



**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:** Final rule.

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**SUMMARY:** The Coast Guard is amending its Great Lakes Regulated Navigation Areas to include one additional regulated navigation area in Green Bay, WI and safety zones in the Lake Erie Islands, OH 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:** This rule is effective [insert date 30 days after publication in the Federal Register].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-0084 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions 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](mailto:matthew.k.stroebel@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

## **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
LCA	Lake Carrier's Association
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

## **II. Background Information and Regulatory History**

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 an RNA is necessary due to the high concentration of recreational users and expected increased commercial vessel traffic in the zone.

Based on the comments received regarding the May 22, 2015 NPRM, we amended the proposed rule and issued a supplemental notice of proposed rulemaking (SNPRM) on April 21, 2017. 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 in accordance with the feedback received from the Lake Carriers Association. We also retracted our proposal to

re-designate three existing regulated navigation areas as safety zones. Instead, this rulemaking proposed to add two safety zones in the Lake Erie Islands and Saginaw Bay to protect recreational ice users. We also proposed to add one regulated navigation area in Green Bay to manage increased commercial traffic in an area that typically experiences high volumes of recreational use.

We received one comment from the Lake Carriers Association (LCA). As a result of the LCA's comment to the original NPRM we modified the rule to not include zones in Maumee Bay or the Straits of Mackinac. LCA commented that zones in those locations would be detrimental to industry. In response to the SNPRM, LCA engaged with their member corporations and did not receive any feedback opposing the addition of a regulated navigation area in Green Bay.

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

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The District Commander has determined that there are potential hazards associated with commercial shipping traffic in close vicinity to recreational ice use. These areas attract recreational ice users during the winter months. Vessel traffic would disrupt ice integrity in these areas and pose risks to these recreational waterway users, which may include people and vehicles falling through the ice. To mitigate these risks, the Coast Guard is establishing safety zones and a regulated navigation area.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received one comment on our SNPRM published April 21, 2017. This comment was not in opposition to the rule. There are no changes in the regulatory text of this rule from the proposed rule in the SNPRM.

This rule establishes two safety zones, one in Saginaw Bay, MI, and the other in the Lake Erie Islands, OH. The safety zones will be activated when ice conditions warrant and will be

deactivated when the ice dissipates in the spring. During the time the safety zones are active, vessels will not be permitted to transit through the zones which will protect recreational ice users from the dangers associated with icebreaking.

This rule also establishes a regulated navigation area in southern Green Bay, WI. This RNA will allow the Coast Guard to regulate when commercial traffic is permitted in southern Green Bay and will give the public a minimum of 72 hours notice before a vessel is permitted to transit the area. This will best manage the risks associated with recreational ice users and vessels operating in Southern Green Bay.

## **V. Regulatory Analyses**

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

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

Executive Orders 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. Executive Order 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 Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

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 Lake Erie Islands, OH, the Coast Guard notes that industry vessels have taken alternative routes bypassing the Lake 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 Saginaw 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 received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have

questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

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

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the

Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves amendments to navigation regulations and establishment of a safety zones. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a 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 rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked

to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 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 C.F.R. 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

1. 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), and the 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: June 12, 2017

J.E. Ryan,

RADM, U.S. Coast Guard,

Commander, Ninth Coast Guard District

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