



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket Number USCG-2015-0084

RIN 1625-AA00, AA11

Great Lakes—Regulated Navigation Areas and Safety Zones

**AGENCY:** Coast Guard, DHS.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend its Great Lakes Regulated Navigation Areas to include one additional regulated navigation area in Green Bay, Wisconsin and safety zones in the Lake Erie Islands and Saginaw Bay, MI. These zones will apply during the winter months and are necessary to protect waterway users, vessels, and mariners from hazards associated with winter conditions and navigation.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.

**ADDRESSES:** You may submit comments identified by docket number USCG-2015-0084 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 on this rule, call or email LT Matthew Stroebel, Ninth District Coast Guard Prevention, U.S. Coast Guard; telephone 216-902-6060, email matthew.k.stroebel@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On May 22 , 2015, the Coast Guard proposed a rule to establish three regulated navigation areas (RNA) and two safety zones in its Great Lakes area. These zones were intended to improve the safety of both recreational users and commercial shipping in high use areas. During the comment period that ended July 6, 2015, we received a total of 6 comments. We received one comment from the Lake Carriers' Association stating that it found the rule unnecessary and expressed concern that the rule will impede vessels' ability to respond quickly and creatively to winter conditions. The comment suggested that COTP Orders specifically tailored to existing and forecasted conditions is a better way to respond to hazardous ice conditions. We agree that in Maumee Bay and the Straits of Mackinac, COTP orders can be used instead of an RNA since safety issues occur less frequently in these areas. Our determination is that in Green Bay a RNA is necessary due to the high concentration of recreational users and expected increased commercial vessel traffic in the zone.

We received 1 comment that did not relate to the rule. Finally, we received 3 comments in favor of the Erie Islands safety zone and two in favor of the Maumee Bay regulated navigation area.

Based on the comments received regarding the NPRM, this proposed rulemaking has been amended. We believe that regulated navigation areas in Maumee Bay and the Straits of Mackinac are not necessary. This supplemental notice of proposed rulemaking retracts the Coast Guard's proposals to create new regulated navigation areas in Maumee Bay and the Straits of Mackinac. We also retract our proposal to re-designate three existing regulated navigation areas as safety zones. The three areas that were proposed to be redesignated as safety zones serve two functions; to establish a single route which optimizes limited icebreaking resources and to protect recreational ice users. By keeping these areas as RNA's it emphasizes that these areas do not solely exist to protect recreational users, but to fulfill an important function in maintaining an efficient navigation plan during ice covered periods.

Instead, this rulemaking proposes to retain the addition of two safety zones in the Lake Erie Islands and Saginaw Bay to protect recreational ice users from the dangers associated with vessels disturbing the ice that is primarily used for recreation. We also propose to retain adding one regulated navigation area in Green Bay to manage increased commercial traffic in an area that typically experiences high volumes of recreational use.

The Coast Guard does not propose changes to the already existing regulated navigation areas in this section. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

### **III. Discussion of Proposed Rule**

The Coast Guard proposes to amend 33 CFR 165.901 based on the foregoing discussion.

The Coast Guard proposes to make paragraph (b) in the current regulation into paragraph (a)(2)(i). Further, the Coast Guard proposes to add paragraph (a)(2)(ii) to establish a regulated navigation area in Green Bay. Within the regulated navigation area the COTP may issue orders to control vessel traffic. Prior to issuing orders to vessel traffic the COTP will provide advance notice as reasonably practicable under the circumstances. This regulated navigation area would include the waters of Green Bay, bounded by a line between Peshtigo Point and Sherwood Point. Green Bay is an area that has many recreational ice users that are accustomed to Green Bay being free from vessel transits during the winter months. Vessels have requested to transit through Green Bay during the ice season at a frequency of 2 to 4 transits per week. The Coast Guard needs to proactively manage activity within Green Bay to ensure the safety of both commercial vessel traffic and recreational ice users.

The Coast Guard proposes to add a paragraph (c) and a paragraph (d) to 33 CFR 165.901 to accommodate the addition of two safety zones to the current regulation. Proposed paragraph (c)(1) establishes a safety zone in the Lake Erie Islands. The zone would be opened and closed by the Captain of the Port (COTP) after providing the public at least 72 hours of advance notice. This safety zone would span from the city of Huron, OH on the eastern side to Port Clinton, OH on its western side. The northern border of the safety zone would be the international border which is located between Kelly's Island and Pelee Island. No vessel would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The District Commander or respective COTP retains the discretion to permit vessels to enter/transit a closed safety zone under certain circumstances. This safety zone will protect recreational ice users from the hazards associated with vessels breaking or disturbing the ice within the zone.

Proposed paragraph (c)(2) establishes a safety zone in Saginaw Bay. The zone would be opened and closed by the Captain of the Port (COTP) after providing the public at least 72 hours of advance notice. This safety zone would include the waters in Saginaw Bay, bounded by a line between Tawas Point and Port Austin Reef. No vessel would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The District Commander or respective COTP retains the discretion to permit vessels to enter/transit a closed safety zone under certain circumstances. This safety zone will protect recreational ice users from the hazards associated with vessels breaking or disturbing the ice within the zone.

Proposed paragraph (d) will include the information relevant to the enforcement of these safety zones. The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every

one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017). A regulatory analysis (RA) follows.

The proposed amendments involve closure areas and a vessel management area, designed to be implemented only during winter months, as ice conditions dictate. As to the impact of the closure area on Lake Erie near the South Channel and the Erie Islands, OH, the Coast Guard notes that industry vessels have taken alternative routes bypassing the Erie Islands when recreational ice users are present. The Coast Guard anticipates the same practice when this area is closed. Further, regarding the closure area on the waters of Lake Huron in Saginaw Bay, Michigan, the Coast Guard anticipates closing the bay after giving due consideration to industry's need to traverse the area. Moreover, under certain circumstances, the Coast Guard may permit vessel traffic to transit the closure areas. Regarding the regulated navigation area in Green Bay, it is designed to regulate the conditions of vessel transit for safety. Overall, we expect the economic impact of this proposed rule to be minimal and that a full Regulatory Evaluation is unnecessary.

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed 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 proposed 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 proposed rule or any policy or action of the Coast Guard.

### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed 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 proposed rule does not have tribal implications under Executive Order 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 proposed 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 proposed 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 proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have 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 proposed rule involves amendments to navigation regulations and establishment of a safety zones. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and Categorical Exclusion Determination are 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 proposed 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.

## **V. 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 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 NPRM 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 website'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 proposes to amend 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 C.F.R. 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.901 to read as follows:

§ 165.901 Great Lakes—regulated navigation areas and safety zones.

(a) The following are regulated navigation areas:

(1) *Lake Huron.* (i) The waters of Lake Huron known as South Channel between Bois Blanc Island and Cheboygan, Michigan; bounded by a line north from Cheboygan Crib Light (LL-1340) at 45°39'48" N, 84°27'36" W; to Bois Blanc Island at 45°43'42" N, 84°27'36" W; and a line north from the mainland at 45°43'00" N, 84°35'30" W; to the western tangent of Bois Blanc Island at 45°48'42" N, 84°35'30" W.

(ii) The waters of Lake Huron between Mackinac Island and St. Ignace, Michigan, bounded by a line east from position 45°52'12" N, 84°43'00" W; to Mackinac Island at 45°52'12" N, 84°39'00" W; and a line east from the mainland at 45°53'12" N, 84°43'30" W; to the northern tangent of Mackinac Island at 45°53'12" N, 84°38'48" W.

(2) *Lake Michigan.* (i) The waters of Lake Michigan known as Gray's Reef Passage bounded by a line from Gray's Reef Light (LL-2006) at 45°46'00" N, 85°09'12" W; to White Shoals Light (LL-2003) at 45°50'30" N, 85°08'06" W; to a point at 45°49'12" N, 85°04'48" W; then to a point at 45°45'42" N, 85°08'42" W; then to the point of beginning.

(ii) The waters of Lake Michigan known as Green Bay from Rock Island Passage or Porte Des Morts Passage north to Escanaba Light at 45°44'48" N., 087°02'14" W.; south to the Fox River Entrance at 44°32'22" N., 088°00'19" W., to the Sturgeon Bay Ship Canal from Sherwood Point Light at 44°53'34" N., 087°26'00" W.; to Sturgeon Bay Ship Canal Light at 44°47'42" N., 087°18'48" W.; and then to the point of beginning.

(b) *Regulations.* (1) In the RNAs under paragraph (a) of this section, the District Commander or respective COTP may issue orders to control vessel traffic for reasons which include but are not limited to: channel obstructions, winter navigation, unusual weather conditions, or unusual water levels. Prior to issuing these orders, the District Commander or respective COTP will provide advance notice as reasonably practicable under the circumstances. The respective COTP may close and open these regulated navigation areas as ice conditions dictate.

(2) Prior to the closing or opening of the regulated navigation areas, the COTP will give interested parties, including both shipping interests and island residents, not less than 72 hours notice of the action. This notice will be given through Broadcast Notice to Mariners, Local Notice to Mariners, and press releases to the media (radio, print and television), local COTP will ensure widest dissemination. No vessel may navigate in a regulated navigation area which has been closed by the COTP. The general regulations in 33 CFR 165.13 apply. The District Commander or respective COTP retains the discretion to authorize vessels to operate outside of issued orders.

(c) The following are safety zones:

(1) *Lake Erie*. The area known as the Lake Erie Islands which is defined as the U.S. waters of Lake Erie at the intersection of the International Border at 082°55'00" W., following the International Border eastward to the intersection of the International Border at 082°35'00" W., moving straight south to position 41°25'00" N., 082°35'00" W., continuing west to position 41°25'00" N., 082°55'00" W., and ending north at the International Border and 082°55'00" W.

(2) *Lake Huron*. The waters of Lake Huron known as Saginaw Bay, Michigan; bounded by a line from Port Austin Reef Light (LL-10275) at 44°04'55" N., 082°58'57" W.; to Tawas Light (LL-11240) at 44°15'13" N., 083°26'58" W.; to Saginaw Bay Range Front Light (LL-10550) at 43°38'54" N., 083°51'06" W.; then to the point of beginning.

(d) *Enforcement*. (1) The District Commander or respective Captain of the Port (COTP) will enforce these safety zones as ice conditions dictate. Under normal seasonal conditions, only one closing each winter and one opening each spring are anticipated.

(2) Prior to closing or opening these safety zones, the District Commander or respective COTP will give the public advance notice, not less than 72 hours prior to the closure. This notice will be given through Broadcast Notice to Mariners, Local Notice to Mariners, and press releases to the media (radio, print and television), local COTP will ensure widest dissemination. The general regulations in 33 CFR 165.23 apply. The District Commander or respective COTP retains the discretion to permit vessels to enter/transit a closed safety zone under certain circumstances.

Dated: April 10, 2017

J.E. Ryan,

RADM, U.S. Coast Guard,

Commander, Ninth Coast Guard District

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