or the Seneca Breaks?”

55. A commenter noted that “[t]he river is very wide here and heavily used by a variety of recreational (including me) and commercial groups such as [Camp] Calleva. One

consequence is that you would be interfering with the rehabilitation of wounded veterans (who are learning to use kayaks there) in order to allow politicians to play golf.”

56. Another commenter stated: “Boaters drive hours to use the boat ramp at Riley’s Lock and it is ridiculous that you would close the river without notice. If you closed the river at the midpoint, you would still have multiple times the exclusion zone in front of the White House and boaters wouldn’t be turned away.”

57. A commenter noted that although the Coast Guard had stated in congressional testimony that it would “accommodate” boaters in the area, no such accommodation was included in the Rule. “Any allowance to use of boaters to be in the river during any closures MUST BE PART OF THE INTERIM OR FINAL RULE. Otherwise, there is no legal authority to prevent the U.S. Coast Guard from closing the river and creating significant harm to small businesses that operate within the Closure Area.”

58. The great majority of comments proposed that the Rule be revised to accommodate recreational River users on the side of the River closest to the Maryland shore.

Canoe Cruisers’ Comment

59. Canoe Cruisers submitted a comment to the Coast Guard during the comment period. *See* Ex. B (“Comment”).

60. The Comment explains that the area of the River subject to the Rule “has been used for . . . both recreational and instructional purposes by CCA members, members of other paddling clubs and small business entities focused primarily on paddling instruction in this area, for over sixty years.”

61. The Comment further notes that Canoe Cruisers “is actively engaged in activities on a daily and weekly basis that use the section of the Potomac River that is affected by this interim rule.”

62. In the Comment, Canoe Cruisers noted that it shares the Coast Guard’s concern with the safety and security of the President and those traveling with him.

63. Canoe Cruisers stated that by restricting access to the entire width of the Potomac River at that site, the Rule is too broad.

64. Canoe Cruisers instead proposed that the Rule be revised to restrict access to the one hundred to two hundred yards of the River closest to Trump National, and that recreational River users be allowed free access to the portion of the River closer to the Maryland shoreline.

65. The Comment states that the Rule threatens boater safety by forcing them to attempt to cross the River to the side closest to the Virginia shore just below the Seneca Dam, in the challenging Seneca Breaks area.

66. The Comment notes that the George Washington Canal and Seneca Breaks “have provided irreplaceable locations, within easy reach of Washington DC, for instructing new paddlers in the skills of maneuvering different types of rapids,” as well as practicing swift water rescue operations.

67. The Comment notes that commercial enterprises, including camps and kayaking entities, as well as nonprofits such as Team River Runner, will be adversely affected by the Rule.

68. The Comment notes that the Rule will not provide the public with adequate notice of impending security zone enforcement. By only using VHF Channel 16, river paddlers and recreational boaters (unlike sea kayakers) would not hear the announcement. Accordingly, the

Comment requests that the Coast Guard revise the Rule to provide for better public notice of enforcement.

69. The Comment further notes that the Rule denied Canoe Cruisers and other affected members of the public adequate notice and an opportunity to comment.

The Coast Guard's Failure to Act

70. The Coast Guard promised, on various occasions, that it would consider the comments and revise the Rule as needed (and as required by law).

71. In the Rule, the Coast Guard stated that it “will consider all comments and material received during the comment period.” *See* Ex. A at 3.

72. Similarly, in a response to a Congressional inquiry raising concerns about the Rule, the Coast Guard stated that it would “carefully evaluate each comment in the docket, and may modify our rule in response to issues raised by the public.” *See* Ex. D at 4.

73. In responses to congressional inquiries, in media reports, and in other public statements, the Coast Guard has conceded that national security needs do not require that the River be closed from shore to shore, and that allowing recreational River traffic to continue to pass on the Maryland side of the River does not pose national security concerns.⁵

74. Nevertheless, in the year-plus that has passed since the Rule was issued, the Coast Guard has failed to respond in any way to the hundreds of comments it received or to modify the Rule to restore River users' legal right of access to this vital public resource.

President Trump's Frequent Visits to His Golf Club

75. President Trump has visited Trump National frequently.

⁵ Avantika Chilkoti, *Coast Guard Shelves Plans to Shut Down Potomac Near a Trump Resort*, N.Y. Times, July 26, 2017, <https://www.nytimes.com/2017/07/26/us/politics/coast-guard-trump-resort-potomac-security.html>.

76. His visits are most common during days and times of peak recreational River use, particularly weekends and holidays.

77. Each time President Trump has visited his Golf Club since the Rule took effect, the Coast Guard has activated the security zone pursuant to the Rule, to the detriment of Canoe Cruisers, its Members, and other recreational River users.

78. President Trump visited his Golf Club on Saturday, June 24, 2017.

79. President Trump visited his Golf Club on Sunday, June 25, 2017.

80. President Trump visited his Golf Club on Tuesday, July 4, 2017.

81. President Trump visited his Golf Club on Sunday, July 9, 2017.

82. President Trump visited his Golf Club on Saturday, July 22, 2017.

83. President Trump visited his Golf Club on Sunday, July 23, 2017.

84. President Trump visited his Golf Club on Sunday, July 30, 2017.

85. President Trump visited his Golf Club on Saturday, October 7, 2017.

86. President Trump visited his Golf Club on Sunday, October 8, 2017.

87. President Trump visited his Golf Club on Monday, October 9, 2017.

88. President Trump visited his Golf Club on Saturday, October 14, 2017.

89. President Trump visited his Golf Club on Sunday, October 15, 2017.

90. President Trump visited his Golf Club on Saturday, October 21, 2017.

91. President Trump visited his Golf Club on Sunday, October 22, 2017.

92. President Trump visited his Golf Club on Saturday, October 28, 2017.

93. President Trump visited his Golf Club on Sunday, March 18, 2018.

94. President Trump visited his Golf Club on Sunday, April 15, 2018.

95. President Trump visited his Golf Club on Saturday, April 28, 2018.

96. President Trump visited his Golf Club on Saturday, May 12, 2018.
97. President Trump visited his Golf Club on Sunday, May 13, 2018.
98. President Trump visited his Golf Club on Saturday, May 26, 2018.
99. President Trump visited his Golf Club on Sunday, May 27, 2018.
100. President Trump visited his Golf Club on Saturday, June 16, 2018.
101. President Trump visited his Golf Club on Sunday, June 17, 2018.
102. President Trump visited his Golf Club on Saturday, June 24, 2018.
103. President Trump visited his Golf Club on Wednesday, July 4, 2018.
104. President Trump visited his Golf Club on Saturday, August 25, 2018.
105. President Trump visited his Golf Club on Sunday, August 26, 2018.
106. President Trump visited his Golf Club on Saturday, September 1, 2018.
107. President Trump visited his Golf Club on Sunday, September 2, 2018.
108. President Trump visited his Golf Club on Saturday, September 8, 2018.
109. President Trump also visited his Golf Club on several occasions prior to the Rule taking effect:
 110. President Trump visited his Golf Club on Saturday, March 11, 2017.
 111. President Trump visited his Golf Club on Sunday, March 26, 2017.
 112. President Trump visited his Golf Club on Sunday, April 2, 2017.
 113. President Trump visited his Golf Club on Sunday, April 30, 2017.
 114. President Trump visited his Golf Club on Sunday, May 14, 2017.
 115. President Trump visited his Golf Club on Saturday, June 3, 2017.
 116. President Trump visited his Golf Club on Sunday, June 4, 2017.

Injuries Suffered by Canoe Cruisers and Its Members

117. The Rule strips Canoe Cruisers and its members of their legal right to access the River to promote outdoor recreation; engage the public in educational and conservation activities; develop skills to understand and safely operate human powered watercraft; and engage in important recreational, educational, and conservation activities.

118. As described above, the section of the River subject to the Rule is among the most popular stretches of the entire Potomac River for canoeists, kayakers, and other recreational users, due in part to its width, breadth, mixture of moving and still waters, outstanding access points, and proximity to popular features including the C&O Canal, the Seneca Breaks rapids, and the George Washington Canal.

119. For decades, Canoe Cruisers has planned organized outings and educational activities on the section of the River subject to the Rule. During paddling season, these outings have routinely occurred on a weekly or near-weekly basis on the section of the River subject to the Rule.

120. As a direct result of the Rule, Canoe Cruisers has been forced to revise or cancel its planned organized outings, education, stewardship, and conservation programs due to the significant possibility that the security zone authorized by the Rule will be in effect on a given day and that their legal right of access to the River will therefore be restricted.

121. Canoe Cruisers has expended organizational time and resources on educating the paddling community about the Rule's limitation on River access and alternative paddling sites.

122. Canoe Cruisers has devoted extensive space in its regular newsletter and on its website to discuss the Rule and the river access problems it creates, and informing the paddling public about how to determine whether the River is open.

123. Canoe Cruisers and its Members have been and are deterred from paddling on the River because of the significant possibility that River access will be restricted on the day of a planned outing because of the Rule.

124. Because of the unique qualities and nature of this particular section of the River, the changes in plans and cancellations that have been necessitated by the Rule have diminished the quality and value of Canoe Cruisers' and its Members' activities.

125. Canoe Cruisers and its Members have had to travel significantly further away from the Greater Washington, D.C. area, at substantial time and expense, to find alternative waters to conduct the same activities that would otherwise be conducted on the River.

126. Members attempting to paddle on the River have been diverted by law enforcement authorities over the lip of a rubble dam located at the Seneca Breaks. This has caused serious risk to life, limb, and property.

CLAIMS FOR RELIEF

Count One

(Administrative Procedure Act, 5 U.S.C. § 706(2)(D))

127. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

128. The Administrative Procedure Act, 5 U.S.C. § 706(2)(D), provides that a court “shall . . . hold unlawful and set aside agency action . . . found to be . . . without observance of procedure required by law.”

129. The Rule was issued “without observance of procedure required by law” and therefore should be held unlawful and set aside for the following reasons:

130. The Coast Guard failed to provide notice of the proposed rule “not less than 30 days before its effective date.” 5 U.S.C. § 553(d).

131. The Coast Guard failed to provide “interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.” 5 U.S.C. § 553(c).

132. The Coast Guard’s invocation of the “good cause” exception was legally deficient, and it did not then, and certainly does not now, justify the Coast Guard’s failure to adhere to required procedures for issuing the Rule.

133. The Coast Guard failed to establish and adhere to “procedures for consulting with, and receiving and considering the views of all interested parties, including— (1) interested Federal departments and agencies, (2) officials of State and local governments, (3) representatives of the maritime community, (4) representatives of port and harbor authorities or associations, (5) representatives of environmental groups, (6) any other interested parties who are knowledgeable or experienced in dealing with problems involving vessel safety, port and waterways safety, and protection of the marine environment, and (7) advisory committees consisting of all interested segments of the public when the establishment of such committees is considered necessary because the issues involved are highly complex or controversial.” 33 U.S.C. § 1231(b).

Count Two
(Administrative Procedure Act, 5 U.S.C. § 706(2)(A))

134. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

135. The Administrative Procedure Act, 5 U.S.C. § 706(2)(A), provides that a court “shall . . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

136. The Rule is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and therefore should be set aside for the following reasons:

137. The Rule does not reflect a logical outgrowth from, or meaningfully respond to, the hundreds of comments expressing significant concerns with the overbreadth of and other aspects of the Rule.

138. The Rule is overbroad, insofar as it restricts legal access to the River beyond that which is reasonably necessary for the Rule’s stated purpose.

139. The Rule fails to provide the affected community with adequate notice of the times when the security zone established by the Rule is in effect.

140. The Rule’s lack of an end date is arbitrary and capricious.

141. The Rule is not authorized by 50 U.S.C. § 191, on which the Coast Guard relies.

Count Three
(Administrative Procedure Act, 5 U.S.C. § 706(1))

142. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

143. The Administrative Procedure Act, 5 U.S.C. § 706(1), provides that a court shall “compel agency action unlawfully withheld or unreasonably delayed.”

144. Defendants have violated 5 U.S.C. § 706(1) by failing to issue a permanent final rule, or otherwise rescinding the interim final Rule, as required by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. declare the Rule unlawful;
2. order Defendants to rescind the Rule;
3. enjoin Defendants from enforcing the Rule against Plaintiff;

4. direct Defendants to issue any new notice of proposed rulemaking reflecting and meaningfully addressing Plaintiff's comments on the Rule within ninety days;
5. award Plaintiff costs, attorneys' fees, and other disbursements for this action; and
6. grant any other relief this Court deems appropriate.

Dated: September 20, 2018

Respectfully submitted,

LERCH, EARLY & BREWER, CHARTERED

By: /s/ Stanley J. Reed

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DEMOCRACY FORWARD FOUNDATION

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TABLE FOUR

Vessel	Number	Distance in meters of masthead light below the submarine identification lights
USS COLORADO	SSN 788	0.81

26. * * *

Vessel	Number	Obstruction angle relative to ship's headings	
		Forward anchor light	Aft anchor light
USS COLORADO	SSN 788	172° to 188°	359° to 1°

* * * * *

Approved: June 15, 2017.
A.S. Janin,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law Division).
 Dated: June 27, 2017.
A.M. Nichols,
Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.
 [FR Doc. 2017-13960 Filed 7-7-17; 8:45 am]
 BILLING CODE 3810-FF-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0448]

RIN 1625-AA87

Security Zone; Potomac River, Montgomery County, MD

AGENCY: Coast Guard, DHS.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule establishes a security zone encompassing certain waters of the Potomac River. This action is necessary to prevent waterside threats and incidents immediately before, during and after events held at the Trump National Golf Club at Potomac Falls, VA. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the

Coast Guard Captain of the Port Maryland-National Capital Region or designated representative. The regulation will enhance the safety and security of persons and property, while minimizing, to the extent possible, the impact on commerce and legitimate waterway use. We invite your comments on this rulemaking.

DATES: This rule is effective without actual notice from July 10, 2017. For the purposes of enforcement, actual notice will be used from June 22, 2017 until July 10, 2017. Comments and related material must be received by the Coast Guard on or before August 9, 2017.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2017-0448. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may submit comments, identified by docket number, using the Federal eRulemaking Portal at <http://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 about this rulemaking, call or email Mr. Ronald L. Houck, at Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, email Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

- CFR Code of Federal Regulations
- COTP Captain of the Port
- DHS Department of Homeland Security
- FR Federal Register
- NPRM Notice of proposed rulemaking
- § Section
- U.S.C. United States Code

II. Regulatory History and Information

On five separate occasions since March 24, 2017, the COTP has established a temporary security zone encompassing certain U.S. navigable waters of the Potomac River during events held at the Trump National Golf Club at Potomac Falls, VA. These security zones were established and enforced at the request of the U.S. Secret Service to support security measures required during visits by high-ranking United States government officials at the golf club.

The Coast Guard is issuing this interim 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 doing so would be impracticable and contrary to the public interest to delay the effective date of this rule due to the short time period between event planners notifying the Coast Guard and publication of this security zone. The NPRM process is contrary to the public

interest by delaying the effective date of this rule or foregoing the necessary protections required for persons and property, surrounding and including high-ranking United States officials, given the high risk of injury and damage to high-ranking United States officials and the public. Immediate action is necessary to provide waterway and waterside security and protection for persons and property on and along the Potomac River. The Coast Guard is establishing this security zone to ensure the appropriate level of protection for high-ranking United States officials and the public.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this interim rule effective less than 30 days after publication in the **Federal Register** because doing so would be impracticable and contrary to the public interest. Delaying the effective date would be contrary to the security zone's intended objectives of protecting the high-ranking United States officials and the public, as it would introduce vulnerability to U.S. navigable waterway safety and the security of high-ranking United States officials, as well as that of the general public.

III. Background, Purpose, and Legal Basis

The Coast Guard has given each Coast Guard COTP the ability to implement comprehensive port security regimes designed to safeguard human life, vessels, and waterfront facilities while still sustaining the flow of commerce. On several occasions during events held at the Trump National Golf Club at Potomac Falls, VA, the U.S. Secret Service has requested additional waterside security measures for a gathering of high-ranking United States officials at the golf club. These events are anticipated to continue during the current Presidential term and a permanent security zone will facilitate both the safety and security of these events and the high-ranking officials who attend them. The COTP Maryland-National Capital Region is establishing this security zone to protect high-ranking United States officials and the public, mitigate potential terrorist acts, and enhance public and U.S. navigable waterway safety and security in order to safeguard life, property, and the environment on or near the regulated area.

The purpose of this rulemaking is to enhance public and U.S. navigable waterway safety and security in order to safeguard life, property, and the environment on specified navigable waters of the Potomac River during

frequent heightened security events that take place in close proximity to U.S. navigable waterways within the COTP's Area of Responsibility.

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

IV. Discussion of Interim Rule

The Coast Guard is revising regulations at 33 CFR part 165 by adding a security zone. The security zone includes all U.S. navigable waters of the Potomac River, from shoreline to shoreline, within an area bounded on the east by a line connecting the following points: Latitude 39°04'02" W., longitude 077°19'48" W., thence south to latitude 39°03'39" W., longitude 077°20'02" W., and bounded on the west by longitude 077°22'06" W., located between Pond Island and Sharpshin Island, in Montgomery County, MD. Entry into the security zone would be prohibited, unless specifically authorized by the COTP Maryland-National Capital Region or a designated representative. Except for public vessels, this rule would require all vessels in the designated security zone as defined by this rule to immediately depart the security zone. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule. The duration of the zone is intended to ensure the safety of vessels and the specified navigable waters before, during, and after the event. The COTP Maryland-National Capital Region will notify waterway users and the boating community, via Broadcast Notice to Mariners (BNM), of the duration of the security zone as required to support the periodic occurrence of high security events.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of

harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location and duration of the security zone. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and access to the zone will be determined in consultation with the lead federal agency on a case-by-case basis when the zone is being enforced.

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 that intend to transit the security zone 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.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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. 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 E.O. 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 E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 would 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 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 made a preliminary determination 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 the establishment of a security zone that prohibits entry on specified waters of the Potomac River during frequently occurring heightened security events. Normally such actions are categorically excluded from further review under

paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.ID. A Record of Environmental Consideration (REC) 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.

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 USCG–2017–0448 for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this rule as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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 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. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.557 to read as follows:

§ 165.557 Security Zone; Potomac River, Montgomery County, MD.

(a) *Definitions.* As used in this section:

Captain of the Port Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his or her behalf.

Designated representative means a Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to enforce the security zone described in paragraph (a) of this section.

Public vessel has the same meaning as that term is defined under 46 U.S.C. 2101.

(b) *Location.* The following area is a security zone: All navigable waters of the Potomac River, from shoreline to shoreline, within an area bounded on the east by a line connecting the following points: latitude 39°04'02" W., longitude 077°19'48" W., thence south to latitude 39°03'39" W., longitude 077°20'02" W., and bounded on the west by longitude 077°22'06" W., located in Montgomery County, MD. Coordinates used in this section are based on NAD83.

(c) *Regulations.* The general security zone regulations found in § 165.33 apply to the security zone created by this section.

(1) Except for public vessels, entry into or remaining in the security zone described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port Maryland-National Capital Region. All vessels within the security zone at the time this regulation is enforced shall depart the zone immediately.

(2) Persons and vessel operators who intend to enter or transit the security zone while the zone is being enforced must obtain authorization from the

Captain of the Port Maryland-National Capital Region or designated representative. Access to the zone will be determined in consultation with the lead federal agency on a case-by-case basis when the zone is enforced. To request permission to enter or transit the security zone, the Captain of the Port Maryland-National Capital Region or designated representatives can be contacted at telephone number 410-576-2693 or on marine band radio, VHF-FM channel 16 (156.8 MHz). Coast Guard vessels that enforce this section can be contacted on marine band radio, VHF-FM channel 16 (156.8 MHz). The operator of a vessel shall proceed as directed upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local law enforcement agency vessel, by siren, radio, flashing light, or other means. When authorized by the Coast Guard to enter the security zone all persons and vessels must comply with the instructions of the Captain of the Port Maryland-National Capital Region or designated representative and proceed at the minimum speed necessary to maintain a safe course while within the security zone.

(3) The U.S. Coast Guard may be assisted by federal, state, and local law enforcement agencies in the patrol and enforcement of the security zone described in paragraph (a) of this section.

(d) *Enforcement.* The Captain of the Port Maryland-National Capital Region will provide the affected segments of the public with notice of enforcement of security zone by Broadcast Notice to Mariners (BNM), Local Notice to Mariners, and on-scene notice by designated representative or other appropriate means in accordance with 33 CFR 165.7.

Dated: June 22, 2017.

M.W. Batchelder,

*Commander, U.S. Coast Guard, Acting
Captain of the Port Maryland-National
Capital Region.*

[FR Doc. 2017-14395 Filed 7-7-17; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2016-0137; FRL-9964-63-
Region 5]

Air Plan Approval; Indiana; Redesignation of the Muncie Area to Attainment of the 2008 Lead Standard; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of an adverse comment, the Environmental Protection Agency (EPA) is withdrawing the May 30, 2017, direct final rule approving the redesignation of the Muncie nonattainment area to attainment for the 2008 national ambient air quality standards (NAAQS) for lead, the state's plan for maintaining the 2008 lead NAAQS through 2030 for the area, and the 2013 attainment year emissions inventory for the area.

DATES: The direct final rule published at 82 FR 24553 on May 30, 2017, is withdrawn effective July 10, 2017.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8777, maietta.anthony@epa.gov.

SUPPLEMENTARY INFORMATION: In the direct final rule, EPA stated that if adverse comments were submitted by June 29, 2017, the rule would be withdrawn and not take effect. EPA received an adverse comment prior to the close of the comment period and, therefore, is withdrawing the direct final rule. EPA will address the comment in a subsequent final action based upon the proposed action also published on May 30, 2017. EPA will not institute a second comment period on this action.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 20, 2017.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Accordingly, the amendments to 40 CFR 52.770 and 40 CFR 52.797 published in the **Federal Register** on May 30, 2017 (82 FR 24553) on page 24559 are withdrawn effective July 10, 2017.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Accordingly, the amendment to 40 CFR 81.315 published in the **Federal Register** on May 30, 2017 (82 FR 24553) on page 24559 is withdrawn effective July 10, 2017.

[FR Doc. 2017-14316 Filed 7-7-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2016-0595; FRL-9962-06]

Buprofezin; Pesticide Tolerance

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of buprofezin in or on rice grain. Nichino America, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 10, 2017. Objections and requests for hearings must be received on or before September 8, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2016-0595, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744,

Canoe Cruisers Assoc comments to Docket Number USCG-2017-0448



**COMMENTS TO THE U.S. COAST GUARD FROM THE
CANOE CRUISERS ASSOCIATION OF GREATER WASHINGTON DC
REGARDING THE SECURITY ZONE ON THE
POTOMAC RIVER ADJACENT TO THE
TRUMP NATIONAL GOLF CLUB**

**Docket Number USCG-2017-0448
July 27th, 2017**

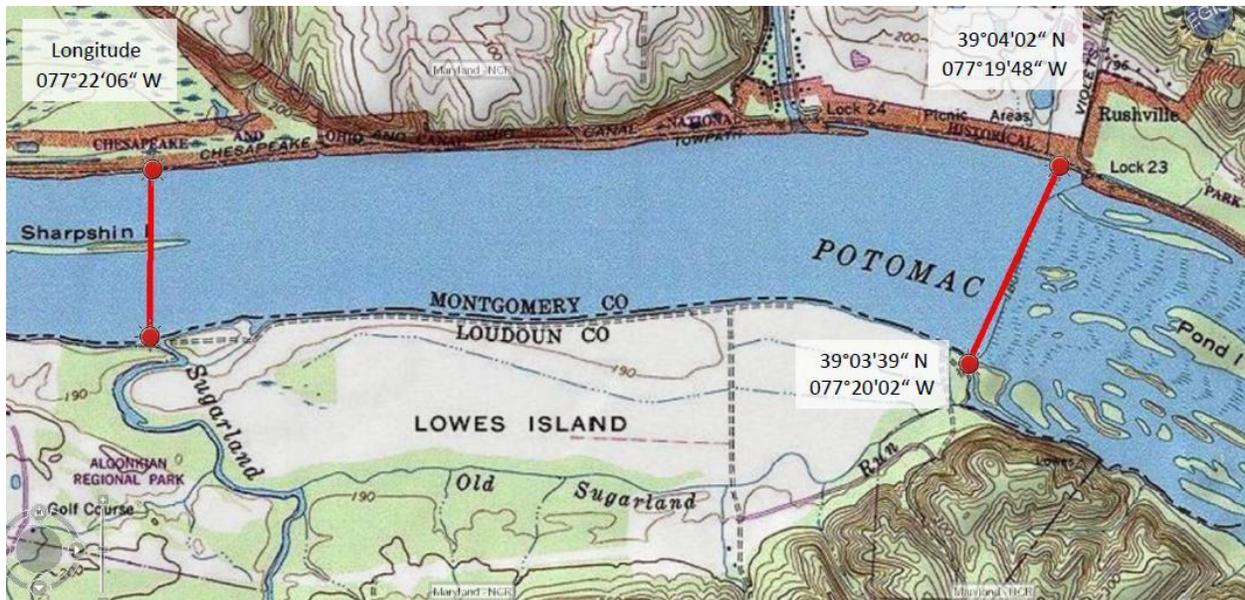
These comments are submitted on behalf of the Canoe Cruisers Association of Greater Washington DC (hereafter called CCA), founded in 1956, on behalf of our over 250 members. We are a non-profit kayak and canoe club whose main purpose is to unite persons interested in paddling the Potomac River and adjacent watersheds. We have been a leader in conservation, education and river safety for many decades.

The area in and immediately downstream from the proposed USCG security zone on the Potomac River (see Figure 1 below) as it passes by the Trump National Golf Club has been used for such both recreational and instructional purposes by CCA members, members of other paddling clubs and small business entities focused primarily on paddling instruction in this area, for over sixty years. CCA is actively engaged in activities on a daily and weekly basis that use the section of the Potomac River that is affected by this interim rule. Our club offers a range of recreational and training events including: weekly paddling trips; classes for beginner, novice and more advanced paddlers; ACA-certified instructor-training courses; and, Swift Water Rescue and Safety classes. Further, we coordinate conservation and river clean-up activities that help to maintain the health and beauty of the Potomac River and her tributaries, including the section in and around the Trump Golf Club that is the subject of this interim rule.

CCA shares the USCG's concern with the safety and security of the President, high-ranking officials and all other participants of events held at the Trump Golf Club. We are eager to work with the U.S. Coast Guard and other relevant officials to develop a Rule that will assure security needs, protect recreational access, and meet the needs of small business that operate in that area.

The Federal Register Number:2017-14395, announced an interim rule to establish a security zone encompassing certain waters of the Potomac River. The notice asserts that this action is meant to prevent waterside threats and incidents immediately before, during and after events held at the Trump National Golf Club at Potomac Falls, VA. As stated, this rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Maryland-National Capital Region or designated representative.

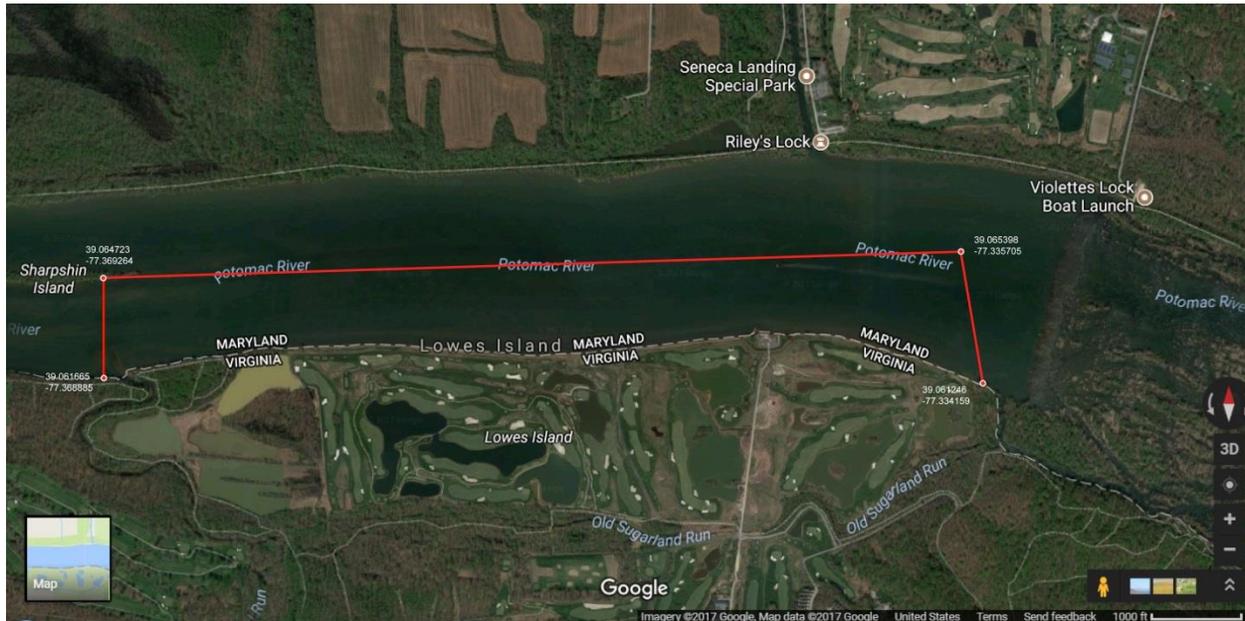
Figure 1: The No Access Zone Described in the Interim Rule



Current Security Practices Already Work

CCA is generally pleased with the security practices to date, where security personnel placed a periodic wide-birth and patrol area of about 100-200 yards off the Virginia shore in front of the Golf course with armed motor boats, a closed off area, and security forces. This permits recreational boaters and small business operators to launch at Riley's and Violette's Locks, continue to access about two-thirds of the river extending from the Maryland shoreline, ferry across the river with a reasonable margin of safety upstream of Seneca Breaks, and enter the George Washington Canal (GW Canal) on the VA shore at the downstream end of the Golf course and upstream of the Seneca Breaks (39.061109, -77.333708). This currently-implemented plan seems to us entirely reasonable (See Figure 2).

Figure 2: No Access Zone Currently Enforced and Recommended by CCA



Interim Rule Fails to Provide Meaningful Opportunity for Public Comment

Under the Administrative Procedure Act, 5 USCS § 553, an agency is required to provide a meaningful opportunity to comment on rulemakings.¹ A comment period is not meaningful if the agency does not issue a proposal, and does not respond to substantial points raised during the public comment period.² In this instance, the USCG has failed to issue a proposed rule for notice and comment, and has failed to provide an opportunity for meaningful comments since the rule is already interim final.

Therefore, CCA requests that the USCG withdraw this interim rule, and instead issue a proposed rule that is published in the FR to provide the public and interested persons a meaningful opportunity to provide comment – we suggest no less than 60 days. The notice and comment provisions of the Federal Administrative Procedures Act also require that an agency respond in a reasoned manner to the comments received (such as issuing a public ‘response to comments’ document), to explain to the public how problems are resolved, and how the resolution has led to the final rule.³

We are very pleased with recent news reports that the USCG has heard the concerns of CCA and others, and will be, “making accommodations for the public,” (AP July 25, 2107)⁴ While these public assurances are important, they are not legally binding now or in the future. We will therefore continue to advocate

¹ Hill v. Gould, 555 F.3d 1003 (D.C. Cir. 2009)

² North Carolina v. Federal Aviation Admin., 957 F.2d 1125 (4th Cir. N.C. 1992)

³ Ohio Valley Envtl. Coalition v. Hurst, 604 F. Supp. 2d 860 (S.D. W. Va. 2009)

⁴ Associated Press

<http://wtop.com/government/2017/07/coast-guard-paddlers-can-use-potomac-near-trump-golf-course/>
The Washington Post

<https://www.washingtonpost.com/local/virginia-politics/coast-guard-agrees-to-partial-opening-of-poto>
The DCist

http://dcist.com/2017/07/coast_reverses_course_says_potomac.php

that the USCG amend, rescind, or otherwise alter the current interim rule to provide public access as described in these comments and depicted in Figure 2.

The Interim Rule Is Overly Broad and Unnecessarily Impairs Recreational and Small Business Activities

The interim Rule extends the no-access security zone from the VA shore to the MD shore, and appears to also block access on and off the Potomac River from the C&O Canal's Violette's Lock access point. Violette's Lock on the C&O Canal provides access to the old Patowmack Canal (GW Canal) on the Virginia side of the river and to the Seneca Breaks rapids. The remains of the Patowmack Canal, built by George Washington to skirt the rapids, forms a very nice, shady set of rapids that are a favorite of paddlers of all skill levels. To access this area requires one to paddle across the river just above the old C&O Canal Dam #2 at the top of Seneca Breaks. The GW Canal area cannot be accessed by boaters from the Virginia side of the river.

Rule Threatens Boater Safety

Crossing the river just below the dam to reach the Virginia side is not feasible due to the Seneca Breaks rapids, which creates serious safety hazards for novice boaters including clients taking kayaking classes, kids enrolled in summer camps, recreational boaters including CCA members, people fishing and others. The dangers will increase with higher water levels such as occur for hours, days, or even a week after rainfall anywhere in the Potomac watershed.

Rule Impacts Small Businesses

The old Patowmack Canal (GW Canal) on the Virginia side of the river and Seneca Breaks rapids, immediately downstream of the proposed security zone, have provided irreplaceable locations, within easy reach of Washington DC, for instructing new paddlers in the skills of maneuvering different types of rapids, and doing so with considerable safety. For this reason, commercial paddling schools in the area, take new students out on the flatwater, into the GW Canal, and in and around the small rapids. Several commercial kayaking schools have operations in the area impacted by the rule, including Calleva, Liquid Adventures, Potomac River Outfitters, and others.

These same rapids have also provided equally irreplaceable locations to teach and to practice the skills of swiftwater rescue operations. The area impacted by this rule will impact commercial swiftwater rescue instructional activities, as well as classes taught by volunteers through local clubs including but not limited to CCA.

Rule Impacts Athlete Training Areas

The area affected by this Rule is regularly used as a training area for Olympic whitewater competitors and as a whitewater race venue. Olympic athletes from the US Whitewater Team use the GW Canal/Violette's Lock loop or paddle through the area daily as a necessary part of their training. Thus, blocking access to this river with the shore-to-shore no access zone described in the interim rule would severely impact recreation and small business operations. Maryland, particularly Montgomery County, sent several kayak athletes to the Olympics in Rio this past year and every one of them trained daily on the Potomac River including the stretch of water that is impacted by this rule.

Rule Impacts Team River Runner Activities for Wounded Veterans

Team River Runner is a non-profit organization dedicated to helping the Nation's wounded military veterans on their road to physical and emotional recovery. Teaching them to kayak has been an instrumental part of their program, giving wounded vets a chance to engage in a challenging physical

activity, build strong friendships through kayaking training and activities, help each other, and help themselves to gain strength and confidence. Team River Runner uses the area impacted by this rule every weekend because it has a range of flatwater and small rapids to help each veteran experience the challenges that are appropriate for everyone given their range of abilities.

Interim Rule Fails to Provide Adequate Public Notice of Impending Security Zone Enforcement

The interim rule stipulates that closures of the river will be announced to the public on VHF channel 16. While sea kayakers who paddle the ocean or Chesapeake Bay may carry hand held VHF marine radios, river paddlers and recreational boaters do not.

Campers and counselors who paddled down to an established campground located on an island below the security zone while it was not being enforced risk becoming stranded on the island, unable to paddle back to their boat-ramp, if a security zone enforcement-period is placed in-effect after they have reached their campground on the island.

People that set up car shuttles (with vehicles prepositioned both at the put-in point and at the take-out point) may not be able to get to their vehicles if they are unexpectedly denied river access after having set-out on their paddling trip.

CCA recommends that the USCG implement permanent two-way VHF communications between paddlers who have equipped themselves with hand-held radio units and Coast Guard controllers, even when no USCG patrol boat is on-station at the restricted zone. The ability to hail the Coast Guard from the shore of the security zone and ascertain whether an enforcement period was going to be placed in effect during the time that a paddling trip was planned would greatly reduce the likelihood that paddlers would unintentionally violate an actively-enforced security zone. A means of making permanent two-way communications possible might be to install two-way antennae on the roof of the golf course club house, which has excellent lines-of-sight with the Potomac.

CCA recommends that the USCG, perhaps with assistance from the US Park Service, post notifications of imminent security zone enforcement at both the Riley's Lock and the Violette's Lock boat-launching areas.

CCA recommends that the USGC place temporary flotation (buoys) or other easily visible markers on the water to let people know the mid-river boundary of the security zone. The interim rule fails to provide a clear zone along the Maryland side of the river so that paddlers who enter the river at Riley's Lock on the Maryland shore or Algonkian on the Virginia side, and paddle downriver, can safely pass through the security zone. This will make enforcement difficult – a problem that could be solved some visible buoys.

Interim Rule Is Ambiguous

The interim rule fails to describe a clear definition of how long a closure will extend. While we appreciate that the USCG and other security forces need some flexibility, the rule provides no boundaries at all. This is overly ambiguous and unfair to the public, small businesses, and others that use and care for this stretch of river. CCA recommends that the rule make clear that each notice can include no more than a day or two.

Recommendation to Limit the Size of the Security Zone

The security practices to date create a no-access zone of about 100-200 yards off the VA Shore in front of the Golf course. As enforced to date, this allows the public, small business operators, and others to enjoy recreating on the river, have adequate water access upstream and downstream of the Golf course, and safely enter and exit the GW canal and small rapids. CCA recommends that this practice be described in a new rule, with a no-access zone as shown in Figure 2.

Thank you for the opportunity to provide comments. We look forward to working with the USCG and others to ensure that security needs are met while addressing the public use of this active section of the Potomac River.

Respectfully,

Susan Sherrod, CCA Chairperson
Fairfax County, VA
Tel: 703-725-4278
E: sgsherrod@verizon.net

CCA Elected Officers:

Jim Landfield, CCA Officer
Louden County, VA

Jennifer Sass, CCA Officer
Montgomery County, MD

Virginia De Seau, CCA Officer
Montgomery County, MD

CCA Board Members:

Barbara Brown, CCA Board Member
Montgomery County, MD

Lisa Fallon, CCA Board Member
Montgomery County, MD

Alfred Cooley, CCA Board Member
Fairfax County, VA

Jeffrey Fox, CCA Board Member
Washington DC

Keith Edmondson, CCA Board Member
Fairfax County, VA

Daniel Mullins, CCA Board Member
Montgomery County, MD

Kay Fulcomer, CCA Board Member
Montgomery County, MD

Kathleen Sengstock, CCA Board Member
Montgomery County, MD

Michal Komlosh, CCA Board Member
Montgomery County, MD

John Snitzer, CCA Board Member
Montgomery County, MD

Howard Morland, CCA Board Member
Arlington County, VA

Janice Wolf, CCA Board Member
Prince Georges County, MD



U.S. Coast Guard Sector Maryland-NCR

2401 HAWKINS POINT ROAD, BLDG 70

BALTIMORE, MD 21226-1791

Phone: (410) 576-2693

Fax: (410) 576-2536

Limited Access Area - Security Zone Trump National Golf Club - Potomac Falls, VA

Notice is hereby given of the establishment of a security zone on certain waters of the Potomac River, in Montgomery County, MD, under the Ports and Waterways Safety Act (PWSA), 33 United States Code (U.S.C.) 1226, which allows the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures.

As described in Title 33 Code of Federal Regulations (CFR) § 165.557, the Coast Guard has established a security zone, encompassing certain waters of the Potomac River, to safeguard high-ranking United States officials at the Trump National Golf Club at Potomac Falls, VA. The security zone includes all navigable waters of the Potomac River, from shoreline to shoreline, within an area bounded on the east by a line connecting the following points: latitude 39°04'02" W., longitude 077°19'48" W., thence south to latitude 39°03'39" W., longitude 077°20'02" W., and bounded on the west by longitude 077°22'06" W., located in Montgomery County, MD. Coordinates used in this section are based on NAD83.

The Coast Guard Captain of the Port (COTP) Maryland-National Capital Region will provide the affected segments of the public with notice of enforcement of security zone by Broadcast Notice to Mariners (BNM), Local Notice to Mariners, and on-scene notice by designated representative or other appropriate means in accordance with 33 CFR 165.7.

The general security zone regulations found in § 165.33 apply to this security zone. Except for public vessels, entry into or remaining in the security zone is prohibited unless authorized by the Coast Guard COTP Maryland-National Capital Region. All vessels within the security zone at the time this regulation is enforced shall depart the zone immediately. Persons and vessel operators who intend to enter or transit the security zone while the zone is being enforced must obtain authorization from the COTP Maryland-National Capital Region or designated representative. Access to the zone will be determined in consultation with the lead federal agency on a case-by-case basis when the zone is enforced. To request permission to enter or transit the security zone, the COTP Maryland-National Capital Region or designated representatives can be contacted at telephone number 410-576-2693 or on marine band radio, VHF-FM channel 16 (156.8 MHz). Coast Guard vessels that enforce this section can be contacted on marine band radio, VHF-FM channel 16 (156.8 MHz). The operator of a vessel shall proceed as directed upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local law enforcement agency vessel, by siren, radio, flashing light, or other means. When authorized by the Coast Guard to enter the security zone all persons and vessels must comply with the instructions of the COTP Maryland-National Capital Region or designated representative and proceed at the minimum speed necessary to maintain a safe course while within the security zone. The U.S. Coast Guard may be assisted by federal, state, and local law enforcement agencies in the patrol and enforcement of this security zone.

(July 2017)

EXHIBIT C

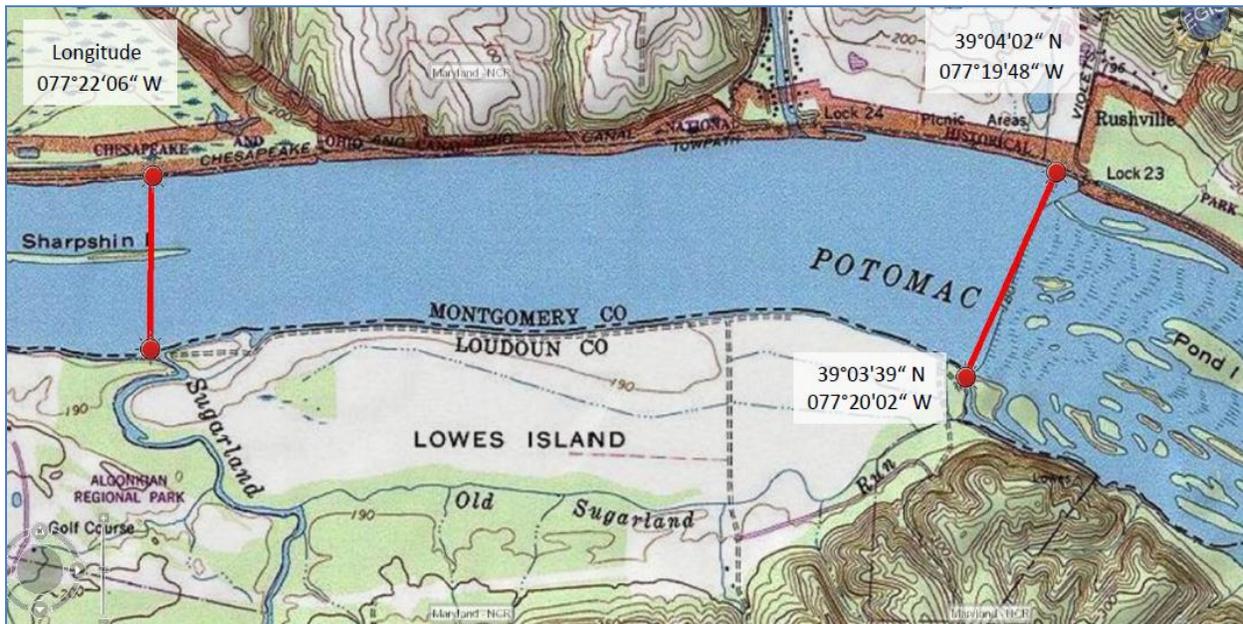
Limited Access Area - Security Zone Trump National Golf Club - Potomac Falls, VA

Captain of the Port Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his or her behalf.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP Maryland-National Capital Region to enforce this security zone.

Public vessel has the same meaning as that term is defined under 46 U.S.C. 2101.

Penalty: Persons or vessels violating this section may be subject to civil or criminal penalties pursuant to 33 U.S.C. 1232 of up to \$90,063.





Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Peter A. DeFazio
Ranking Member

Mathew M. Sturges, Staff Director

July 19, 2017

Katherine W. Dedrick, Democratic Staff Director

Admiral Paul F. Zukunft
Commandant
United States Coast Guard
2703 Martin Luther King Jr Ave SE
Washington, DC 20593-7000

Dear Admiral Zukunft:

It has recently come to our attention that the Coast Guard intends to periodically close down a roughly two-mile section of the Potomac River when President Trump and “high-ranking government officials” are golfing at the Trump National Golf Club in Sterling, Virginia, outside Washington, D.C.¹ Although we recognize the importance of the Coast Guard’s longstanding role in providing Presidential security, we encourage you to reconsider the decision. Throwing recreational river users, including the Team River Runner injured veterans organization, off the river so that the President, and his guests can spend their summer afternoons on the links is unnecessary and unacceptable.

A Coast Guard spokesperson has cited security concerns related to the clear lines of sight between the river and the private golf course. This is ironic, considering the Trump Organization cut down a stand of mature trees along the shoreline in 2010 that would have obscured the line of sight and mitigated security concerns.² At the time, the excuse that the trees were in poor health rang hollow to conservationists and river users. Seven years later, the Trump Organization has failed to replant mature trees along the riverbank as it promised at the time.

Time and again President Trump, with the aid of the Secret Service, has disregarded the needs of the general public for his own personal benefit and convenience. This is a very popular and busy section of the Potomac River, and summer is the season of peak use. We implore you not to allow the President’s frequent leisure activities to take away access to the river regularly enjoyed by wounded veterans, and other kayakers, boaters, jet skiers, and anglers. The Potomac River is a

¹ Peter Jamison, *Coast Guard wants to kick boats off Potomac River when president is golfing*, WASHINGTON POST, July 17, 2017.

² Kafia A. Hosh, *Trump golf club in Loudoun removes hundreds of trees near river*, WASHINGTON POST, August 13, 2010.

Adm. Paul F. Zukunft

July 19, 2017

Page 2

shared resource held in trust for public use and commerce. It is the right of all residents and visitors in the National Capital Region to enjoy it at their own leisure.

We ask that you provide the following information related to this newly announced policy by July 25, 2017:

1. Which government employees or other individuals qualify as “high-ranking government official” for the purpose of shutting down river access near the Trump National Golf Course? Please provide their names and positions held within the government.
2. What process has the Coast Guard established for informing the general public in advance that the river will be closed at particular times for security reasons? How will the Coast Guard accommodate stranded users who are unaware of a planned closure?
3. How will the Coast Guard ensure that small businesses relying on the river, such as fishing guides and paddle sport outfitters, are not negatively impacted by the closure of this stretch of river?
4. How much does the Coast Guard anticipate it will cost to provide security to the President or other “high-ranking government officials” for each golf outing at Trump National Golf Course? What will be the impact of diverting resources from other security priorities in the National Capital Region?
5. Has the Coast Guard, with the Secret Service, discussed non-closure alternative security measures such as requiring the Trump Organization to replant mature trees along the riverbank, deploying a small response craft to patrol the river, or monitoring river activity from the shore?

Thank you for your attention to this request. We look forward to your prompt reply.

Sincerely,



PETER DeFAZIO
Ranking Member



JOHN GARAMENDI
Ranking Member
Subcommittee on Coast Guard and
Maritime Transportation

U.S. Department of
Homeland SecurityUnited States
Coast GuardCommandant
United States Coast Guard2703 Martin Luther King Jr. Ave. SE
Washington, D.C. 20593-7103
Staff Symbol: CG-0921
Phone: (202) 245-0520
Fax: (202) 245-0529

5730

JUL 24 2017

Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Congressman DeFazio and Congressman Garamendi:

Thank you for your letter dated July 19, 2017, regarding a Coast Guard security zone on the Potomac River adjacent to Trump National Golf Club in Sterling, Virginia. I appreciate the concern expressed and value your understanding of the Coast Guard's role while operating in support of the U.S. Secret Service (USSS). In response to the specific questions you ask, my staff and I welcome the opportunity to provide the following information:

The Coast Guard has long established maritime security zones associated with the protection of the President and other high ranking officials of the United States and foreign governments. Security zones are activated at the request of the U.S. Secret Service (USSS) to facilitate the safety and security of individuals under their protection. The USSS determines which government officials require such protection, and will call upon the Coast Guard and other law enforcement agencies to assist. The Coast Guard has not received a list of particular officials from the USSS relevant to this matter.

We principally use two methods to ensure the public is aware of Coast Guard limited access areas, which include security zones. First, in accordance with 5 U.S.C. 553 and 33 CFR part 165, subpart D, the Coast Guard published an Interim Final Rule in the *Federal Register* with the details of the Security Zone (Docket Number USCG-2017-0448). During the presently-open public comment period for this interim final rule, many constructive recommendations and concerns have been brought to our attention. The Coast Guard takes these comments seriously and has already taken steps to address concerns. Second, as required by 33 CFR 165.7, and implemented in past security zones, Broadcast Notice to Mariners (BNMs), which are marine radio addresses (VHF radio, channel 16 and 13), are issued to alert the public of security zone closure several hours before it goes into effect. Furthermore, onscene operational units will also inform the boating public about the security zone and may assist with transit through the zone as discussed below.

To ensure widest distribution of future activations, our local public affairs office will issue press releases and post them to Coast Guard pages on social media platforms. We will continue to work with our local partners to identify additional methods of information distribution to inform the public of the activation periods.

We will provide notification to the public as early as possible to minimize impact to the public, including small businesses. As stated in the interim final rule, persons desiring to transit through the security zone can receive authorization to do so by contacting the Captain of the Port (COTP), Sector Maryland National Capital Region at (410) 576-2518. During previous activations of security zones these authorizations were granted. We will continue to evaluate such requests on a case-by-case basis.

With the existing personnel and resources already assigned for similar security operations, the costs associated with enforcing this security zone are minimal and already allocated as part of routine Coast Guard operations.

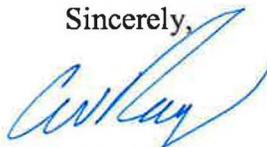
With regard to the replanting of trees, developing other physical security measures, or requiring private security, these activities would not negate the need and responsibility of the U.S. Coast Guard to support USSS efforts to ensure the security of covered government officials. Our responsibility and authorities to prevent and stop malicious maritime activity cannot be delegated to a private entity.

The public comment period for this interim final rule will remain open through August 9, 2017, and will include your letter and this response in the docket along with all other comments received. We will carefully evaluate each comment in the docket, and may modify our rule in response to issues raised by the public.

The Coast Guard's primary concern is for the safety and security of all Americans. Toward that end, we daily enforce numerous security zones, including moving security zones around cruise ships and fixed security zones near oil terminals, power plants, and military bases. We understand that the occasional activation of this security zone can be inconvenient to waterway users, but at the same time is necessary to ensure safety of those under USSS protection.

My House Liaison Office at (202) 225-4775 would be pleased to respond to any further questions you or your staff may have.

Sincerely,



Charles W. Ray
Vice Admiral, U.S. Coast Guard
Deputy Commandant for Operations