



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0785]

RIN 1625-AA11

Regulated Navigation Areas; Harbor Entrances along the Coast of Northern California

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish Regulated Navigation Areas (RNAs) at the harbor bar entrances to Crescent City Harbor, Humboldt Bay, Noyo River, and Morro Bay. The proposed regulation would create additional safety requirements for recreational and small commercial vessels operating in these areas during periods of hazardous conditions, such as high wind or breaking surf, as well as establish clear procedures for restricting and closing these harbor bar entrances in the event of unsafe conditions. The proposed regulation is necessary to enhance mariner and vessel safety when crossing the bars exceeds parameters, typically when breaking seas are projected to be 20-foot or greater. The proposed rulemaking would prohibit vessels from entering these areas during unsafe conditions unless authorized by the local Captain of the Port or a designated representative. We invite your comments on this proposed rulemaking.

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-2019-0785 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 proposed rulemaking, call or email Lieutenant Andres Ayure, Coast Guard District 11 Waterways Office; telephone 510-437-2982, email Andres.A.Ayure@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

NPRM	Notice of Proposed Rulemaking
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
LA-LB	Los Angeles-Long Beach
OCMI	Officer in Charge of Marine Inspection
OMB	Office of Management and Budget
NTSB	National Transportation Safety Board
PWSA	Ports and Waterways Safety Act
RNA	Regulated Navigation Area
U.S.C.	United States Code
§	Section

II. Background, Purpose, and Legal Basis

Since 1998, Captain of the Port (COTP) San Francisco and COTP Los Angeles-Long Beach (LA-LB) have issued various navigation safety advisories and created numerous emergency safety zones to mitigate risk to mariners and vessels transiting the Crescent City Harbor, Humboldt Bay, Noyo River, and Morro Bay Harbor entrances

during unsafe conditions. These emergency safety zones included policies and procedures for closing the bar to vessel traffic as well as vessel escort policies and provided parameters and procedures for waiver requests. For example, in October 2017, COTP San Francisco published a temporary final rule to establish temporary safety zones in the navigable waters of the Humboldt Bay Entrance Channel in Eureka, CA; the Noyo River Entrance Channel in Fort Bragg, CA; and the Crescent City Harbor Entrance in Crescent City, CA to enhance navigation safety during unsafe conditions (82 FR 53418). The use of emergency safety zones to accomplish the required risk mitigation does not provide consistency or predictability of Coast Guard actions to mariners. The RNAs proposed here would define the parameters and implementation procedures for restricting access to the applicable areas during unsafe conditions for various types and classes of vessels.

The current mariner rules of the road and use of emergency safety zones governing maritime traffic operating in the vicinity of the Crescent City Harbor, Humboldt Bay, Noyo River, and Morro Bay Harbor bar entrances are insufficient to enhance the safety of mariners and vessels operating in those areas. Bars along the northern California coast experience severe wave, sea, and current conditions that have contributed to numerous marine casualties. Various Coast Guard and National Transportation Safety Board (NTSB) casualty investigations have identified a need for specific regulations to mitigate these risks to enhance the safety of mariners and vessels operating in the vicinity of bars. One example is the NTSB Safety Recommendation M-05-009, available at: https://www.nts.gov/investigations/AccidentReports/_layouts/nts.gov/recsearch/Recommendation.aspx?Rec=M-05-009.

On October 17, 2005, in a written response to NTSB Safety Recommendation M-05-009, the Coast Guard articulated its intention to develop written policies for transiting west coast bars and inlets. In July 2010, Coast Guard District Thirteen published a final rule, 74 FR 59098, amended by 75 FR 41988, to mitigate bar transit risks that addressed NTSB Safety Recommendations M-05-009 and M-05-010. Coast Guard District Eleven is proposing a similar rule to streamline safety regulations and provide predictability for local mariners regarding the conditions for the Coast Guard to regulate navigation in the vicinity of Crescent City Harbor, Humboldt Bay, Noyo River, and Morro Bay Harbor bar entrances based on weather, sea, tide, and river conditions.

The Coast Guard solicited public input on the potential establishment of RNAs at these locations through the *Federal Register* prior to publication of this NPRM (83 FR 5592, Feb. 8, 2018). The comment period closed on March 12, 2018. Coast Guard District Eleven received a request for an extension of the comment period, and after reviewing it, reopened the public comment period to extend to March 30, 2018 (83 FR 11649). In addition to the *Federal Register* notices, an extensive public outreach plan was completed by Coast Guard COTP LA-LB and COTP San Francisco, and a press release was issued to engage all mariner stakeholders in the local communities. Coast Guard District Eleven recognizes the need to provide ample opportunity for public discussion of bar crossing safety measures and seeks to acquire mariner feedback on the proposed regulatory text.

The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231) and Department of Homeland Security (DHS) Delegation No. 0170.1(70). This authority has been re-delegated by the Commandant to District

Commanders in accordance with 33 CFR 1.05-1(e). In addition, without this rule the COTP can issue COTP Orders under the Ports and Waterways Safety Act (PWSA) 46 U.S.C. 70002 to direct only a specific vessel, facility, or individual in order to: restrict or stop vessel operations; require specific actions to be taken; deny a vessel further entry to port until a deficiency is corrected; or detain a vessel in port. COTP Orders cannot be issued to “all vessels” or a class of vessels, facilities or individuals. Where a group or class of entities is targeted, a safety zone or RNA is more appropriate. Due to this limitation, this rule is being established to restrict all vessels, when the COTP determines that the on scene conditions are unsafe. Authority to activate the proposed RNA at Morro Bay Harbor is delegated from the District Commander to COTP LA-LB. The authority to activate the proposed RNA at Crescent City Harbor, Humboldt Bay, and Noyo River is delegated to COTP San Francisco. The Designated Representative for enforcement of the proposed RNA at Crescent City Harbor, Humboldt Bay, and Noyo River would be designated by COTP San Francisco to Commander, Sector Humboldt Bay.

III. Discussion of Comments

A total of six comments were received from the published Request for Comments. We considered four comments in drafting this proposed rule; two comments were outside the scope of the notice or appeared to be based on a misunderstanding of the intent of the Request for Comments.

One commenter stated that the Government should not regulate when mariners can navigate a specific area. The Coast Guard has maintained a narrow scope for the enactment of the proposed regulation in order to minimize potential impact on navigation. The Coast Guard’s goal is to provide advance notice, consistency, and

predictability for local mariners during periods of extreme weather and sea conditions (*i.e.*, unsafe conditions). The Coast Guard seeks clear communication with local mariners and views this proposed regulation as a tool to improve public safety, predictability, advance notice, and transparency.

One comment questioned the ability of the Coast Guard to determine when the bars are safe for seasoned mariners to transit versus the judgment of professional mariners themselves. The Coast Guard drafted the proposed RNAs as a formalization of existing best-practices already used by prudent mariners at bar entrances along the Pacific Coast during extreme weather and sea conditions. The proposed regulation differentiates between a bar restriction and bar closure based on set environmental conditions as observed by the COTP, who under 33 CFR 6.04-5, retains ultimate authority to restrict entrance to the harbor bars in order to avoid damage or injury to a vessel or waterfront facility. To account for the various levels of mariner knowledge and familiarity with each bar, the draft regulation also proposes progressive standards for recreational and professional mariners. In addition, the proposed regulatory text establishes safety standards for operating in the RNAs during periods of unsafe conditions and provides the opportunity for preapproved bar crossing plans to implement supplemental safety and accessibility measures for mariners. Unsafe conditions in this proposed rule are typically expected to be at least 20-foot breaking seas. The bar should be reopened at the discretion of each COTP, typically when breaking seas are less than 20-foot and when the local Coast Guard station is able to launch the 47-foot motor life boat to respond to search and rescue cases. Finally, the proposed regulation establishes waiver procedures for vessels requiring access to safe harbor during a bar restriction or closure. We welcome further

discussion on the proposed text, as the primary focus of this NPRM is to provide an opportunity for public comment to inform potential revisions of the proposed RNA.

One commenter stated that such RNAs would be redundant because the Coast Guard currently closes the entrances to all craft during unsafe periods. The Coast Guard believes the commenter is referring to the use of emergency safety zones. While emergency safety zones reduce the risk for all vessels, they do not provide advance notice, consistency, or predictability of Coast Guard actions affecting mariners, or additional safety requirements, such as implementing bar crossing plans for small passenger and commercial fishing vessels to mitigate risks inherent to transits of the harbor bars. The proposed RNA negates the need to establish emergency safety zones, and defines the parameters and enforcement procedures for restricting access to the applicable areas during unsafe conditions and defines safety requirements for small passenger and commercial fishing vessels operating within the proposed RNAs. This regulation would improve consistency of enforcement and communication with the maritime public.

The Coast Guard received one comment suggesting that the Coast Guard discuss possible penalties or actions the Coast Guard will take for violations of the proposed regulation. The Coast Guard incorporated a reference to 46 U.S.C. 70036, which provides penalties for all persons in violation. Per 46 U.S.C. 70036, the current civil penalty shall not exceed \$25,000 per violation. Each day of a continuing violation shall constitute a separate violation.

The Coast Guard utilized the comments received to draft the proposed RNA text to be minimally disruptive to the local community and mariners utilizing Crescent City

Harbor, Humboldt Bay, Noyo River, and Morro Bay Harbor bar entrances outlined in this NPRM, while acknowledging the limits of Coast Guard rescue assets and the need for additional safety measures. In the sections below, we outline a comprehensive proposed regulation of RNAs for public comment.

IV. Discussion of Proposed Rule

The Coast Guard is proposing to establish RNAs at the harbor bar entrances to Crescent City Harbor, Humboldt Bay, Noyo River, and Morro Bay. The proposed regulation would create additional safety requirements for recreational and small commercial vessels operating in these areas during periods of hazardous conditions, such as high wind or breaking surf, as well as establish clear procedures for restricting and closing these harbor bar entrances in the event of hazardous conditions. The proposed regulation is necessary to enhance mariner and vessel safety when crossing the bars exceeds parameters, typically when breaking seas are projected to be 20-foot or greater. The COTP or a designated representative would determine whether an unsafe condition exists for restricting or closing the bar entrances, meaning that the wave height within an RNA is equal to or greater than the maximum wave height as defined by the formula $L/10 + F = W$. In the formula “L” is the overall length of a vessel, “F” is the minimum freeboard when measured in feet from the lowest point along the upper strake edge to the surface of the water and “W” is the maximum wave height in feet. The COTP will also utilize their professional maritime experience and knowledge of local environmental conditions in making their determination. Factors that will be considered include, but are not limited to: size and type of vessel, sea state, winds, wave period, and tidal currents. The proposed rulemaking would also prohibit vessels from entering these areas during

hazardous conditions unless authorized by Commander, District Eleven, the local Captain of the Port, or a designated representative.

In the proposed rule, the operation of recreational and uninspected passenger vessels in the RNA is prohibited during bar restrictions and bar closures unless specifically authorized by the COTP or a designated representative. The operator of any recreational or uninspected passenger vessel operating in an activated RNA shall ensure that all persons located in any unenclosed areas of the recreational vessel are wearing lifejackets, and that lifejackets are readily accessible for/to all persons located in any enclosed area of the vessel.

The proposed rule would also prohibit small passenger vessels and commercial fishing vessels from crossing the bars located in the RNAs during a bar closure, unless specifically authorized by the COTP or a designated representative.

The master or operator of any small passenger vessel operating in an activated RNA shall ensure that all persons located in any unenclosed areas of the small passenger vessel are wearing lifejackets and that lifejackets are readily accessible for/to all persons located in any enclosed areas of the vessel. The aforementioned requirement may be waived if the operator of the small passenger vessel pre-establishes a bar crossing plan with the Coast Guard OCMI with responsibility for the bar they intend to cross that will include outlining a communication plan and safety equipment to be set out during the crossing. Operators intending to cross the Crescent City Harbor, Humboldt Bay, and Noyo River bars should contact Coast Guard Sector San Francisco and operators intending to cross the Morro Bay Harbor entrance should contact Coast Guard Sector Los Angeles-Long Beach.

The master or operator of any commercial fishing vessel operating in an activated RNA shall ensure that all persons located in any unenclosed areas of commercial fishing vessel are wearing lifejackets or immersion suits and that lifejackets or immersion suits are readily accessible for/to all persons located in any enclosed spaces of the vessel.

For bars having deep draft vessel access, the COTP will consult with the local pilots association, when practicable, prior to closing the affected bar.

A similar RNA program has been tested and used along the Northern Pacific Coast with limited burden to local mariners while improving vessel safety during unsafe conditions. The Coast Guard believes that implementing a standard protocol along the Pacific Coast will improve our service to the maritime community and minimize the unpredictability of emergency safety zones. Conditions that exceed operating parameters for the Coast Guard's primary rescue asset, the 47-foot motor lifeboat with an operating limit of 20-foot breaking seas, will be the threshold for COTP activation of the proposed RNA. In addition, the proposed RNA will provide predictability of closures, improve vessel transit plans during extreme weather conditions, and strengthen communications between the Coast Guard and the maritime community. The regulatory text we are proposing appears at the end of this document.

V. 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 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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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 fact that: (1) the proposed regulation does not require vessel operators affected by the regulation to purchase additional equipment; (2) the restriction and/or closure of the bars are temporary and will only occur when necessary due to unsafe conditions; (3) the maritime public will be advised of bar restrictions and/or closures via one or more of the following methods: Broadcast Notice to Mariners, local government partners, bar warning lights and/or publication in the Local Notice to Mariners; and (4) vessels may be allowed to enter the proposed RNA when a bar restriction and/or closure is in place on a case-by-case basis with permission of the COTP or a designated representative.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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.

This rule may affect the following entities, some of which may be small entities: owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the RNA at times when the RNA has been activated. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) the proposed regulation does not require vessel operators affected by the regulation to purchase additional equipment; (2) the restriction and/or closure of the bars are temporary and will only occur when necessary due to unsafe conditions; (3) the maritime public will be advised of bar restrictions and/or closures via one or more of the following methods: Broadcast Notice to Mariners, local government partners, bar warning lights and publication in the Local Notice to Mariners; and (4) vessels may be allowed to enter the proposed RNA when a bar restriction or closure is in place on a case-by-case basis with permission of the COTP or a designated representative.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 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 Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guides 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 RNAs that would prohibit the transit of maritime traffic in times of unsafe conditions. Normally such actions are categorically excluded from further review under L60[a] in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A preliminary Record of Environmental Consideration supporting this determination 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 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.

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 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, visit <http://www.regulations.gov/privacyNotice>.

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, 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: 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 § 165.1196 to read as follows:

§ 165.1196 Regulated Navigation Areas; Harbor Entrances along the Coast of Northern California.

(a) *Regulated navigation areas.* Each of the following areas is a regulated navigation area (RNA):

(1) Humboldt Bay Entrance Channel: The navigable waters shoreward of a line drawn from Humboldt Bay Entrance Light 4 to Humboldt Bay Entrance Light 3, in Eureka, CA.

(2) Noyo River Entrance Channel: The navigable waters of the Noyo River Entrance Channel as defined by the area contained seaward of the Line of Demarcation, with the northern boundary of the line originating in approximate position 39°25'41" N, 123°48'37" W and extending 4 nautical miles at bearing 290° T, and the southern boundary of the line originating in approximate position 39°25'38" N, 123°48'36" W and extending 4 nautical miles at 281° T, in Fort Bragg, CA.

(3) Crescent City Harbor Entrance Channel: The navigable waters of the Crescent City Harbor Entrance Channel, as defined by the area contained seaward of the line originating in approximate position 41°44'36" N, 124°11'18" W bearing 237° T and extending out to 1 nautical mile from the Line of Demarcation, in Crescent City, CA.

(4) Estero-Morro Bay Harbor Entrance Channel: The navigable waters of the Morro Bay Harbor Entrance Channel, as defined by the area contained seaward of the Line of Demarcation, with the northern boundary of the line originating from the seaward extremity of the Morro Bay East Breakwater to the Morro Bay West Breakwater Light 35°21'46" N, 120°52'11" W in Morro Bay, CA.

(b) *Definitions.* For purposes of this section:

(1) *Bar closure* means that the operation of any vessel within an RNA established in paragraph (a) of this section has been prohibited by the Coast Guard.

(2) *Bar crossing plan* (also known as a Go/No-Go plan) means a plan, developed by local industry, in coordination with Coast Guard, for a bar within an RNA established in paragraph (a) of this section and adopted by the master or operator of a small passenger vessel or commercial fishing vessel to guide his or her vessel's operations on and in the vicinity of that bar.

(3) *Bar restriction* means that operation of a recreational, uninspected passenger, small passenger, and commercial fishing vessel within an RNA established in paragraph (a) of this section has been prohibited by the Coast Guard.

(4) *Commercial fishing industry vessel* means a fishing vessel, fish tender vessel, or a fish processing vessel.

(5) *COTP designated representative* means any Coast Guard commissioned,

warrant, civilian or petty officer that has been authorized by the Captain of the Port (COTP) to act on his or her behalf in the enforcement of the RNA.

(6) *Fish processing vessel* means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

(7) *Fish tender vessel* means a vessel that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or a fish processing facility.

(8) *Fishing vessel* means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

(9) *Operator* means a person who is an owner, a demise charterer, or other contractor, who conducts the operation of, or who is responsible for the operation of a vessel.

(10) *Readily accessible* means equipment that is taken out of stowage and is available within the same space as any person for immediate use during an emergency.

(11) *Recreational vessel* means any vessel manufactured or used primarily for non-commercial use or leased, rented, or chartered to another for non-commercial use. It does not include a vessel engaged in carrying paying passengers.

(12) *Small passenger vessel* means a vessel inspected under 46 CFR subchapter T or 46 CFR subchapter K.

(13) *Uninspected passenger vessel* means an uninspected vessel—

(i) Of at least 100 gross tons;

(A) Carrying not more than 12 passengers, including at least one passenger-for-hire; or

(B) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 12 passengers; or

(ii) Of less than 100 gross tons;

(A) Carrying not more than six passengers, including at least one passenger-for-hire; or

(B) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than six passengers.

(14) *Unsafe condition* exists when the wave height within an RNA identified in paragraph (a) of this section is equal to or greater than the maximum wave height determined by the formula $L/10 + F = W$ where:

L = Overall length of a vessel measured in feet in a straight horizontal line along and parallel with the centerline between the intersections of this line with the vertical planes of the stem and stern profiles excluding deckhouses and equipment.

F = The minimum freeboard when measured in feet from the lowest point along the upper strake edge to the surface of the water.

W = Maximum wave height in feet to the nearest highest whole number.

(c) *Regulations.*

(1)(i) *Bar restrictions.* The COTP or a designated representative will determine when to restrict passage for recreational and uninspected passenger vessels across the bars located in the RNAs established in paragraph (a) of this section. In making this

determination, the COTP or a designated representative will determine whether an unsafe condition exists for such vessels as defined in paragraph (b) of this section. Additionally, the COTP or a designated representative will use his or her professional maritime experience and knowledge of local environmental conditions in making his or her determination. Factors that will be considered include, but are not limited to: size and type of vessel, sea state, winds, wave period, and tidal currents. When a bar is restricted, the operation of recreational and uninspected passenger vessels in the RNA established in paragraph (a) of this section in which the restricted bar is located is prohibited unless specifically authorized by the COTP or a designated representative.

(ii) *Bar closure.* The bars located in the RNAs established in paragraph (a) of this section will be closed to all vessels whenever environmental conditions exceed the operational limitations of the relevant Coast Guard Search and Rescue resources as determined by the COTP. When a bar is closed, the operation of any vessel in the RNA established in paragraph (a) of this section in which the closed bar is located is prohibited unless specifically authorized by the COTP or a designated representative. For bars having deep draft vessel access, the COTP will consult with the local pilots association, when practicable, prior to closing the affected bar.

(iii) The Coast Guard will notify the public of bar restrictions and bar closures via a Broadcast Notice to Mariners on VHF-FM Channel 16 and 22A. Additionally, Coast Guard personnel may be on-scene to advise the public of any bar restrictions or closures. In some locations, the Coast Guard may use bar warning lights to provide a visual indication of unsafe conditions to the public. Monitoring cameras and associated websites may also provide mariners with additional information in some locations.

(2) *Safety requirements for recreational vessels.* The operator of any recreational vessel operating in an RNA established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of the recreational vessel are wearing lifejackets; and that lifejackets are readily accessible for/to all persons located in any enclosed area of the recreational vessel:

(A) When crossing the bar and a bar restriction exists or

(B) Whenever the recreational vessel is being towed or escorted across the bar.

(3) *Safety requirements for uninspected passenger vessels (UPVs).* (i) The master or operator of any uninspected passenger vessel operating in an RNA established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of their vessel are wearing lifejackets and that lifejackets are readily accessible for/to all persons located in any enclosed areas of their vessel uninspected passenger vessel:

(A) When crossing the bar and a bar restriction exists or

(B) Whenever the uninspected passenger vessel is being towed or escorted across the bar.

(ii) The master or operator of any uninspected passenger vessel operating in an RNA established in paragraph (a) of this section during the conditions described in paragraph (c)(3)(i)(A) of this section shall contact the Coast Guard on VHF-FM Channel 16 prior to crossing the bar. The master or operator shall report the following:

(A) Vessel name,

(B) Vessel location or position,

(C) Number of persons onboard the vessel and

(D) Vessel destination.

(4) *Safety Requirements for Small Passenger Vessels (SPV)*. (i) The master or operator of any small passenger vessel operating in an RNA established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of the small passenger vessel are wearing lifejackets and that lifejackets are readily accessible for/to all persons located in any enclosed areas of the vessel:

(A) Whenever crossing the bar and a bar restriction exists or

(B) Whenever their vessel is being towed or escorted across the bar.

(ii) Small passenger vessels with bar crossing plans that have been reviewed by and accepted by the Officer in Charge of Marine Inspection (OCMI) are exempt from the safety requirements described in paragraph (c)(4)(i) of this section during the conditions described in paragraph (c)(4)(i)(A) of this section so long as when crossing the bar the master or operator ensures that all persons on their vessel wear lifejackets in accordance with their bar crossing plan. If the vessel's bar crossing plan does not specify the conditions when the persons on their vessel shall wear lifejackets, however, then the master or operator shall comply with the safety requirements provided in paragraph (c)(4)(i) of this section in its entirety.

(iii) The master or operator of any small passenger vessel operating in an RNA established in paragraph (a) of this section during the conditions described in paragraph (c)(4)(i)(A) of this section shall contact the Coast Guard on VHF-FM Channel 16 prior to crossing the bar. The master or operator shall report the following:

(A) Vessel name,

(B) Vessel location or position,

(C) Number of persons on board the vessel and

(D) Vessel destination.

(5) *Safety Requirements for Commercial Fishing Vessels (CFV).*

(i) The master or operator of any commercial fishing vessel operating in an RNA described in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of commercial fishing vessel are wearing lifejackets or immersion suits and that lifejackets or immersion suits are readily accessible for/to all persons located in any enclosed spaces of the vessel:

(A) Whenever crossing the bar and a bar restriction exists or

(B) Whenever the commercial fishing vessel is being towed or escorted across the bar.

(ii) The master or operator of any commercial fishing vessel operating in an RNA described in paragraph (a) of this section during the conditions described in paragraph (c)(5)(i)(A) of this section shall contact the Coast Guard on VHF-FM Channel 16 prior to crossing the bar. The master or operator shall report the following:

(A) Vessel name,

(B) Vessel location or position,

(C) Number of persons on board the vessel and

(D) Vessel destination.

(6) *Penalties.* All persons and vessels within the RNAs described in paragraph (a) of this section shall comply with orders of Coast Guard personnel. Coast Guard personnel includes commissioned, warrant, petty officers, and civilians of the United States Coast Guard. Any person who fails to comply with this regulation is subject to civil penalty in accordance with 46 U.S.C. 70036.

Dated: October 21, 2019

Peter W. Gautier,
Rear Admiral, U.S. Coast Guard,
Commander, Coast Guard District Eleven
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