

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0563]

RIN 1625-AA11

Regulated Navigation Area; Straits of Mackinac, Mackinaw City, MI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) for certain waters of the Straits of Mackinac. This action is necessary to provide for the safety of life and protection of property on these navigable waters near Mackinaw City, MI. This proposed rulemaking would prohibit persons and vessels from anchoring or loitering within the RNA unless authorized by the Captain of the Port of Sault Sainte Marie, Michigan or a designated representative.

DATES: This rule is effective October 31, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-0563 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 Jason Radcliffe, Ninth District Waterways Management, U.S. Coast Guard; telephone 216-902-6060, email Jason.A.Radcliffe2@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
RNA	Regulated Navigation Area
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
RNA	Regulated Navigation Area
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The northwest part of Lake Huron forms the approach to, and the east part of the, Straits of Mackinac. At the extreme northwest end, the lake narrows abruptly to a width of 4 miles. Spanning this divide is the Mackinac Bridge. Two main shipping lanes lead north and south of Bois Blanc Island and pass under the bridge. Numerous shoals and several islands obstruct the Straits Area. Located approximately a mile west of the Mackinac Bridge are submerged electrical cables and the Enbridge Line 5 Pipeline. Posted on NOAA's navigation charts are cautionary notes advising mariners of the cable and pipeline area. There is no prohibition nor is there an enforcement mechanism to discourage anchoring in this area. The Captain of the Port (COTP) of Sault Sainte Marie has determined that the high volume of vessel transits and the potential for damage to submerged infrastructure warrants the creation of a regulatory measure to specifically outline an area of regulated navigation that establishes transit and communication expectations through the Straits.

The purpose of this rulemaking is to better enhance the safety of vessels and protection of sub-surface cables and pipelines within the navigable waters of the Straits

of Mackinac. The Coast Guard publishes this rulemaking under authority in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

III. Legal Authority and Need for Rule

On the behalf of COTP Sector Sault Sainte Marie, the Ninth Coast Guard District is creating a Regulated Navigation Area that mandates transiting vessels make a direct passage with no anchoring or loitering, unless expressly granted permission from the COTP or designated representative. Vessels that are required to comply with this RNA include vessels of 40 meters or more in length, towing vessels of 20 meters or more in length while engaged in towing another vessel, vessels certificated to carry 50 or more passengers for hire, when engaged in trade, or any dredge or floating plant.

Within the RNA, the District Commander or COTP may establish temporary traffic rules that include but are not limited to channel obstructions, winter navigation, unusual weather conditions, or unusual water levels. This rule will ensure transiting mariners are fully aware of existing and emergent hazards to navigation on or below the navigable waterways and provide the Coast Guard with greater situational awareness and oversight. The regulatory text appears at the end of this document.

IV. Discussion of Comments, Changes, and the Rule

In total, we received 21 comments on the proposed regulated navigation area (RNA) for the Straits of Mackinac published on August 2, 2018 (83 FR 37780). In consideration of the comments received, we have amended the regulatory text in this final rule.

We received seven comments expressing support for proceeding with the rulemaking.

One comment did not address the proposed rule, nor offer any support for or criticism against the rulemaking.

One commenter suggested that pipelines and cables could be protected with a smaller than proposed RNA. The Coast Guard believes that requiring ships to seek permission from the COTP to anchor in any part of the regulated area, coupled with the requirement to notify the COTP 15 minutes prior to getting underway, will reduce the likelihood of an accidental anchor deployment through areas with pipes and cables below.

Another commenter expressed disapproval of the proposed rule, saying it would not prevent accidents in the future. The comment did not offer any suggestions for how to improve the regulations. For the same reasons given above, the Coast Guard believes that there will be fewer accidental anchor deployments causing damage to the pipes and cables below the surface.

One commenter suggested that we should remove the pipelines. The purpose of this RNA, however, is to protect all of the submerged pipes and cables in the Straits of Mackinac and to prevent accidental anchor deployment through them.

One comment from NOAA's charting team requested clarification of the horizontal datum type used. In this final rule, we include the horizontal datum type, NAD 83, in the regulatory text after the latitude coordinates.

We received four comments from commercial vessel owners and operators concerned that the rulemaking would prohibit large vessels from anchoring to safely

endure foul weather. Other commenters expressed similar concern on having to anchor within the RNA, away from submerged cables and pipelines, in adverse weather with little or no notice. To address these safety concerns, we have added clarification that in emergency cases, regulated vessels may anchor in the RNA without one hour notice to the COTP, but they must give notice of anchoring as soon as practical. Nothing in this rule prohibits vessel masters from safely navigating their vessels and/or anchoring when necessary while in extremis and/or to preserve safety of life at sea. Communicating the need and requesting permission to anchor with an hour's notice, or as soon as practicable, gives the COTP the situational awareness and ability to respond to mariner needs.

Six comments were received from sight-seeing, ferry, and tourism related waterway users concerned with this rule prohibiting their ability to linger, loiter, stop, etc. to observe specific areas of interest. The Coast Guard does not intend to overly burden businesses engaged in these activities. Therefore, we amended this final rule's definition of loiter to explicitly exclude brief stops for sightseeing, ferrying and tourism. Thus, operations that require stopping by passenger ships for sightseeing, ferrying, and tourism purposes do not require expressed permission from the COTP under this rule because we do not think these brief stops reduce the safety goals of this RNA. However, this rule requires that vessels engaged in sightseeing, ferrying, and tourism contact the COTP within one hour of their intent to anchor within the RNA.

The regulatory text in this final rule differs from the NPRM in that we added the ability for operators of vessels engaged in activities, such as tourism, ferrying, or sightseeing, to request a waiver from the COTP to anchor within the RNA, but not within charted submerged cables and/or pipelines areas. The sightseeing, ferry, and

tourism waivers are intended for frequent vessel operations and configurations that are reasonably determined by the COTP to not pose a threat to sensitive submerged infrastructure.

Lastly, this rule differs from the NPRM in that we added language to 165.944(c)(4) that states even when one (1) hour notice is given to the COTP, anchoring in the charted submerged cable and pipeline areas is prohibited. This additional language is necessary to achieve our goal of promoting safe transit through the RNA now that we have added waivers and permission to anchor with little to no notice in emergencies.

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 fact that no part of this proposed rulemaking and its stipulations will require any additional equipment purchases or create an undue burden to marine operations. This proposed rule will increase

communication and situational awareness of the specified area.

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 proposed rule would not have a significant economic impact on any vessel owner or operator. The majority of this proposed rule applies to vessels typically larger than those operated by small entities. The size and operational applicability of this proposed rule is found at the end of this document.

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 proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, 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 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 rule involves creating a permanent Regulated Navigation Area detailing how mariners shall transit through the Straits of Mackinac. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. 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 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 proposes to amend 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6 and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.944 — Regulated Navigation Area; Straits of Mackinac

(a) *Location.* All navigable waters of the Straits of Mackinac bounded by longitudes 084°20'W and 085°10'W and latitudes 045°39'N and 045°54'N (NAD 83), including Grays Reef Passage, the South Channel between Bois Blanc Island and Cheboygan, MI, and the waters between Mackinac Island and St. Ignace, MI.

(b) *Applicability.* Unless otherwise stated, the provisions of this RNA apply to the following vessels:

- (1) Vessels of 40 meters (approx. 131 feet) or more in length, while navigating;
- (2) Towing vessels of 20 meters (approx. 65 feet) or more in length, while engaged in towing another vessel astern, alongside or by pushing ahead; or
- (3) Vessels certificated to carry 50 or more passengers for hire, when

engaged in trade; or

(4) Each dredge or floating plant.

(c) *Regulations.* The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply within this RNA.

(1) Nothing in this regulation relieves any vessel, owner, operator, charterer, master, or person directing the movement of a vessel, from the consequences of any neglect to comply with this part or any other applicable law or regulation. (i.e. the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS) or the Inland Navigation Rules) or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

(2) Vessels transiting through the RNA must comply with all directions given to them by the COTP, or a designated representative. The “designated representative” of the COTP is any Coast Guard commissioned, warrant or petty officer who is designated by the COTP to act on their behalf. The designated representative may be on a Coast Guard vessel; or other designated craft; or on shore and communicating via VHF-16 or telephone, 906-635-3319.

(3) Vessels transiting through the RNA must make a direct passage. No vessel may anchor or loiter within the RNA at any time without the expressed permission of the COTP or a designated representative.

(4) Vessels are prohibited from anchoring in any charted submerged cable and/or pipeline areas; except when expressly permitted by the COTP. Vessels desiring to anchor within the confines of the RNA, but outside a charted submerged cable and/or pipeline area, must contact the COTP or a designated representative one (1) hour in

advance of anchoring via VHF-16 or telephone 906-635-3319. The person directing the movement of the vessel desiring to anchor shall provide the time, purpose and location for the proposed anchoring. Vessels who receive permission to anchor, shall notify the COTP or a designated representative no less than 15 minutes prior to getting underway via VHF-16 or telephone 906-635-3319.

(5) In an emergency, any vessel may deviate from this regulation to the extent necessary to avoid endangering the safety of persons, the environment, and/or property. If deviation from the regulation is necessary, the master or his designee shall inform the Coast Guard as soon as it is practicable to do so.

(6) The owner, operator, charterer, master or person directing the movement of a vessel desiring to anchor within the prescribed RNA for the purposes of work, dredging, or survey must receive permission from the COTP or a designated representative a minimum of 72 hours in advance of the desired activity. Vessels engaged in activities, such as tourism, ferrying, or sightseeing, which require anchoring, within the RNA boundaries, but not within charted submerged cables and/or pipelines areas, may request a waiver from the COTP.

(7) In the RNA, the District Commander or COTP may establish temporary traffic rules for reasons that include but are not limited to channel obstructions, winter navigation, unusual weather conditions, or unusual water levels.

(8) There may be times that the Ninth District Commander or the COTP finds it necessary to close the RNA to vessel traffic. During times of limited closure, persons and vessels may request permission to enter the RNA by contacting the COTP or a designated representative via VHF-16 or telephone 906-635-3319.

(d) *Definitions.* As used in this RNA:

(1) *Captain of the Port* means the United States Coast Guard Captain of the Port (COTP) of Sault Sainte Marie, Michigan.

(2) *Straits of Mackinac* means the navigable waters of the Great Lakes connecting Lake Huron to Lake Michigan passing between the upper and lower peninsulas of Michigan.

(e) *Notification.* The Coast Guard will rely on the methods described in 33 CFR 165.7 to notify the public of the time and duration of any closure of the RNA. Reports of violations of this RNA should go to COTP Sault Sainte Marie at 906-635-3319 or on VHF-Channel 16.

(f) *Waiver.* For any vessel, the COTP or a designated representative may waive any of the requirements of this section, upon finding that circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

(g) *Loiter.* To linger aimlessly in or about a place making purposeless stops in the course of a trip, journey, or errand. Loitering does not include brief stops for sight-seeing, ferry, or tourism purposes.

Dated: 24 September 2018

J. M. NUNAN,

Rear Admiral, U. S. Coast Guard,

Commander, Ninth Coast Guard District.