

## 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:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish 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. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before September 4, 2018.

**ADDRESSES:** You may submit comments identified by docket number USCG–2018–0563 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Jason Radcliffe, Ninth District Waterways Management, U.S. Coast Guard; telephone 216–902–6060, email [Jason.A.Radcliffe2@uscg.mil](mailto: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  
§ 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 NOAAs 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 prohibits certain vessels from anchoring or loitering.

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 proposes 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. Discussion of Proposed Rule**

On the behalf of COTP Sector Sault Sainte Marie, the Ninth Coast Guard District proposes the creation of a Regulated Navigation Area that mandates transiting vessels to make a direct passage with no anchoring or loitering, unless expressly granted permission from the COTP or designated representative. Vessels that would be 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 proposed 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 we are proposing appears at the end of this document.

##### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

###### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact that 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 certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the Regulated Navigation Area may be small entities, for the reasons stated in section IV.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.

If you think that your business, organization, or governmental

jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and 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 preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves 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 proposed rule.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>.

If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 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 above the heading “Eleventh Coast Guard District” to read as follows:

#### § 165.944 Regulated Navigation Area; Straits of Mackinac.

(a) *Location.* All navigable waters of the Straits of Mackinac bounded by longitude 084°20' W and 085°10' W, 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 in 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 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 desiring to anchor within the confines of the RNA 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 will provide the time and purpose for anchoring, plus the anchoring location. Vessels getting underway from anchor will notify the COTP or a designated representative no less than 15 minutes prior to sailing via VHF-16 or telephone 906-635-3319.

(5) The owner, operator, charterer, master or person directing the movement of a vessel desiring to loiter 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.

(6) 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.

(7) 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.

Dated: July 27, 2018.

**J.M. Nunan,**

*Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

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