



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2023-0308]

RIN 625-AA08

Special Local Regulation; Henderson Bay, Henderson Harbor, NY

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule

SUMMARY: The Coast Guard is establishing a permanent special local regulation for certain waters of Henderson Bay in Henderson Harbor, NY, in support of the Christmas in July festival. This action is necessary to provide for the safety of life on these navigable waters near Henderson Bay, Henderson Harbor, NY, during a boat parade. This rulemaking will prohibit persons and vessels from entering, transiting through, anchoring, blocking, or loitering within the event area adjacent to the city of Henderson Harbor, unless authorized by the Captain of the Port Buffalo or a designated representative.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0308 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email MST2 Andrew Nevenner, Waterways Management Division MSD Massena, U.S. Coast Guard; telephone 315-769-5483, email SMB-MSDMassena-WaterwaysManagement@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

On March 16, 2023, the Henderson Business and Community Council notified the Coast Guard of an intention to conduct the “Christmas in July” boat parade in Henderson Bay on July 29, 2023. Christmas in July is an annual event in July occurring on or near the last weekend of July. The special local regulation area will occur from 5 p.m. through 9 p.m. and cover all waters within a moving zone that encompasses a 50-yard buffer zone ahead of the lead vessel, 50 yards astern of the last participating vessel, and 50 yards on each side of the parade vessels as it travels the parade route. The parade will start at Waterside Tavern dock at point 43°51'44"N 76°12'07.3"W and running north adjacent to the shore to point 43°52'12.2"N 76°11'32.7"W, continuing northwest to point 43°53'40.9"N 76°12'40.6"W and running south adjacent to the shore to point 43°51'47.2"N 76°14'08.3"W, ending at the starting position at point 43°51'44"N 76°12'07.3"W. In response, on June 7, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Special Local Regulation; Henderson Bay, Henderson Harbor, NY” (88 FR 37194). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this boat parade. During the comment period that ended July 7, 2023, we received one comment that was in full support of the rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Sector Buffalo (COTP) has determined that this rule is necessary to

ensure the safety of life and property of the participants within the regulated area before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we only received one comment on our NPRM published June 7, 2023, and it fully supported the proposed rule. There are no substantive changes in the regulatory text of this rule from the proposed rule in the NPRM. We did reform the text and corrected the authority citation for 33 CFR part 100.

This rule establishes a special local regulation from 5 p.m. through 9 p.m. on July 29, 2023. The special local regulation area will cover all waters within a moving zone that encompasses a 50-yard buffer zone ahead of the lead vessel, 50 yards astern of the last participating vessel, and 50 yards on each side of the parade vessels as it travels the parade route in Henderson Bay, Henderson Harbor, NY. The duration of the special local regulation is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 5 p.m. through 9 p.m. boat parade. No vessel or person will be permitted to enter the special local regulation area without obtaining permission from the COTP 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. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has

not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. Vessel traffic will be able to safely transit around this regulated area which would impact a small-designated area of Henderson Bay. Moreover, the Coast Guard would issue a Local Notice to Mariners about the areas, and the rule would allow vessels to seek permission to enter the areas.

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 special local regulation 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 (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 call or email 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.

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, Rev. 1, associated implementing instructions, 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 special local regulation lasting that will prohibit persons and vessels from transiting the regulated area during the parade. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for Record supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. In § 100.901, revise table 1 to read as follows:

§ 100.901 Great Lakes annual marine events.

Table 1 to § 100.91

Event	Location	Date
Sector Buffalo, NY		
(1) Fireworks by Grucci Sponsor: New York Power Authority.	Lake Ontario, Wright's Landing/Oswego Harbor, NY within an 800 foot radius of the fireworks launching platform located in approximate position 43°28'10" N 076°31'04" W.	Last weekend of July.
(2) Flagship International Kilo Speed Challenge Sponsor: Presque Isle Powerboat Racing Association.	That portion of Lake Erie, Presque Isle Bay, south of a line drawn from 42°08'54" N 080°05'42" W; to 42°07' N 080°21' W will be a regulated area. That portion of Lake Erie, Presque Isle bay, north of a line drawn from 42°08'54" N 080°05'42" W; to 42°07' N 080°21' W will be a "caution area". All vessels transiting the caution area will be operated at bare steerageway, keeping the vessel's wake at a minimum, and will exercise a high degree of caution in the area. The bay entrance will not be effected.	3rd or 4th weekend of June.
(3) Flagship International Offshore Challenge Sponsor: Presque Isle Powerboat Racing Association.	That portion of Lake Erie, Presque Isle Bay, Entrance Channel, and the enclosed area from Erie Harbor Pier Head Light (LLNR 3430) northeast to 42°12'48" N 079°57'24" W, thence south to shore just east of Shades Beach.	3rd or 4th weekend of June.
(4) Friendship Festival Airshow Sponsor: Friendship Festival	That portion of the Niagara River and Buffalo.	4th of July holiday.

	Harbor from:		
	Latitude	Longitude	
	42°54.4' N	078°54.1' W, thence to	
	42°54.4' N	078°54.4' W, thence	
	along the International Border to		
	42°52.9' N	078°54.9' W, thence to	
	42°52.5' N	078°54.3' W, thence to	
	42°52.7' N	078°53.9' W, thence to	
	42°52.8' N	078°53.8' W, thence to	
	42°53.1' N	078°53.6' W, thence to	
	42°53.2' N	078°53.6' W, thence to	
	42°53.3' N	078°53.7' W, thence	
	along the breakwall to		
	42°54.4' N	078°54.1' W.	
(5) NFBRA Red Dog Kilo Time Trials Sponsor: Niagara Frontier Boat Racing Association.	That portion of the Niagara River, Tonawanda Channel, between Tonawanda Channel Buoy 31 to approximately 1/2 mile southwest of Twomile Creek along a line drawn from 43°00'45" N 078°55'06" W to 43°00'28" N 078°54'56" W (Sipco Oil Company).		4th or 5th weekend of September.
(6) Sodus Bay 4th of July Fireworks Sponsor: Sodus Bay Historical Society.	Lake Ontario, within a 500 foot radius around a barge anchored in approximate position 43°15.73' N 076°58.23' W, in Sodus Bay.		4th of July holiday.
(7) Tallship Erie Sponsor: Erie Maritime Programs, Inc.	That portion of Lake Erie, Presque Isle Bay.		1st or 2nd weekend of July.
	Entrance Channel and Presque Isle Bay from:		
	Latitude	Longitude	
	42°10' N	080°03' W, thence to	

	42°08.1' N	080°07' W, thence to	
	42°07.9' N	080°06.8' W, thence	
	east along the shoreline and structures to:		
	42°09.2' N	080°02.6' W, thence to	
	42°10' N	080°03' W.	
(8) Thomas Graves Memorial Fireworks Display Sponsor: Port Bay Improvement Association.	That portion of Lake Ontario, Port Bay Harbor, NY within a 500 ft radius surrounding a barge anchored in approximate position 43°17'46" N 076°50'02" W.		1st or 2nd weekend of July.
(9) Thunder Island Offshore Challenge Sponsor: Thunder on the Water Inc.	That portion of Lake Ontario, Oswego Harbor from the West Pier Head Light (LLNR 2080) north to:		3rd or 4th weekend of June.
	Latitude	Longitude	
	43°29'02" N	076°32'04" W, thence to	
	43°26'18" N	076°39'30" W, thence to	
	43°24'55" N	076°37'45" W, thence	
	along the shoreline to the West Pier Head Light (LLNR 2080).		
(10) We Love Erie Days Fireworks Sponsor: We Love Erie Days Festival, Inc.	That portion of Lake Erie, Erie Harbor, within a 300 foot radius, surrounding the Erie Sand and Gravel Pier, located in position 42°08'16" N 080°05'40" W.		3rd weekend of August.
(11) Christmas in July Sponsor: Henderson Business and Community Council	Location: The special local regulation area will cover ALL WATERS WITHIN A MOVING ZONE THAT ENCOMPASSES A 50 yard BUFFER ZONE ahead of the lead vessel, 50 yards astern of the last participating vessel, and 50 yards on each side of the parade vessels as it travels the parade route starting at point 43°51'44"N 76°12'07.3"W and running		Date: Final weekend of July

	north adjacent to the shore to point 43°52'12.2"N 76°11'32.7"W, continuing northwest to point 43°53'40.9"N 76°12'40.6"W and running south adjacent to the shore to point 43°51'47.2"N 76°14'08.3"W, ending at the starting position at point 43°51'44.0"N 76°12'07.3"W.	
	Latitude	Longitude
	43°51'44" N	076°12'07.3" W, thence to
	43°52'12.2" N	076°11'32.7" W, thence to
	43°53'40.9" N	076°14'08.3" W, thence
	along the shoreline to end at the starting position.	
Sector Sault Ste. Marie, MI		
(1) Bridgefest Regatta Sponsor: Bridgefest Committee.	Keweenaw Waterway, from the Houghton Hancock Lift Bridge to 1000 yards west of the bridge, near Houghton, MI.	2nd weekend of June.
(2) Duluth Fourth Fest Fireworks Sponsor: Office of the Mayor, Duluth, MN.	That portion of the Duluth Harbor Basin Northern Section bounded on the south by a line drawn on a bearing of 087° true from the Cargill Pier through Duluth Basin Lighted Buoy #5 (LLNR 15905) to the opposite shore on the north by the Duluth Aerial Bridge. That portion of Duluth Harbor Basin Northern Section within 600 yards of position 46°46'47" N 092°06'10" W.	4th of July weekend.
(3) July 4th Fireworks Sponsor: City of Sault Ste Marie, MI.	That portion of the St. Mary's River, Sault Ste. Marie, MI within a 1000 foot radius of Brady Park, located on the south shore of the river. These waters are enclosed by the Locks to the west and to the east from a line drawn from the	4th of July weekend.

	pier light of the east center pier to the U.S. Coast Guard Base to the southeast.	
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¹ All coordinates listed in this table 1 reference North American Datum of 1983 (NAD 1983).

² As noted in the introductory text of this section, the enforcement dates and times for each of the listed events in this table are subject to change. In the event of a change, or for enforcement periods listed that do not allow a specific date or dates to be determined, the Captain of the Port will provide notice to the public by publishing a Notice of Enforcement in the **Federal Register**, as well as, issuing a Broadcast Notice to Mariner.

Dated: July 19, 2023.

Sean M. Murray,
Commander, U.S. Coast Guard,
Alternate Captain of the Port Buffalo.

[FR Doc. 2023-15797 Filed: 7/25/2023 8:45 am; Publication Date: 7/26/2023]