



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0792]

RIN 1625-AA00

Temporary Safety Zone; M/V Highland Eagle Operating in the Straits of Mackinac, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 500-yard radius of the Motor Vessel (M/V) HIGHLAND EAGLE while conducting geotechnical sampling operations in the Straits of Mackinac. The safety zone is needed to protect persons, vessels, and the marine environment from potential hazards created by geotechnical sampling operations in the Straits of Mackinac. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Sault Sainte Marie.

DATES: This rule is effective from October 1, 2019, through November 30, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0792 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 Lieutenant Sean Murphy, Chief, Waterways Management Division, U.S. Coast Guard; telephone 906-635-3223, email ssmprevention@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive the final details of the requested safety zone with sufficient time for a comment period before the start of the event. The final details of the specific dates and safety zone distances concerning the safety zone around the M/V HIGHLAND EAGLE were not finalized within a sufficient time to allow for notice and a subsequent 30-day comment period before the commencement of geotechnical sampling operations. Delaying this rule to allow for a notice and comment period would be impracticable and contrary to the public interest because it would inhibit the Coast Guard’s ability to protect the public from the potential hazards associated with geotechnical sampling.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective

date would be contrary to the rule's objectives of protecting safety of life on the navigable waters in the vicinity of the geotechnical sampling.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP Sault Sainte Marie has determined that potential hazards associated with ongoing geotechnical sampling starting October 1, 2019, will be a safety concern for anyone upon the navigable waters of the U.S. within a 500-yard radius of the Motor Vessel (M/V) HIGHLAND EAGLE while conducting geotechnical sampling operations in the Straits of Mackinac. The COTP Sault Sainte Marie previously issued a rule for geotechnical sampling under the same authority, 33 CFR 165.T09-0493, (84 FR 28743, June 20, 2019). That rule is effective through 30 September 2019. This rule is needed to protect persons, vessels, and the marine environment from potential hazards created by geotechnical sampling operations in the Straits of Mackinac through November 30, 2019

IV. Discussion of the Rule

This rule establishes a safety zone from October 1, 2019 through November 30, 2019 for navigable waters within a 500-yard radius of the M/V HIGHLAND EAGLE while conducting geotechnical sampling operations in the Straits of Mackinac. The duration of the zone is intended to protect personnel and vessels in these navigable waters while the M/V HIGHLAND EAGLE conducts geotechnical sampling operations. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Sault Sainte Marie or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related

to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which impacts a relatively small portion of the Straits of Mackinac and related waterway.

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 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 above.

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 Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), 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 a 500-yard safety zone around a vessel conducting technical operations. Vessel traffic will be able to safely transit

around this safety zone, which impacts a relatively small portion of the Straits of Mackinac and related waterway.

It is categorically excluded from further review under paragraph L60a in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

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: 46 U.S.C. 70034, 70051; 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.T9-0792 to read as follows:

§ 165.T9-0792 Temporary Safety Zone; M/V Highland Eagle operating in the Straits of Mackinac, MI.

(a) *Location.* The following area is a safety zone: All navigable waters within 500 yards of Motor Vessel (M/V) Highland Eagle while conducting geotechnical sampling in the Straits of Mackinac.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sault Sainte Marie (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) In accordance with the general regulations in §165.23, entry into, transiting, or anchoring within this temporary safety zone is prohibited unless authorized by the Captain of the Port, Sault Sainte Marie or designated representative.

(2) Before a vessel operator may enter or operate within the safety zone, the operator

must obtain permission from the Captain of the Port, Sault Sainte Marie, or designated representative via VHF Channel 16 or telephone at (906) 635-3233. Vessel operators given permission to enter or operate in the safety zone must comply with all orders given to them by the Captain of the Port, Sault Sainte Marie or designated representative.

(d) *Enforcement period.* This section will be enforced from October 1, 2019 through November 30, 2019.

Dated: September 17, 2019.

P. S. Nelson,
Captain, U.S. Coast Guard,
Captain of the Port Sault Sainte Marie.

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