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Raymond W. Kelly,
Commissioner of Customs.

Approved: July 6, 1999

Dennis M. O'Connell,
Acting Deputy Assistant Secretary of the Treasury

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 09-99-007]

Safety Zone, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Notice; withdrawal of proposed rule.

SUMMARY: The Coast Guard is withdrawing a notice of proposed rulemaking (NPRM) to establish a temporary safety zone on the American side of the Detroit River for the Windsor Can-AM Offshore Power Boat Race. The event sponsor withdrew his application for safety reasons, and based on comments received by the Coast Guard, the proposed rule was criticized and deemed not in the best interest of this vital international waterway.

DATES: This proposed rule is withdrawn effective July 30, 1999.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at Marine Safety Office, Detroit between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG French, Coast Guard Marine Safety Office Detroit, 110, at 313-568-9580.

SUPPLEMENTARY INFORMATION:

Regulatory History

On 3 May, 1999, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (64 FR 23570-23571) that the American side of the Detroit River would be closed for the Windsor Can-Am Offshore Race, which at the time was scheduled to take place on August 22, 1999. In the mean time, the Coast Guard received notice from the event organizer on June 4, 1999 of his intention not to hold the race. The organizer noted safety concerns resulting from recent fatal accidents in the Detroit river where high currents and murky waters made

rescue of victims impossible. The event sponsor believed such a race in such a location was "unsafe."

The Coast Guard received 7 letters in response to its proposed rulemaking during the public comment period, all of which were opposed to the closure. Relevant issued commenters raised ranged from adverse economic consequences that were likely to result from the river closure to possible violations of existing binational agreements between the United States and Canada

1. The Detroit and St. Clair River system hereafter called the Detroit River Corridor, is a key international trade route, that if closed, would adversely affect the entire Great Lakes and restrict access to other key economic ports.

2. The proposed closure appears to contradict the Boundary Waters Treaty of 1909 which states in part, "The navigation of all boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels and boats of both countries equally." The treaty goes on to establish a precedence to be observed among the various uses enumerated . . . for these waters." According to the treaty, "No use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence:

(1) Uses for domestic and sanitary purposes;

(2) Uses for navigation

(3) Uses for power and irrigation."

As the term "domestic" is not defined, and recreational use is not spelled out or given priority in the treaty, decisions on boundary water uses are in the purview of the International Joint Commission.

3. Closure of the river for even a few hours has a ripple effect on commercial shipping in the Great Lakes that causes more than a minor inconvenience to vessels. Closure of any part of the Detroit River Corridor presents safety issue for vessel operators related to reduced speed and steerage. Compound that with closure of the Belle Isle Anchorage and, for the prudent commercial mariner, you shut down the entire river system for up to six hours, shutting down commercial navigation from Lake Erie to Lake Huron. Such a closure would have a detrimental effect not only on vessel operators, but also pilots and terminal operators, with impacts on the time sensitive nature of delivering raw materials to Great lakes ports and plants.

4. Race locations are variables that can be controlled, so as not to impede

safe commercial navigation. Races similar to the one proposed are conducted in other areas all over the Great Lakes without river closures. A notable example is the Detroit Thunderfest. Those events are held in locations mutually agreeable to recreational and navigational interests. Closure of the river for this event to promote essentially a single sponsor's commercial use of the river over navigational use would set a precedent that might lead to applications for more such events in the future, resulting in further restrictions to navigation. More than that, though, a decision to close the river to the commercial advantage of one sponsor gives that sponsor a material benefit that other sponsors do not get—an arbitrary and capricious decision in favor of one person or group, made to the disadvantage and harm of others. It isn't fair.

5. The proposed rulemaking does not address fully the idea of just compensation for the maritime community adversely affected by the action. Costs are difficult to calculate, especially hidden costs. A more detailed agreement on compensation would need to be worked out well in advance of any such event.

The Coast Guard agrees with all these points of contention. Before withdrawing his permit application, the event sponsor did not have the benefit of the public comments in this matter or an opportunity to address the issues raised during the comment period. The Coast Guard appreciates all the efforts of the regulated community in sharing its views and will retain the public docket for future use. Accordingly, the Coast Guard is withdrawing the notice of proposed rulemaking and terminating further rulemaking on this proposal. Based on the regulatory history of this event, the Coast Guard Captain of the Port Detroit will be reluctant to consider proposed closures in any part of the Detroit River Corridor in the future. The Coast Guard will also work closely with Canadian Officials and the International Joint Commission to ensure that all provisions of the Boundary Waters Treaty of 1909 are upheld.

Dated July 30, 1999.

B. P. Hall,

Commander, USCG, Acting Captain of the Port, Detroit.

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