

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 156

[CGD 93-081]

RIN 2115-AE90

Designation of Lightering Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to designate three lightering zones in the Gulf of Mexico, more than 60 miles from the baseline from which the territorial sea of the United States is measured. By using these lightering zones, all single hull tank vessels would be permitted to off-load oil within the U.S. Exclusive Economic Zone (EEZ) until January 1, 2015. This proposal is in response to industry requests, and would establish the first lightering zones designated by the Coast Guard. It would also establish three areas in which all lightering would be prohibited.

DATES: Comments must be received on or before March 6, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 93-081), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket. Comments and other materials related to this rulemaking are available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A copy of the material listed in "Incorporation by Reference" of this preamble is available for inspection at room B-718, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Commander Stephen Kantz, Project Manager, Oil Pollution Act (OPA 90) Staff, (G-MS-A), (202) 267-6740. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 93-081) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans to hold a public hearing on this proposed rulemaking in New Orleans, Louisiana. The date and time will be announced by a later notice in the **Federal Register**. Persons may request additional public hearings by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that an additional opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold another public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Stephen Kantz, Project Manager, Oil Pollution Act (OPA 90) Staff, and C. G. Green, Project Counsel, Regulations and Administrative Law Division (G-LRA).

Background and Purpose

Section 3703a of title 46 of the United States Code establishes the requirements for tank vessels eventually to be equipped with double hulls and includes a phaseout schedule for single hull tank vessels. This section also provides exemptions from the double hull requirement. Until January 1, 2015, a tank vessel need not comply with the double hull requirement when it is off-loading oil at a deepwater port licensed under the Deepwater Port Act of 1974 as amended (33 U.S.C. 1501, *et seq.*) or within a lightering zone established under 46 U.S.C. 3715(b)(5) more than 60 miles from the baseline from which the U.S. territorial sea is measured (46

U.S.C. 3703a(b)(3)). Currently, only the Louisiana Offshore Oil Port (LOOP) has been authorized under the Deepwater Port Act of 1974. No lightering zones have yet been established under 46 U.S.C. 3715(b)(5). By using designated lightering zones more than 60 miles from the baseline from which the territorial sea is measured, single hull tank vessels contracted for after June 30, 1990 and older single hull tank vessels phased out by OPA 90, would be able to lighter in the EEZ until January 1, 2015.

Lightering of imported crude oil in the Gulf of Mexico is of national significance. The Regulatory Assessment prepared for this rulemaking estimates that in 1992 approximately 6.1 million barrels of crude oil per day were imported into the United States. Approximately 1.6 million barrels per day (26 percent of imported crude oil) were lightered offshore in the Gulf of Mexico.

Section 3715 of title 46 of the United States Code authorizes the Secretary of the Department in which the Coast Guard is operating to prescribe regulations on lightering operations involving oil or hazardous material in waters subject to the jurisdiction of the United States, including provisions on the establishment of lightering zones (46 U.S.C. 3715(b)(5)). This authority was delegated to Coast Guard District Commanders under 33 CFR 156.225 where necessary for safety or environmental protection.

Currently, 33 CFR part 156 provides that the Coast Guard will consider various factors in designating lightering zones: traditional use of the area for lightering; weather and sea conditions; water depth; proximity to shipping lanes, vessel traffic schemes, anchorages, fixed structures, designated marine sanctuaries, fishing areas, and designated units of the National Park System, National Wild and Scenic Rivers System, National Wilderness Preservation System, properties included on the National Register of Historic Places and National Registry of Natural Landmarks, and National Wildlife Refuge System; and other relevant safety, environmental, or economic data (33 CFR 156.230).

This rulemaking proposes to designate three lightering zones in the Gulf of Mexico in which single-hull tankers may conduct lightering operations as authorized by OPA 90. This rulemaking requires extensive environmental and economic analysis and documentation and it has been determined to be a significant regulatory action under the Department of Transportation (DOT) and the Office of

Management and Budget (OMB) criteria. For these reasons, this rulemaking is being prepared by the Commandant of the Coast Guard. However, this proposed rulemaking by the Commandant will not affect the District Commander's authority under 33 CFR 156.225 to administer and modify these zones as appropriate or to designate subsequent lightering zones.

Related Rulemakings

On September 15, 1993, the Coast Guard published a final rule (CGD 90-052) revising 33 CFR part 156, subpart B to clarify that regulations issued under section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321 *et seq.*) apply to offshore lightering operations when conducted in the U.S. marine environment (58 FR 48436). Under that rulemaking, a Declaration of Inspection (as required by 33 CFR 156.150) and a vessel response plan (if required under part 155) serve as acceptable evidence of compliance with section 311(j) of the FWPCA. The vessel to be lightered and the service vessel, as defined in 33 CFR 156.205, must both have such evidence of compliance on board at the time of a transfer. The rule also amended 156.215, pre-arrival notice requirements, to include the number of transfers expected and the amount of cargo expected to be transferred during each lightering operation.

Publication History

In November 1993, the Coast Guard received several requests to establish lightering zones in the Gulf of Mexico. On December 2, 1993, the Coast Guard published in the **Federal Register** a notice of these petitions for rulemaking and request for comment (58 FR 63544).

The requests received by the Coast Guard for the designation of lightering zones varied in their specifics. One requested that all U.S. waters of the Gulf of Mexico more than 60 miles beyond the baseline from which the territorial sea is measured be designated as a lightering zone. Another sought a large lightering zone off the coast of Texas and a smaller one off the coast of Louisiana. The third request was for a lightering zone off the coast of Mississippi.

On December 16, 1993, the Coast Guard published in the **Federal Register** a notice of public meeting to solicit opinions on whether lightering zones should be established and, if so, where they should be located and what operating conditions should be mandated (58 FR 65683). A public meeting was held in Houston, Texas, on January 18, 1994. Ninety-six people

attended this meeting, representing industry, environmental advocates, and government agencies. The views expressed at the meeting and written comments received are discussed below and were considered by the Coast Guard in formulating this proposed rulemaking.

Discussion of Comments

Tanker owners and operators supported the designation of lightering zones in the Gulf of Mexico, commenting that the need for lightering was increasing. They also noted that approximately 40 new tankers possessing single hulls but otherwise state of the art, are prohibited from lightering in U.S. waters until and unless lightering zones are established. In the meantime, most oil is being imported in older, presumably less safe, single hull tankers.

A representative from LOOP expressed support for the designation of lightering zones. He pointed out that all lighters, not merely new single hull tank vessels, could use the zones. Additionally, LOOP argued that this project was important enough to warrant careful analysis.

A representative of the State of Louisiana requested that all lightering be moved to 60 miles offshore, that the State of Louisiana be permitted to review any proposal to designate lightering zones, and that a public meeting be held in Louisiana. In addition, this speaker suggested several issues for consideration: input from natural resource trustees, consistency with area contingency plans, and response capability for spills in any established zones.

One attendee requested that any designation of lightering zones contain provisions to minimize interference with artificial reefs. Another attendee requested measures to ensure that offshore structures (oil and gas platforms) and pipelines be avoided. No representative of a nongovernmental environmental advocacy group spoke during the public meeting.

The Coast Guard received 45 written comments, ranging from support to criticism and raising the same issues as noted above. Also, a letter signed by 20 Members of Congress was received which voiced concerns about the possible environmental impacts of designating lightering zones. Two Congressmen wrote separate letters supporting the designation and discussing the economic impact of the failure to establish the zones which had been authorized by law. Finally, a letter from the State of Louisiana expressed concern over consistency between this

project and the State's coastal zone management plan. This issue is discussed in the environmental section of the preamble.

A letter from the Department of Interior's Mineral Management Service (MMS) expressed concern that establishing lightering zones may affect its offshore lease sales. Establishment of the proposed zones should not affect the leasability of offshore mineral rights. Furthermore, the proposed rule incorporates requirements for vessels underway to cease lightering operations when within 3 nautical miles (nm) of an offshore structure and vessels at anchor may not conduct lightering when within a 1 nm radius.

The Coast Guard has determined that designating all U.S. waters of the Gulf of Mexico more than 60 miles beyond the baseline from which the territorial sea is measured as one large lightering zone is unwarranted. The Coast Guard does, however, propose to establish three lightering zones in the Gulf of Mexico off the coasts of Texas, Louisiana, and Mississippi generally conforming to the specific areas requested by the petitioners. Because of their location, the Coast Guard proposes to name these zones "Southtex," "Gulfmex No. 2," and "Offshore Pascagoula No. 2," respectively. The coordinates of the proposed zones are listed in the proposed subpart C of 33 CFR part 156.

Analysis of the areas covered by the requests revealed a series of seamounts, also called pinnacle trends or live bottoms, cutting through the northern portion of the requested zone off Texas and proceeding along the northern edge of the requested central zone off Louisiana. These seamounts consist of coral reefs and other bottom-living organisms which attract other marine life.

Among these seamounts is the Flower Garden Banks National Marine Sanctuary (the Sanctuary). The Sanctuary is administered by the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce. Certain activities in the Sanctuary are either prohibited or regulated by NOAA under authority of 16 U.S.C. 1431. Those regulations are published in 15 CFR part 943. While anchoring within the Sanctuary is prohibited, the issue of lightering is not addressed in the NOAA regulations. Although lightering is not currently conducted near the Sanctuary, nothing prohibits such activity from occurring.

While the Sanctuary may be the most ecologically sensitive of the various seamounts in the vicinity of the

requested lightering zones, the Coast Guard has determined that all the seamounts in this vicinity should be protected and lightering in their vicinity would constitute an interference with their passive use. Therefore, included within this proposed rulemaking is a provision which prohibits all lightering operations in the vicinity of the seamounts. For convenience, the seamounts have been grouped in this proposed rulemaking into three prohibited areas, the specific coordinates of which are listed in proposed subpart C of 33 CFR part 156. The environmental aspects of this proposed rulemaking are more fully

discussed in the Environmental Analysis which has been placed in the docket.

Establishment of the prohibited areas as proposed would result in the division of the requested western zone off Texas into a small northern zone and a larger southern zone. While the southern zone provides ample room for tank vessels engaged in lightering, it appears that the smaller northern zone may be unnecessary. Thus, the Coast Guard proposes to designate only the southern portion of the requested area as a lightering zone. Figure 1 is a pictorial representation of the proposed zones and prohibited areas. The Coast Guard requests comments on the practicality of

also designating the smaller northern area as an additional lightering zone. The boundaries of this northern area, which would be called "South Sabine Point," would consist of the waters bounded by a line connecting the following points beginning at:

<i>Latitude N.</i>	<i>Longitude W.</i>
28°30'00",	92°38'00", thence to
28°44'00",	93°24'00", thence to
28°33'00",	94°00'00", thence to
28°18'00",	94°00'00", thence to
28°18'00",	92°38'00",
	and thence to the
	point of beginning.

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Proposed Lightering Zones and Prohibited Areas in the Gulf of Mexico

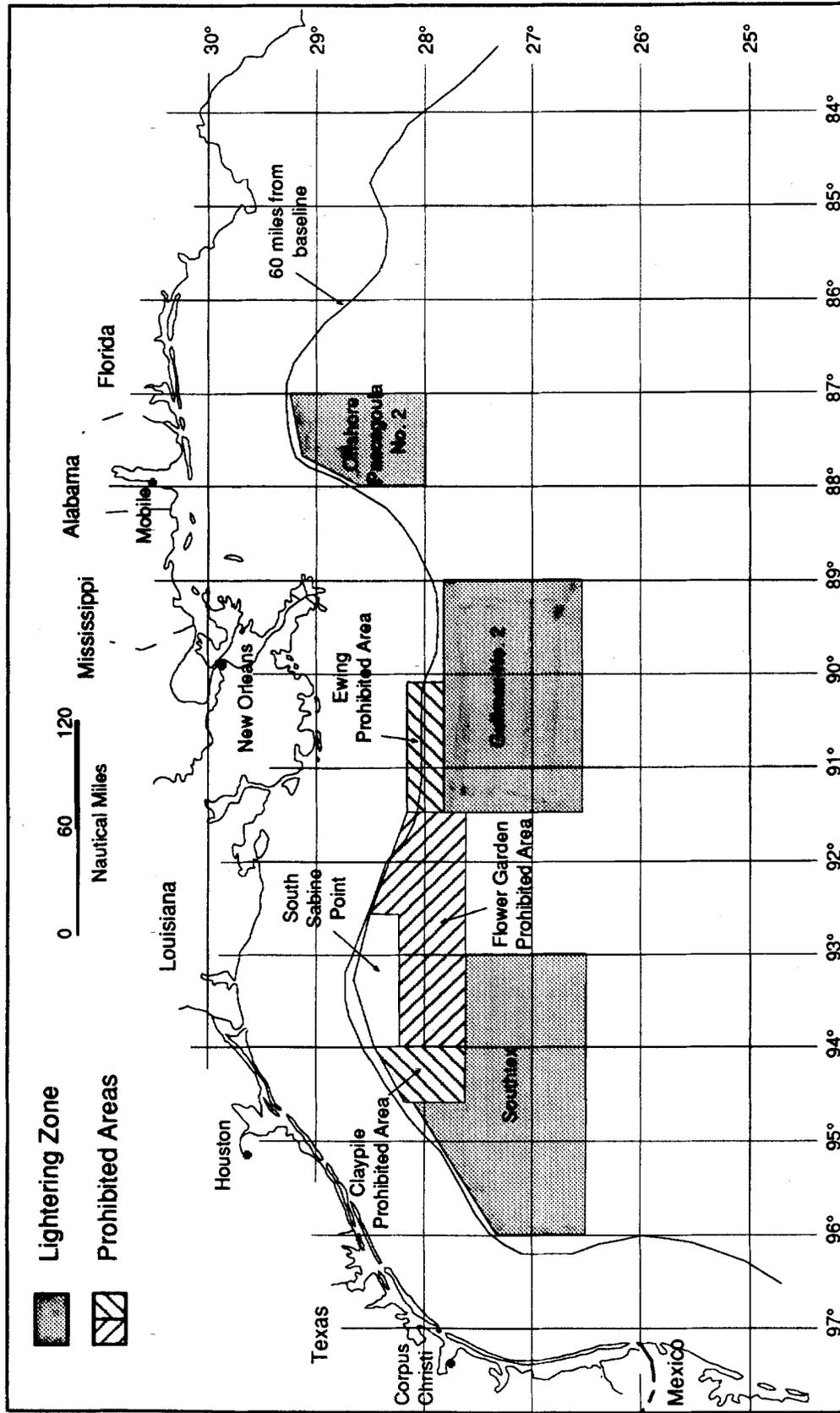


Figure 1

Offshore lightering is a traditional maritime activity in the Gulf of Mexico and has taken place for many years. The Coast Guard's 1993 Deepwater Ports Study contains a summary of data on U.S. crude oil spills from 1986 to 1990. The casualty analysis in the Study considered only non-catastrophic oil spills and grouped them into three basic categories:

(1) *Transit casualties*: Navigation-related accidents, such as groundings or collisions, that occurred when the vessel was inbound and loaded with cargo oil.

(2) *Transfer casualties*: Accidents which occur during cargo transfer operations when lightering, or discharging in-port, or at LOOP. These include human error and equipment failure such as hose ruptures, leaking valves, tank overflows, and improper connections.

(3) *Intrinsic casualties*: Accidents associated with the operation of the ship itself rather than the activity (mode) in which it is engaged. These accidents would include leaks from hull cracks, sea chests or rudder/propeller seals, accidental discharge of dirty bilges, and fuel/lube oil spills. Fires and explosions not associated with transfer operations or navigation are also intrinsic casualties which may result in oil spills. These accidents are equally probable for any vessel in any mode. Consequently, spills resulting from such intrinsic casualties are grouped separately from those resulting from navigation or transfer operations.

The data revealed that for transit casualties in the Gulf of Mexico, none occurred more than 20 miles offshore.

For transfer casualties in the Gulf of Mexico, the Study lists 15 minor spills attributed to offshore lightering operations, with a total discharge of 45 barrels. The rate for these offshore transfer casualties was 3 to 4 times per 1,000 transfers with an average spill size of 3 barrels.

Not included in the transfer casualty data analyzed by the Study was the catastrophic spill from the MEGA BORG incident in 1990. A pump room explosion occurred while the MEGA BORG was engaged in lightering 57 miles off the coast of Texas. As a result of the explosion, a fire started in the pump room and spread to the engine room. An estimated 92,857 barrels of crude oil were burned or released into the water from the MEGA BORG.

For intrinsic casualties, the data shows 18 casualties on vessels associated in some manner to offshore lightering activities in the Gulf.

Rendezvous in the Gulf of Mexico between vessels to be lightered and

service vessels generally occurs in the vicinity of one of nine locations. These locations are listed in the New Worldwide Tanker Nominal Freight Scale 1993 (Worldscale) published by the Worldscale Association of London and New York. Worldscale lists these points as Offshore Transshipment Areas (Offshore TSAs). The coordinates of these locations are as follows:

	Latitude N.	Longitude W.
Offshore Corpus Christi No. 1.	27°28'	96°49'
Offshore Corpus Christi No. 2.	27°48'	95°31'
Offshore Freeport	28°45'	95°03'
Offshore Galveston No. 1.	28°27'	94°30'
Offshore Galveston No. 2.	28°40'	94°08'
South Sabine Point ..	28°30'	93°40'
South West Point	28°27'	90°42'
Gulfmex	28°00'	89°30'
Offshore Pascagoula	29°27'	88°13'

Following rendezvous, the two ships maneuver and berth alongside one another. Lightering operations are then conducted in the general area near these transshipment points. Typically, it takes between four and six lighter voyages to empty a very large crude carrier (VLCC). Each discharge to a service vessel normally takes about 18 hours, although this may be accomplished in as few as 12 hours to specially equipped lighters. Under ideal conditions, a VLCC can be turned around in about 4 days, provided lighters are available for continuous, back-to-back operations. However, conditions rarely remain ideal for that length of time. More typically it takes a week for a VLCC to be completely offloaded. It may take longer if bad weather interrupts operations; if fewer lighters are used; or if the capacity of the receiving storage facility, pipeline, or refinery does not permit it to take delivery at the optimum rate. Bunkering (refueling) occurs before or after lightering; it is not undertaken during lightering operations.

This proposed rulemaking does not affect lightering operations in the traditional lightering areas. Double hull tankers and single hull tankers allowed to operate under OPA 90 could continue to use the traditional areas. Only those vessels not otherwise permitted to operate within the EEZ would be limited to lightering in the zones proposed in this rulemaking. The Coast Guard seeks comments on whether it should consider a rulemaking to change those traditional lightering areas into formal lightering zones, and whether

any of the concepts developed in this rulemaking should be used in such a subsequent rulemaking.

Lighterers generally utilize the "Ship to Ship Transfer Guide" published by the Oil Companies International Marine Forum (OCIMF) and the "Guide to Helicopter/Ship Operations" published by the International Chamber of Shipping (ICS) as the voluntary standard for industry practice during lightering. This rulemaking proposes to incorporate these guides and require consistent use of the practices contained therein.

General operational limitations have been voluntarily adopted by the lightering industry in the Gulf of Mexico in addition to those contained in the OCIMF and ICS guides. This rulemaking proposes to make those limitations mandatory in the designated zones. For example, the service vessel would be prohibited from mooring alongside the vessel to be lightered when the wind velocity is 30 knots or more, the wave height is 10 feet or more, or when the eye of a hurricane is predicted to pass within 160 miles in the next 36 hours. When lightering at anchor, operations could not occur within 1 nm of offshore structures. When lightering underway, operations could not be conducted when the vessels come within 3 nm of an offshore structure. Vessels engaged in lightering would not be permitted to anchor over pipelines, charted artificial reefs or historical resources. The prohibited areas would include live topographical features found beyond the 60 mile boundary.

During normal lightering operations, the vessel to be lightered remains in one general area and several (between four and six) service vessels rendezvous with it to take its cargo. Often these service vessels rapidly follow each other alongside the vessel to be lightered. Some crews of service vessels may be afforded opportunities to rest between cargo transfer operations, and some may not, depending upon the cargo's final delivery point. Service vessels transiting congested shipping lanes and pilotage waters typically require additional watch standers. Some crew members of the vessel to be lightered could become overly tired because their lightering operations continue for uninterrupted periods. Tired crew members tend to be less attentive to detail. Such inattention increases the risk of a casualty. To reduce the likelihood of a casualty caused by fatigue, the Coast Guard proposes that work hour limitations be established for crew members of the vessels to be lightered, and associated service vessels. These proposed work hour limitations are the same as those

currently imposed by 46 U.S.C. 8104(n) on the crew members of U.S. flag tankers. Those limitations, which constitute minimum safe operating conditions, are that no member of the crew may be permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency or a drill. The term "work" includes any administrative duties associated with the vessel, whether performed on board or ashore.

Under 46 U.S.C. 3711, no foreign flag tank vessel can operate in U.S. waters unless it has had a tank vessel examination within the past year. Sometimes delivering tank vessels arrive in the vicinity of U.S. waters without a current Tank Vessel Examination (TVE) letter and then request a Coast Guard examination at the time of the 24-hour advance notice of arrival. Getting a Coast Guard official out to the proposed lightering zones, which are further offshore than the traditional lightering areas, will require additional time for planning and logistics. Therefore, the Coast Guard proposes that vessels to be lightered in the zones proposed under this rulemaking be required to notify the appropriate Coast Guard COTP a minimum of 72 hours before a TVE is desired. The regulations requiring TVEs of vessels involved with lightering are located at 33 CFR 156.210.

While certain single hull tankers desiring to engage in lightering will have no choice but to use a designated lightering zone, other tank vessels may use these proposed zones at their option. Any tank vessel conducting lightering within these zones must, under this proposal, comply with all the regulations applying to the zone. In addition, both the delivering vessel to be lightered and the service vessel must comply with the relevant provisions of 33 CFR parts 151, 153, 155, 156, and 157, including the requirements in these parts regarding financial responsibility and response planning.

Under 33 CFR 156.225, when a lightering zone has been established, all lightering operations within a given geographic area must occur within the designated lightering zone. As proposed in this rulemaking, the geographic areas for each of the zones will be coterminous with the zones themselves. Therefore, with the exception of the proposed ban on all lightering operations in the prohibited zones, lightering outside the proposed zones by vessels otherwise allowed under OPA 90 to operate within the EEZ will not be subject to these proposed regulations. Due to the greater distance offshore of

these proposed zones as compared with most of the traditional lightering areas, it is expected that few tank vessels will operate in the vicinity of, but outside, the proposed zones.

A vessel operator may propose alternative procedures, methods, or equipment standards to be used in lieu of the requirements in subpart C. A proposal would be submitted to the cognizant Captain of the Port (COTP) under the procedures in 33 CFR 156.107. Operators seeking an exemption or partial exemption under 33 CFR 156.110 from subpart C requirements may also submit a request to the cognizant COTP. The Commander, Eighth Coast Guard District, would have authority to issue exemptions under section 156.110 to the operating requirements and conditions in subpart C of part 156.

While the Coast Guard is not required to engage in a formal consultation process with the natural resource trustees as defined in Executive Order 12777, the Coast Guard welcomes comments from the various trustees, particularly regarding the potential impact this proposed rulemaking may have upon national contingency planning for the Gulf of Mexico.

Under current regulations, tank vessel operations must be consistent with the appropriate Area Contingency Plans and private resources capable of responding to the worst case discharge must be provided for by contract or other approved means. Therefore, no additional requirements for response planning are included in this proposed rule.

Incorporation by Reference

Under this proposed rulemaking, the following material would be incorporated by reference in § 156.111: Oil Companies International Marine Forum (OCIMF) Ship to Ship Transfer Guide (Petroleum), Second Edition, 1988 and International Chamber of Shipping Guide to Helicopter/Ship Operations, Third Edition, 1989. Copies of the material are available for inspection where indicated under ADDRESSES. Copies of the material are also available from the sources listed in the proposed text of § 156.111.

Before publishing a final rule, the Coast Guard will submit this material to the Director of the **Federal Register** for approval of the incorporation by reference.

Assessment

This proposal is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management

and Budget (OMB) under that Order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A draft Assessment has been prepared and is available in the docket for inspection or copying where indicated under ADDRESSES. The Assessment is summarized as follows.

The Assessment for establishing lightering zones contains detailed information on crude oil imports to the U.S., cargo movements and trends, lightering industry practices and economics and the costs of alternative methods of delivery of crude oil to the United States. It contains an analysis of the effects of OPA 90 and Regulation 13G of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78) on vessel replacement requirements, taking into account the age and composition of the existing tanker fleet, future demand for tanker tonnage, shipbuilding capacity, and current and prospective rates of new tanker construction.

The Assessment shows that crude oil imports by water are heavily concentrated in a limited number of port areas where major refining complexes are located. The largest refining centers are situated at or near ports on the Gulf of Mexico. Major Gulf Coast refineries are clustered along the lower Mississippi River and at Lake Charles in Louisiana, in the vicinities of Houston, Port Arthur/Beaumont, Freeport, and Corpus Christi in Texas, and at Pascagoula, Mississippi. In 1992, the Gulf Coast region accounted for nearly half of U.S. refinery output and close to three-quarters of crude oil imports. Because Gulf Coast ports do not have sufficient water depths to accommodate large vessels which are used to transport oil efficiently over long distances, the practice of lightering has evolved to deliver the oil to port.

Unless lightering zones are established in the Gulf of Mexico, newly built single hull tankers which were contracted for after June 30, 1990, will continue to be excluded from operating in waters under U.S. jurisdiction, except to discharge their cargoes at LOOP. In order to lighter newly built single hull vessels, it would be necessary to perform the lightering outside the EEZ, more than 200 miles offshore. Some older single hull vessels not yet affected by the OPA 90 phaseout schedule could continue unrestricted lightering at close-in locations. Therefore, if lightering zones are not established, it can be anticipated that older single hull tankers would be substituted for newly built

and generally superior single hull tankers that would be used if the lightering zones are established.

By the end of this decade, however, a large proportion of the existing single hull tanker fleet will be affected by the phaseout schedule of OPA 90. If lightering zones are not established, these single hull tankers could be compelled to conduct any lightering operations more than 200 miles offshore. Lightering under these conditions, if it proved to be feasible or practicable at all, would be more expensive and less safe than lightering closer to shore in a designated lightering zone. Weather and sea state conditions not only are more unfavorable in deep-sea areas, but also are more unpredictable and subject to rapid change. Serious logistical problems would be encountered in providing essential support services, such as workboats, bunkering and provisioning. Because operations would have to be conducted beyond the range of most helicopters and remote from the bases of response vessels, capabilities to respond to emergencies would be impaired. Operations could not be monitored or regulated because they would take place outside U.S. jurisdiction. The Coast Guard does not consider lightering under these circumstances to be either practicable or desirable.

Some of the cargo that is now lightered could be handled by resorting to transshipment arrangements at terminals or lightering areas in the Caribbean or Bahamas, but suitable transshipment terminal capacity in the region is limited. These alternatives to lightering in the Gulf of Mexico, at best, are costly and inefficient expedients. To the extent that these activities were carried out abroad, they would entail adverse small entity impacts on the array of domestic small businesses that depend on the revenue of current shipping activities, including steamship agents, bunkering and provisioning companies, helicopter operators, and the lightering companies. The loss of this business also would have adverse balance of payments impacts.

Single hull vessels, old or new, could continue to off-load at LOOP until 2015; but LOOP has capacity to handle only a portion of the total amount of oil that is now lightered. Furthermore, LOOP cannot deliver by pipeline to many of the refineries which depend upon lighters for their supplies. Adoption of a no action alternative would impact refineries and the communities whose economies depend upon them at locations that cannot be supplied physically or economically by LOOP.

The analysis indicates that there will be sufficient numbers of newly built double hull tankers and relatively young single hull tankers unaffected as yet by the OPA 90 phaseout schedule to meet the crude oil import requirements of the United States, provided most of these qualified ships are dedicated to supplying the U.S. market. It seems likely, however, that the United States will have to pay premium rates above world market levels to draw these newer ships from the world pool of tanker tonnage.

The analysis also shows that there is a high probability of a worldwide shortfall of vessel capacity as this decade comes to a close as a result of the impact of MARPOL 13G. Although there is sufficient worldwide shipbuilding capacity to avert such a shortfall, a very high sustained level of construction would have to occur, beginning immediately and continuing for most of the rest of this decade. The current state of orders for new ships indicates a significant fall-off of new tanker construction from 1994 through 1996; and current tanker market conditions may not provide the basis for financing a high sustained level of construction. An acute worldwide shortage of crude oil shipping capacity could occur lasting for several years, and resulting in significantly increased costs for tank vessel transportation for its duration. The adverse economic consequences for the United States would be oil transportation costs substantially higher than world levels unless lightering zones are established to enable the United States to draw from the general world supply of tanker capacity.

This rulemaking would establish well-defined lightering zones strategically sited in the Gulf of Mexico to avoid environmentally sensitive areas and to meet the transportation needs of the region's refineries. Lightering activities in the zones could be effectively monitored by the Coast Guard. Oil pollution response plans could be readily implemented for the zones. Helicopter, workboat, provisioning, bunkering, pollution response, and other essential support services would not be impaired. Costs would not be materially affected and adverse small entity impacts would not occur. Substantial benefits to the economy would accrue from avoidance of the negative economic impacts that would occur if lightering zones were not established.

Establishing lightering zones will not encourage further single hull construction. Since July 6, 1993, single hull tankship construction has been

deterred as a result of the general impact of MARPOL Regulation 13F for new single hull tankers in excess of 20,000 deadweight tons.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Assessment indicates that adverse small entity impacts could occur as a result of the Coast Guard's taking no action to establish lightering zones. Some vessels which would be lightered in designated lightering zones could be diverted to transshipment terminals in the Bahamas or Caribbean. To the extent that these activities were carried out abroad, they would entail losses of business to the lightering companies and other small businesses, such as steamship agents, bunkering and provisioning companies, and helicopter operators.

Because adoption of this proposal will avert these adverse impacts and preserve the current revenues derived by small entities from tanker shipping in the Gulf of Mexico, and because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no new collection-of-information requirements or additions to currently approved information collections under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The sections in this proposal that contain collection-of-information requirements are §§ 156.110 and 156.215 which are approved under OMB Control Numbers 2115-0096 and 2115-0539 respectively.

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a draft Finding of No Significant Impact are available in the docket for inspection or copying as indicated under ADDRESSES.

The Environmental Assessment considered, among other things, the factors set out in 33 CFR 156.230: traditional use of the area for lightering; weather and sea conditions; water depth; proximity to shipping lanes, vessel traffic schemes, anchorages, fixed structures, designated marine sanctuaries, fishing areas, and designated units of the National Park System, National Wild and Scenic Rivers System, National Wilderness Preservation System, properties included on the National Register of Historic Places and National Registry of Natural Landmarks, and National Wildlife Refuge System; other relevant safety, environmental, or economic data. The Coast Guard specifically looked at wildlife and marine habitats and topographic features in the proposed lightering zones.

The Endangered Species Act of 1973 (16 U.S.C. 1531-1543), as amended, seeks to protect endangered and threatened species and the ecosystems on which they depend. The Act is administered by the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS). Several protected marine species (e.g., Right whales, Kemp's Ridley sea turtles, and hawksbill turtles) are located throughout the Gulf region.

The Coast Guard consulted with the regional NMFS office in St. Petersburg, Florida, and the FWS regional offices in Albuquerque, New Mexico, and Atlanta, Georgia, regarding the effect of the proposed regulation on endangered and threatened species as well as sensitive environmental areas such as wildlife refuges. Each have issued a written concurrence with the Coast Guard's finding that this proposal will not have an adverse effect on endangered and threatened species.

The Coast Guard also considered topographic features of the Gulf. These include areas on the offshore banks where reef-building activity occurs. These reefs support diverse communities of marine plant and animal species in large numbers. The following areas are of particular concern: the East and West Flower Gardens, 32 Fathom Bank, Coffee Lump, Claypile Bank, Stetson Bank, Hospital

Bank, North Hospital Bank, Sackett Bank, Diaphus Bank, Fishnet Bank, and Sweet Bank. These areas are charted and are ecosystems on which many endangered or threatened species are dependent. These areas are particularly vulnerable to damage from anchoring and, to a lesser extent, from oil spills. While oil spills are not expected to have a significant effect on the biota of concern in these areas, the Coast Guard proposes to establish three "prohibited areas" where lightering will not be permitted. Establishment of "prohibited areas" over these features will further ensure protection of these vital ecosystems. Proposed operational restrictions for designated lightering zones would also reduce the likelihood of spillage from the tank vessels utilizing these zones.

"Historic property" or "historic resources" are defined under The National Historic Preservation Act (16 U.S.C. 470w) as prehistoric or historic sites, buildings, structures, or objects. This definition includes shipwrecks registered with the National Register of Historic Places. There are no known historical properties or resources in the proposed lightering zones.

Military warning areas also exist throughout the Gulf and are clearly demarcated. The Department of Defense commands responsible for these warning areas have expressed no opposition to the establishment of these lightering zones. The Coast Guard does not expect military warning areas to be significantly impacted by this proposed rulemaking.

The Coast Guard has considered the implications of the Coastal Zone Management Act (16 U.S.C. 1451, *et seq.*) with regard to the proposed action. Under this Act, the Coast Guard must determine whether the proposed activities are consistent with activities covered by a federally approved coastal zone management plan for each state which may be affected by the action. The States of Louisiana, Mississippi, Florida, and Alabama have federally approved coastal zone management plans. The State of Texas has a draft plan which has not yet been federally approved.

The Coast Guard has determined that the designation of lightering zones, as provided in this proposed rulemaking, will have no effect on the coastal zones of Mississippi, Alabama, or Florida. Designation of the proposed lightering zones has the potential of an indirect effect on the coastal zones of Louisiana and Texas. Although designation of offshore lightering zones is not a listed activity for which consistency determinations are required under

either the Louisiana coastal zone plan or the current Texas draft coastal zone plan, the Coast Guard has initiated informal discussions with officials in these two states concerning coastal zone management issues.

In a telephone consultation, the Administrator of Louisiana's Department of Natural Resources Coastal Management Division raised a question as to whether designation of the proposed offshore lightering zones would result in increased shore-based facilities to support lightering which might affect coastal wetlands, such as the establishment of additional airports to support helicopter operations. As noted in the Regulatory Assessment, the shift of some current lightering activity from the traditional lightering areas to the proposed lightering zones is not expected to result in a need for additional support facilities. Only a substantial increase in the total amount of lightering occurring off the coast of the United States would trigger a need for additional shore-based support facilities. The proposed designation of lightering zones would not result in such a change in the amount of oil lightered into the United States.

The draft plan for Texas does not list the establishment of offshore lightering zones as a federal activity subject to review for consistency. The Coast Guard's research and review of environmental effects indicate a low probability that the proposed regulations would affect the coastal zone of Texas.

The Coast Guard will further consult with the States of Louisiana and Texas after they have had an opportunity to review this proposed rulemaking.

Volatile organic compound (VOC) air emissions result from the operation of ship engines and from oil transfers, such as the lightering of oil from one vessel to another. Nitrogen oxides (NOX) are also produced by engine exhaust. Both VOC and NOX are precursors of the National Ambient Air Quality Standards (NAAQS) pollutant ozone. However, lightering is a traditional, well-established activity, and the proposed rulemaking is not expected to materially effect the frequency or volume of oil transferred in the Gulf of Mexico. Thus the proposed Lightering Zones will not lead to a net increase in emissions.

National Ambient Air Quality Standards, promulgated by the Environmental Protection Agency (EPA), pursuant to the Clean Air Act (CAA) (42 U.S.C. 7401 *et seq.*) provide benchmarks against which air quality is gauged. Those areas which do not attain the NAAQS (nonattainment areas) are subject to controls aimed at improving

the air quality. The proposed rulemaking is expected to have no significant effect on any state's attainment of air quality standards.

The EPA under the authority of the CAA has promulgated the "conformity rule", which requires that federal agencies taking actions in nonattainment or maintenance areas which would result in air emissions to make determinations of conformity with the local State Implementation Plan (SIP) for the NAAQS before acting. The lightering zones which would be created by this rule are well outside the boundaries of the coastal states (more than 60 miles from the baseline for the territorial sea) and therefore, outside any nonattainment or maintenance areas. By the terms of 40 CFR Part 51, the conformity rule is not applicable to this rulemaking.

List of Subjects in 33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 156 as follows:

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

1. The authority citation for part 156 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1) (C) and (D); 46 U.S.C. 3703a. Subparts B and C are also issued under 46 U.S.C. 3715.

2. In section 156.110, the introductory text of paragraph (a) is revised to read as follows:

§ 156.110 Exemptions.

(a) The Chief, Office of Marine Safety, Security and Environmental Protection, acting for the Commandant, grants an exemption or partial exemption from compliance with any requirement in this part, and the District Commander grants an exemption or partial exemption from compliance with any operating condition or requirement in subpart C of this part, if:

* * * * *

3. Section 156.111 is added to read as follows:

§ 156.111 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of the change in the **Federal Register**; and the material must be available to the public. All approved

material is available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Marine Environmental Protection Division (G-MEP), room 2100, 2100 Second Street, SW., Washington, DC 20593-0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

Oil Companies International Marine Forum (OCIMF)

6th Floor, Portland House, Stag Place, London SW1E 5BH England.

Ship to Ship Transfer Guide (Petroleum), Second Edition, 1988—156.330

International Chamber of Shipping

30/32 St. Mary Axe, London EC3A 8ET, England.

Guide to Helicopter/Ship Operations, Third Edition, 1989—156.330

4. In § 156.205, the definition of "work" is added in alphabetical order to read as follows:

§ 156.205 Definitions.

* * * * *

Work includes any administrative duties associated with the vessel whether performed on board the vessel or onshore.

5. In § 156.210, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

§ 156.210 General.

* * * * *

(c) On tank vessels to be lightered in a designated lightering zone, and on service vessels transporting cargo to or from vessels in a designated lightering zone, a licensed individual or seaman may not work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency or a drill.

* * * * *

6. In § 156.215, paragraph (d) is added to read as follows:

§ 156.215 Pre-arrival notices.

* * * * *

(d) The master, owner, or agent of each vessel to be lightered in a designated lightering zone, requiring a Tank Vessel Examination (TVE) or other special Coast Guard inspection, must request such TVE or other inspection from the cognizant Captain of the Port at least 72 hours prior to commencement of scheduled lightering operations.

7. In part 156, a new subpart C is added to read as follows:

Subpart C—Lightering Zones and Operational Requirements for the Gulf of Mexico

Sec.

156.300 Designated lightering zones.
156.310 Prohibited areas.
156.320 Minimum operating conditions.
156.330 Operational restrictions.

§ 156.300 Designated lightering zones.

The following lightering zones are designated in the Gulf of Mexico and are more than 60 miles from the baseline from which the territorial sea is measured:

(a) *Southtex—lightering zone*. This lightering zone and the geographic area for this zone are coterminous and consist of the waters bounded by a line connecting the following points beginning at:

Latitude N.	Longitude W.
27°40'00"	93°00'00", thence to
27°40'00"	94°35'00", thence to
28°06'30"	94°35'00", thence to
27°21'00"	96°00'00", thence to
26°30'00"	96°00'00", thence to
26°30'00"	93°00'00"

and thence to the point of beginning.

(b) *Gulfmex No. 2—lightering zone*. This lightering zone and the geographic area for this zone are coterminous and consist of the waters bounded by a line connecting the following points beginning at:

Latitude N.	Longitude W.
27°53'00"	89°00'00", thence to
27°53'00"	91°30'00", thence to
26°30'00"	91°30'00", thence to
26°30'00"	89°00'00"

and thence to the point of beginning.

(c) *Offshore Pascagoula No. 2—lightering zone*. This lightering zone and the geographic area for this zone are coterminous and consist of the waters bounded by a line connecting the following points beginning at:

Latitude N.	Longitude W.
29°20'00"	87°00'00", thence to
29°12'00"	87°45'00", thence to
28°39'00"	88°00'00", thence to
28°00'00"	88°00'00", thence to
28°00'00"	87°00'00"

and thence to the point of beginning.

§ 156.310 Prohibited areas.

Lightering operations are prohibited within the following areas in the Gulf of Mexico:

(a) *Claypile—prohibited area*. This prohibited area consists of the waters

bounded by a line connecting the following points beginning at:

<i>Latitude N.</i>	<i>Longitude W.</i>
28°15'00",	94°35'00", thence to
27°40'00",	94°35'00", thence to
27°40'00",	94°00'00", thence to
28°33'00",	94°00'00"

and thence to the point of beginning.

(b) *Flower Garden—prohibited area.* This prohibited area consists of the waters bounded by a line connecting the following points beginning at:

<i>Latitude N.</i>	<i>Longitude W.</i>
27°40'00",	94°00'00", thence to
28°18'00",	94°00'00", thence to
28°18'00",	92°38'00", thence to
28°30'00",	92°38'00", thence to
28°15'00",	91°30'00", thence to
27°40'00",	91°30'00"

and thence to the point of beginning.

(c) *Ewing—prohibited area.* This prohibited area consists of the waters bounded by a line connecting the following points beginning at:

<i>Latitude N.</i>	<i>Longitude W.</i>
27°53'00",	91°30'00", thence to
28°15'00",	91°30'00", thence to
28°15'00",	90°10'00", thence to
27°53'00",	90°10'00"

and thence to the point of beginning.

§ 156.320 Minimum operating conditions.

Unless otherwise specified, the minimum operating conditions in this section apply to tank vessels operating within the lightering zones designated in this subpart.

(a) A tank vessel shall not moor or remain moored alongside another vessel when any of the following conditions exist:

(1) When wind, waves, and swell are from the same direction and—

(i) The wind velocity is 56 km/hr (30 knots) or more;

(ii) The wave height is 3 meters (10 feet) or more; or

(iii) The swell height is 3 meters (10 feet) or more.

(2) When wind and waves differ in direction by 30 degrees or more to swell and—

(i) The wind velocity is 46.3 km/hr (25 knots) or more;

(ii) The wave height is 1.8 meters (6 feet) or more; or

(iii) The swell height is 1.5 meters (5 feet) or more.

(b) Service vessels and vessels to be lightered shall not conduct lightering operations and shall not remain moored alongside when the National Weather Service predicts that the center of a hurricane will pass within 296 km (160 nautical miles) of current or expected location of lightering operations within the next 36 hours.

§ 156.330 Operational restrictions.

Unless otherwise specified in this subpart or when otherwise authorized by the cognizant COTP or District Commander, the master of a vessel lightering in the zones designated in this subpart shall ensure that the following operational restrictions are complied with:

(a) Lightering operations shall be conducted in accordance with OCIMF Ship to Ship Transfer Guide (Petroleum), Second Edition, 1988.

(b) Helicopter operations shall be conducted in accordance with International Chamber of Shipping's Guide to Helicopter/Ship Operations, Third Edition, 1989.

(c) The master of the vessel to be lightered shall ensure a voice warning is made prior to the commencement of lightering activities via channel 13 VHF and 2182 Khz.

(d) In the event of a communications failure between the lightering vessels or the respective persons-in-charge of the transfer, or an equipment failure affecting the vessel's cargo handling capability or ship's maneuverability, the master of the affected vessel shall

suspend lightering activities and shall sound at least five short, rapid blasts on the vessel's whistle. Lightering activities shall remain suspended until corrective action has been completed.

(e) No vessel involved in a lightering operation may open its cargo system until the vessel to be lightered is securely moored alongside the servicing vessel.

(f) If any vessel not involved in the lightering operation or support activities approaches within 300 feet of vessels engaged in lightering activities, the vessel engaged in lightering shall warn the approaching vessel by sounding a loud hailer, ship's whistle, or any other appropriate means.

(g) No vessels, other than the lightering tender, supply boat, or crew boat which are equipped with spark arrestors on their exhaust(s), may moor alongside a vessel engaged in lightering operations.

(h) When lightering at anchor, lightering operations shall not be conducted within 1 nautical mile of offshore structures or mobile offshore drilling units (MODUs).

(i) When lightering underway, lightering operations shall not be conducted within 3 nautical miles of offshore structures or MODUs.

(j) No vessel engaged in lightering activities may anchor over pipelines, charted artificial reefs or historical resources.

(k) All vessels engaged in lightering activities shall be capable of immediate maneuver at all times while inside a designated lightering zone. The main propulsion system must not be disabled at any time.

Dated: December 28, 1994.

A.E. Henn,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

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