

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 156

[CGD 93-081]

RIN 2115-AE90

## Designation of Lightering Zones

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is designating four lightering zones in the Gulf of Mexico, each more than 60 miles from the baseline from which the territorial sea of the United States is measured. By using these lightering zones, single hull tank vessels contracted for after June 30, 1990, and older single hull tank vessels phased out by the Oil Pollution Act of 1990, will be permitted to offload oil in the U.S. Exclusive Economic Zone (EEZ) until January 1, 2015 for transshipment to U.S. ports. This rule establishes the first lightering zones designated by the Coast Guard. It also establishes three areas in the Gulf of Mexico where all lightering will be prohibited.

**EFFECTIVE DATE:** This rule is effective on August 29, 1995. The Director of the Federal Register approves as of August 29, 1995, the incorporation by reference of certain publications listed in § 156.111.

**ADDRESSES:** Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington, DC 20593-0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

**FOR FURTHER INFORMATION CONTACT:** LCDR 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:****Drafting Information**

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

**Regulatory 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.

On January 5, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Designation of Lightering Zones" in the **Federal Register** (60 FR 1958). The Coast Guard received 23 letters commenting on the proposal.

On January 13, 1995, the Coast Guard published in the **Federal Register** a notice of public meeting to solicit additional opinions on the NPRM (60 FR 3185). A public meeting was held in Metairie, Louisiana, on February 16, 1995. Fifty-five people attended this meeting, representing tankship owners and operators, service and support industries, and government agencies. Ten attendees made oral presentations, and most of these individuals subsequently provided written copies of their presentations for the docket. No additional public meeting was requested and none was held.

**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 offloading 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), which is 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 previously 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 the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380), will be able to lighter until January 1, 2015. For clarification, throughout the preamble discussion for this final rule, the term "double hull" means a tank vessel meeting the requirements of 33 CFR 157.10d, or an equivalent to the requirements of 33 CFR 157.10d. The term "single hull" tank vessel means any tank vessel which does not conform to, or is not considered equivalent to, the requirements of 33 CFR 157.10d.

Before proposing the zones designated by this rule, in accordance with 33 CFR part 156, the Coast Guard considered the 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, and economic data (33 CFR 156.230). Current regulations at 33 CFR 156.225 provide the District Commander the authority to designate lightering zones. Due to the extensive environmental and economic analysis required, and because this rulemaking was determined to be a significant regulatory action under Department of Transportation (DOT) policy, this rulemaking was prepared by the Commandant of the Coast Guard. However, this 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 33 CFR 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.

On July 1, 1994, the Coast Guard published an interim final rule (CGD 91-005) implementing provisions concerning financial responsibility for vessels under OPA 90 and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. These provisions included expanding the applicability of the financial responsibility requirements of 33 CFR part 130 to "vessels of any size using the waters of the exclusive economic zone to transship or lighter oil", specifically meaning both the delivering and receiving vessels. Consequently, when lightering in the EEZ, both vessels are required to possess valid Certificates of Financial Responsibility (COFR) demonstrating evidence of insurance, or other evidence of financial responsibility, sufficient to meet the vessels' potential liability under OPA 90 and CERCLA for discharges or threatened discharges of oil. This requirement went into effect July 1, 1994.

### Effective Date

This rule is being made effective on August 29, 1995. Under 5 U.S.C. 553(d) a rule may be made effective less than 30 days after its publication if it grants or recognizes an exemption or relieves a restriction. At the present time, single hull tank vessels contracted for after June 30, 1990, and single hull tank vessels phased out by OPA 90 cannot offload oil destined for the U.S. in the U.S. Exclusive Economic Zone (EEZ) except at a deepwater port or in a designated lightering zone. The first

single hull vessel phase out date went into effect January 1, 1995. There is only one deepwater port (LOOP) and this deepwater port does not provide oil to many of the refineries along the Gulf Coast. This rule establishes the first designated lightering zones for the United States. By using these lightering zones, single hull tank vessels currently precluded from operating in the EEZ may lighter their oil cargo closer to the U.S. ports for which it is destined. For these reasons, the Coast Guard finds that this rule should be made effective in less than 30 days after publication.

### Discussion of Comments and Changes

The Coast Guard has reviewed all of the comments received in response to the NPRM and, in some instances, revised the final rule language based on these comments. The comments have been grouped by major issue or specific regulatory section and are discussed below.

#### General

Of the comments received in response to the NPRM, most generally supported the designation of lightering zones in the Gulf of Mexico and noted that the need for lightering was increasing.

An individual representing the American Institute of Merchant Shipping (AIMS), the American Petroleum Institute (API), and the Industry Task Force on Offshore Lightering (ITOL) spoke at the public meeting in New Orleans and also provided a letter to the docket, giving a number of detailed reasons why these organizations all support this rulemaking. Together these organizations represent over 300 companies engaged in all aspects of the petroleum and marine transportation industry. Since the comments, both at the public meeting and in a letter to the docket, present the views of the majority of commercial interests impacted by this rulemaking, they are identified as the "industry comments" throughout the remaining preamble discussion, and the individual who spoke at the hearing is identified as the "industry representative".

At the public meeting the industry representative stated that lightering has long been established as a safe and effective means of transferring imported crude oil from tankers too large for shallow water ports to small tankers that serve refineries ashore. He further stated that 25 percent of U.S. crude oil imports are delivered this way in the Gulf of Mexico at a rate of approximately 2 million barrels per day. He asserted that the establishment of these zones is absolutely critical to meet the supply

requirements of U.S. refineries and noted that lightering operations historically have been conducted in a safe and environmentally sound manner. He cited the Coast Guard 1993 Deepwater Ports Study which stated that between 1986 and 1990 only 15 lightering casualties were reported for a total spillage of 45 barrels and that the relative risk factor of lightering operations in zones 40 to 60 miles offshore was zero. The industry representative added that factors which would benefit spill response and mitigation should be considered in establishing lightering zones.

Two comments from organizations involved in the shipbuilding industry generally opposed the proposed regulations. Both comments stated that the designation of lightering zones would be a disincentive to purchase new double hull tankers. They also stated that the continued use of single hull tankers would increase the potential risks of collisions and oil spills which OPA 90 was intended to prevent, and that the proposed regulations would circumvent the transition to double hull tankers.

The Coast Guard has determined that establishing lightering zones will not encourage further single hull tanker construction. Such construction is effectively barred by the International Maritime Organization's (IMO) adoption of Regulation 13F of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78) which requires double hull or mid-deck construction of all new tankers for which contracts are placed on or after July 6, 1993, or which are to be completed after July 6, 1996. (It should be noted that mid-deck construction is not an acceptable alternative to a double hull under 46 U.S.C. 3703a). Additionally, the IMO has adopted Regulation 13G in Annex I of MARPOL 73/78. Regulation 13G subjects tank vessels to increasingly rigorous hull surveys at 5-year intervals and is practically certain to bring about the timely retirement of most aging single hull tankers. This retirement of single hull tankers would occur, notwithstanding the exemption under OPA 90 that permits single hull tankers to operate in U.S. waters until the year 2015 by using a designated lightering zone. It is the consensus of the worldwide industry that a minority of crude oil tankers will survive the prohibitively costly survey regimen that will begin at their 25th anniversary survey. The international regulations, in conjunction with the provisions of section 4115 of OPA 90, effectively

ensure that the day of the single hull tanker is ending. Available data shows that many single hull tankers are being scrapped earlier than required by either OPA 90 or MARPOL 73/78.

A letter from the Minerals Management Service (MMS) of the Department of the Interior expressed concern about establishing lightering zones in active oil and gas development areas on the Outer Continental Shelf (OCS). It was concerned with the safety of offshore production facilities which could be at risk from vessels in the proposed lightering zones. The comment urged that the Coast Guard work together with MMS to monitor lightering zones to avoid use conflicts and to promote safety, and suggested that the Coast Guard decrease the size of the proposed zones or require permanent mooring buoys for use by lightering vessels.

The Coast Guard is aware of the active mineral and oil industry on the Gulf of Mexico's OCS and has historically been involved with the safety of the offshore marine industry and environment. The reserves and refineries of the western Gulf Coast region play a significant role in the nation's energy needs. The development of the extensive refining capacity which now exists along the Gulf Coast was a consequence of the development of regional land-based oil and gas reserves as well as those offshore. Due to the fluctuations in crude oil prices and the variations in crude oil composition, these Gulf Coast refineries must supplement their domestically produced sources with waterborne oil imports. This rule will help to meet the regional needs of these refiners for imported oil and provide stability to the nation's energy supply and economy. The designated lightering zones and prohibited areas in this rulemaking will only affect the lightering activities within their geographical bounds and will not interfere with or discourage the development of OCS oil and gas reserves.

Regarding the safety of offshore production facilities from vessel activities in the lightering zones, only the South Sabine Point lightering zone and the northern tip of the Southtex lightering zone include waters where an appreciable number of production facilities have been constructed. A significant factor favoring construction of production platforms in these areas is the shallow water depths, generally less than 200 meters (109 fathoms). The shallower areas of the South Sabine Point and the northern tip of the Southtex lightering zones allow

lightering to be conducted while vessels are anchored.

During the last 15 years, offshore lightering in the vicinity of the South Sabine Point transshipment area (TSA) and Offshore Galveston No. 1 and No. 2 TSAs has not proven to be a safety hazard to the production platforms in the areas, nor has it affected offshore oil and gas development. It is anticipated that lightering will continue in these locations even after designation of lightering zones. The operational restrictions in this rule mirror several practices currently used by many offshore lightering companies. One of these industry practices is a 1-nautical mile minimum closest-point-of-approach (CPA) to production platforms and drilling units. The maintenance of a 1-nautical mile CPA by lighters has thus far proven adequate to provide for the safety of nearby offshore mineral, oil, and gas development facilities. Formally requiring this minimum CPA and other operating restrictions in the final rule enhances the safety of production facilities in the designated lightering zones. The remaining areas of the designated lightering zones, other than South Sabine Point and the northern tip of Southtex zones, have undergone little development and, therefore, provide expansive open waters to all users.

This rulemaking establishes the first lightering zones designated by the Coast Guard. As discussed previously, the District Commander's authority at 33 CFR 156.225 to designate lightering zones and their operating requirements remains unaffected by this rulemaking. The Commander, Eighth Coast Guard District, located in New Orleans, Louisiana, will administer the lightering zones designated in this rule. If experience indicates that a realistic threat to offshore facilities exists or that additional safety criteria or procedures are warranted to regulate activities in these zones, the District Commander may revise these regulations as appropriate.

One comment suggested that the proposed regulations should also authorize offloading of oil from deepwater production facilities located inside lightering zones. These facilities would include tension leg platforms, spars, semi-submersibles, and converted tankers.

The comment misunderstood the NPRM as limiting authorized operations within lightering zones to lightering and bunkering operations from oceangoing tankers. There are no generally authorized or prohibited activities in designated lightering zones. Rather, this rule regulates how lightering activities

should be conducted within the designated zones. Offloading of oil from deepwater production facilities in designated lightering zones is not prohibited or otherwise regulated by this rule. That activity continues to be subject to the regulations in 33 CFR part 154 and subpart A of part 156, whether the activity occurs inside or outside a designated lightering zone.

#### *Addition of Fourth Lightering Zone at South Sabine Point*

In the NPRM for this rulemaking, the Coast Guard specifically requested comments on whether an additional area off Galveston, Texas, in the vicinity of South Sabine Point TSA, should be designated as a fourth lightering zone. Twelve comments addressed this issue.

These comments supported designating the area as an additional lightering zone. The comments indicated that this area is closest to lightering support centers of Texas refining complexes and within range of all support helicopters. The comments also indicated that the South Sabine Zone would decrease congestion in the northwestern corner of the Southtex zone by providing additional anchorage area for lightering operations. Industry comments at the public meeting in New Orleans detailed reasons why an additional zone at South Sabine Point should be established. These reasons were stated as follows:

(1) The South Sabine Point zone is closest to shoreside responders and response vessels pre-staged to respond to a pollution incident.

(2) In many environmental conditions, anchoring is the preferred method of lightering. This procedure generally is not available to tankers lightering in the other lightering zone off the coast of Texas (Southtex), where the waters are largely too deep.

(3) Shallower water depths in the South Sabine Point zone contribute to more moderate sea conditions than those generally found in the Southtex zone.

(4) This area is currently being used for lightering and historically has been so used for almost 20 years.

(5) It is the closest zone to the principal lightering support centers of eastern Texas.

(6) This area is also within the range of most helicopters from the Houston-Galveston-Port Arthur areas which can fly round trip, without requiring refueling.

(7) The majority of oil lightered in the Gulf of Mexico is destined for the Houston-Galveston-Port Arthur areas. If the Southtex zone were the only one available for tankers with oil destined

for Houston, Galveston, or Port Arthur, the added costs for support and transportation would create an additional economic burden for many Texas refineries. This burden would not be shared by other refineries on the Gulf Coast, placing them at an economic disadvantage.

(8) Because of proximity to ports and shallower water depths for anchoring, the northwestern corner of the Southtex zone would get very crowded if lightering were not allowed in the South Sabine Point zone.

(9) The extension of the logistics lines for lightering support is a major safety and economic concern.

Unified comments from three international organizations heavily involved in the tanker industry, Oil Companies International Marine Forum (OCIMF), the International Chamber of Shipping (ICS), and the International Association of Independent Tanker Owners (INTERTANKO), expressed support for the designation of the proposed lightering zones. These organizations also supported the designation of South Sabine Point zone, citing many of the same reasons as in the industry comments. The Texas GLO also supported the designation of the South Sabine Point zone.

Data contained in the Regulatory Assessment on 1992 U.S. crude oil imports by water show that all offshore lightering for the U.S. was conducted in the Gulf of Mexico. The data further indicate that lightered oil delivered to the Houston, Galveston, and Port Arthur areas was approximately 50 percent of the total lightered oil, averaging over 800,000 barrels per day. Similar import data for 1993 shows an increase to 900,400 barrels per day. This latter figure represents 60 percent of the oil lightered in the Gulf of Mexico. Based on the data, the industry comments expressed at the public meeting, and comment letters to the docket, the Coast Guard has decided to designate a fourth zone named "South Sabine Point." The boundaries of the South Sabine Point zone have been added to § 156.300 as a new paragraph (d). The same operational conditions and restrictions which apply in the proposed three lightering zones will apply to this new zone.

#### *Request for Comments on Additional Rulemaking*

In response to the Coast Guard's request for comments on whether to consider a rulemaking to change the traditional lightering areas into formal lightering zones and whether any of the concepts contained in the NPRM could be used in such a subsequent

rulemaking, comments from industry noted that lightering operations are highly professional cargo transfer operations and that the industry's record for safety is outstanding. The comments stated that the purpose of this rulemaking is to implement the clear language of OPA 90 which allows single hull vessels to continue to lighter in the Gulf of Mexico until January 1, 2015, and that there is no need for this rulemaking to regulate current long-standing lightering operations being conducted elsewhere in the Gulf of Mexico.

The Texas GLO stated that the proposed weather, operational, and work hour limitations should apply to all vessels engaged in lightering activities regardless of their location. The GLO also suggested that lightering should be prohibited in all areas, except for the proposed designated lightering zones, and that designation of lightering zones would minimize the area which must be patrolled and inspected for compliance with the Coast Guard's rule. It added that the ability to plan for responses to offshore spills would be greatly enhanced by allowing lightering only in specific areas, asserting that failure to contain and remove oil from the offshore environment often results in substantial impact to Texas shores. The GLO cited the recent spill from the *BERGE BANKER*<sup>1</sup> as an example of such impact, noting that most of the fuel oil sank and that large tar mats and tar balls washed ashore in Texas weeks after the spill, threatening recreational use of the beaches.

The Coast Guard has decided to limit this rulemaking to designating lightering zones and prescribing some restrictions on lightering activities within the zones to implement the exceptions in OPA 90 to the double hull standards. The rule

<sup>1</sup> The collision between two Norwegian tankers, the *BERGE BANKER* and the *SKAUBAY*, which were maneuvering in preparation for lightering, occurred on February 5, 1995. The vessels collided in the vicinity of the Offshore Galveston No. 2 transshipment area, 45 miles off the Texas coast. This incident constitutes the first transit casualty related to offshore lightering, and, although no cargo oil was spilled, nearly 900 barrels of heavy fuel oil spilled into the Gulf, creating an oil sheen 3 miles long. This collision is still under investigation.

The Coast Guard was the Federal On-Scene Coordinator for this spill cleanup both offshore and later on shore when beach impact occurred. The offshore cleanup of this spill was limited in its effectiveness due to two related factors: the type of oil spilled, a heavy bunker fuel oil, and the sea and weather conditions at the time. Although two oil spill recovery vessels were used for a period of 3 days, less than 5 barrels of oil was recovered. Due to subsequent winds and currents, the weathered oil washed ashore 12 days later on Matagorda Island, predominantly in the form of tar mats and balls.

does not affect existing regulations concerning the response to and recovery of spilled oil. Other than the prohibited areas designated in § 156.310, the Coast Guard is not restricting lightering activities elsewhere in the Gulf of Mexico at this time, but it may do so in the future if circumstances change. The final rule contains a new paragraph in § 156.330 that governs vessels maneuvering in preparation for mooring alongside. Like the other operational restrictions in the final rule, it applies only in the lightering zones and is intended to prevent the occurrence of oil spills associated with that aspect of lightering activities in the zones.

One comment from National Oceanic and Atmospheric Administration (NOAA) suggested moving the northernmost boundary of the Southtex lightering zone 15 nautical miles to the south. This suggestion was based upon spill trajectory data concerning the Flower Gardens Sanctuary, which NOAA had obtained from the MMS. The suggested boundary change would keep the zone outside a 10 percent contact probability area over a 3-day period during the spring and summer seasons.

The Coast Guard has reviewed this trajectory information and has decided to retain the boundaries of the Southtex lightering zone as proposed in the NPRM. Accommodating the requested 3-day/10-percent seasonal contact probability would remove from the zone some of the area closer to shore where most users in this zone would operate. There are already numerous oil and gas production platforms within an 8 nautical mile range of the sanctuary. Additionally, the main east-west shipping fairway extends through the Flower Garden prohibited area between the marine sanctuary and the northern edge of the Southtex lightering zone. The Coast Guard believes that providing an 8 nautical mile distance from the northernmost boundary of the Southtex zone affords an adequate range of protection to the sanctuary against surface spillage. In the event of an oil spill originating at or near the water surface, the toxic effects of the soluble and lighter aromatic components of crude oil (C-12 [crude oil with 12 carbon molecules] or less) can reasonably be expected to be minimal after 24 hours of exposure to air, surface wave action, and the relatively warm climatic conditions of the Gulf. As indicated in a 1987 MMS study, small surface spills are unlikely to have any significant impact on the health of Flower Garden Banks corals. Oil from surface spills, driven into the water column to depths of 10 meters (33 feet), is found only at concentrations several

orders of magnitude lower than those shown to have an effect on corals. Oil released in surface spills and driven 15 meters (50 feet) deep to the shallowest point on the Flower Garden Banks would be in such low concentrations that, according to the study, it would have no significant impact on these reefs.

#### *Section 156.111 Incorporation by Reference*

Five comments addressed this section of the NPRM. One comment agreed with the inclusion of documents mentioned in this section. A letter from the Oil Companies International Marine Forum (OCIMF) provided an updated address for their organization as well as for the International Chamber of Shipping (ICS). These two organizations are the co-authors of the Ship to Ship Transfer Guide (Petroleum). This section has been amended to reflect these new addresses.

Three of the comments suggested additional materials be included in this section. One comment suggested incorporating by reference the "Limitation/Obstruction Markings" discussion in the American Petroleum Institute publication, API Recommended Practice for Planning, Designing, and Construction of Heliports for Fixed Offshore Platforms in § 156.330, arguing that such guidelines should be included because markings benefit landing safety on shipboard helodecks. This same comment suggested making the International Chamber of Shipping (ICS) Guide to Helicopter/Ship Operations, Third Edition (1989), a recommended rather than mandated reference for operations in these lightering zones. Two comments suggested incorporation of two additional standards in § 156.330: the ITOL Guidelines for Offshore Lightering (1994), and the Rubber Manufacturers Association Specifications for Rubber Hose for Oil Suction and Discharge Specification (1991).

Comments from the Texas General Land Office (GLO), although generally supporting the rulemaking, stated that the goals of the rulemaking could be better served by requiring that the practices in the Oil Companies International Marine Forum (OCIMF) Ship to Ship Transfer Guide (Petroleum), Second Edition, 1988, and in the International Chamber of Shipping Guide to Helicopter/Ship Operations, Third Edition, 1989, apply to all lightering in the Gulf of Mexico.

Industry comments at the public meeting in New Orleans encouraged the Coast Guard to incorporate by reference

industry standards and operating practices wherever possible as this is the most cost-effective and non-redundant method of establishing effective practical standards. The industry representative noted that the ITOL Operating Guidelines were developed specifically to address the conditions faced by lighterers in the Gulf of Mexico and that it would be appropriate that these guidelines be incorporated by reference into § 156.330 of the final regulations. He added that along these same lines, while the ICS helicopter guide is an excellent reference, there are some sections in the guide for which local conditions dictate a somewhat different approach to lightering operations and that the local helicopter guidelines should be incorporated by reference in § 156.330 in the regulations. Another comment from Gulf Coast helicopter operators also urged that conformity with the ICS helicopter guide not be required, citing the same reasons articulated by the industry representative.

The Coast Guard has reviewed both the OCIMF Guide and ICS Guide in light of these comments. The Coast Guard's position is that the authority and responsibility for the safety of a vessel, its crew, and its cargo rests with the master of that vessel. Consequently, since the practices and considerations presented in the OCIMF Guide, and the ICS Guide, are generally procedural recommendations, the Coast Guard is not making them mandatory in the lightering zones designated by this final rule. Rather, they should be implemented to the maximum extent practicable for vessels conducting lightering operations in these zones. The recommended procedures and checkoff sheets in these guides, along with the operational restrictions specified in this rulemaking, provide for safe lightering practices while still providing the masters of the respective vessels sufficient latitude to exercise their responsibility for safe navigation and cargo operations. This allows flexibility, for instance, in the use of peculiar fendering arrangements based upon the general arrangement of the vessels involved and the lighterers' preference based upon experience.

The Coast Guard is not incorporating by reference the ITOL Guidelines for Offshore Lightering (1994). However, several pertinent provisions of the ITOL Guidelines are reflected in § 156.330 of this final rule. Additionally, the Coast Guard agrees that the flow rates used with certain cargo oil transfer hoses should be left up to the lighterers' discretion based on the pumps and piping systems of the vessels involved.

The Coast Guard notes that hoses which comply with the Rubber Manufacturers Association Specifications for Rubber Hose for Oil Suction and Discharge Specification (1991) would satisfy the requirements of 33 CFR 155.800. However, incorporation of a hose standard that would affect vessels other than those in the designated lightering zones is beyond the scope of this rulemaking.

Since the OCIMF Guide is not mandatory, the requirement for a radio voice warning in § 156.330(c) has been revised to require certain information identified in section 5.6 of the OCIMF Guide. This specific information includes:

- The names of the vessels involved;
- The vessels' geographical positions and general headings;
- A description of the operations;
- The expected time of commencement and duration of the operation; and
- Request for wide berth.

#### *Section 156.205 Definitions*

Three comments addressed this section. One comment stated that the definition of lightering at 33 CFR 156.205(b) should clearly state that oil spill response vessels (OSRVs), including barges, conducting ship to ship transfers as part of oil spill response operations are exempt from lightering regulations. This comment claimed that compliance with the proposed regulations might interfere with response activities. The Coast Guard agrees that operations related to the transfer of recovered oil from OSRVs were not intended to fall within the scope of the OCIMF Ship to Ship Transfer Guide (Petroleum).

Additionally, the equipment, arrangement, and construction requirements for OSRVs are specifically addressed by other Coast Guard requirements. Lightering conducted as a shipboard spill mitigation procedure under a spill response plan approved under subpart D of 33 CFR part 155 already incorporates the use of the OCIMF Guide transfer procedures. Consequently, the Coast Guard agrees that the lightering regulations in subpart B of 33 CFR part 156 should not apply to OSRVs or to vessels of opportunity in accordance with the National Contingency Plan (40 CFR parts 9 and 300) when transferring oil during oil spill response activities. In lieu of the requested revision to § 156.205, the Coast Guard is revising the applicability section for subpart B, § 156.200, to exclude such activity by these vessels from the requirements of this subpart.

*Section 156.210 General*

Four comments were received in response to this section of the NPRM. Two comments supported the proposed work hour limitations, while another comment argued that the limitations should conform to the stricter requirements proposed under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention). Taking unilateral action to impose the proposed STCW standards would be inappropriate. The Coast Guard will not initiate a rulemaking on these requirements until the provisions of the STCW Convention are finalized and adopted by the United States.

The fourth comment requested clarification as to whether the proposed work hour limitations would apply to laden service vessels actually located in designated lightering zones but not engaged in cargo transfer activities or to service vessels located in designated lightering zones but not carrying cargo. Industry generally supported the application of work hour and rest period restrictions to lightering operations, but recommended that the applicability of this requirement be clarified in the final rule.

The Coast Guard has clarified this section in the final rule, specifying the activity and the time period involved. When in the designated zones, the crews of both the tank vessels to be

lightered and the crews of the service vessels are subject to the work hour limitations throughout the duration of lightering operations, as defined in 33 CFR 156.205(b). For these licensed individuals and seamen to start work during lightering operations in a lightering zone, their work hours during the last 24 and 72 hours prior to the commencement of the lightering operation must be considered, and the individual must be in compliance with this section. This section has been revised to clarify these applications.

*Section 156.310 Prohibited Areas*

Four comments addressed this section. One comment argued that the proposed prohibited areas were too extensive. Three comments suggested that only vessels lightering at anchor should be barred from these areas and not all lightering operations.

At the public meeting in Metairie, the industry representative commented that it appeared that the prohibited areas would apply to all lightering operations, not just those conducted by new or phased out single hull tankers. Industry perceived that the Coast Guard's concern with lightering in these areas comes principally from the potential for seabed damage associated with anchoring, and stated that vessels currently lightering in the proposed prohibited areas do not anchor in these areas. However, lightering vessels do drift through these areas if that is where

the prevailing winds and currents take them. Industry urged the Coast Guard to allow this practice to continue.

The Coast Guard disagrees. This rule does not prohibit anchoring over or in the vicinity of the prohibited areas. This rulemaking addresses lightering activities and only prohibits these operations. While the Coast Guard acknowledges the detrimental effect anchoring may have in these areas, this rulemaking will prevent anchoring in the prohibited areas only to the extent that such anchoring would have occurred for the purposes of lightering.

The definition of lightering in § 156.205(b) includes all phases of the operation from the beginning of the mooring operation to the departure of the service vessel from the vessel to be lightered. Two catastrophic events which could occur during offshore lightering activities are transit casualties, such as collisions, and intrinsic casualties, such as pump room explosions. Prohibiting lightering activities over biologically active areas will help to prevent a worst case scenario of one or more vessels engaged in lightering operations sinking in these areas while laden with a large quantity of oil. Such an occurrence would be a significant environmental hazard in the most ecologically sensitive offshore regions of the Gulf of Mexico. Figure 1 is a pictorial representation of the lightering zones and prohibited areas.

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# Designated Lightering Zones and Prohibited Areas in the Gulf of Mexico

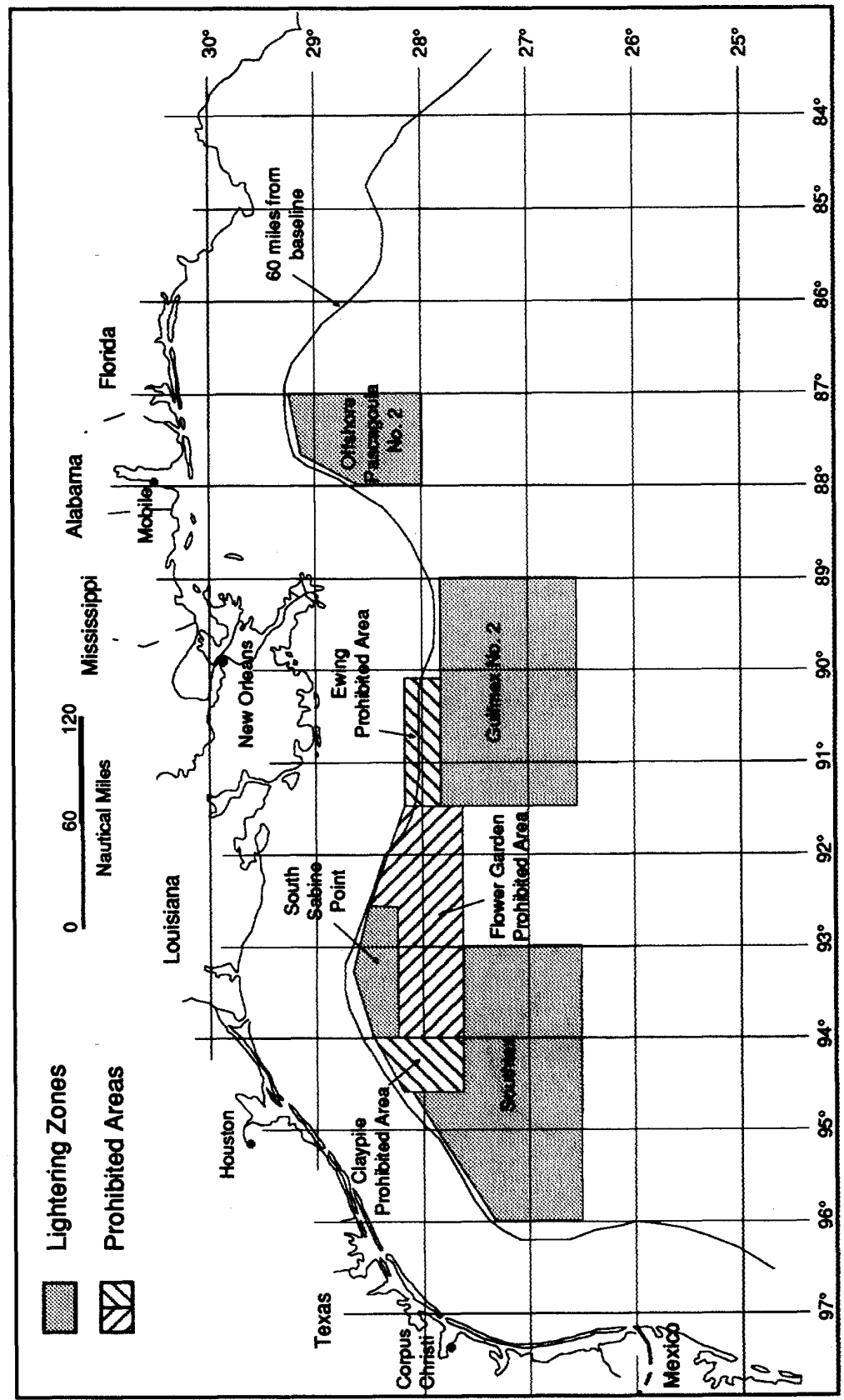


Figure 1

*Section 156.320 Minimum Operating Conditions*

Six comments were received on this section. Three comments supported the proposed prohibition on beginning lightering when there are 30 knot winds and 10 foot seas in the same direction, but recommended that the operating criteria prohibiting mooring when wind and sea direction vary by 30 degrees be removed because the effects of these factors could not be accurately predicted. Three comments opposed the unmooring requirements, stating that it may be safer to remain moored during some severe weather conditions. One of these comments also noted that this section did not address the situation when the current is counter to the wind, stating that such a condition may make ship to ship transfer impossible even though the speed of the wind may only measure a few knots.

Industry comments questioned the Coast Guard's determination of the weather parameters set in § 156.320. They stated that the proposed conditions exceed those contained in the operating manuals of different lightering companies. This comment stated that § 156.320 should be revised to either eliminate the requirement to unmoor or to increase the proposed operating criteria, noting that it may be dangerous for some vessels to unmoor in the weather conditions proposed and that, except for the most severe weather conditions, it often may be safer to stay moored until the weather abates. They stated that ultimately it should be the decision of the masters of the service vessel and the vessel to be lightered to remain moored or to unmoor, based upon their evaluation of the weather conditions in the operating area and the handling characteristics of their vessels. Industry added that if the Coast Guard is convinced that maximum criteria are necessary, then it should be absolutely certain that it is not asking ships' masters to perform maneuvers that may endanger crew and cargo.

Comments from industry and those from the OCIMF, ICS, and INTERTANKO stated that the lightering provisions regarding hurricanes were too restrictive. They argued that lightering operations can be discontinued quickly, lightering vessels can be disconnected quickly, and lightering personnel should be responsible for monitoring reports from the National Weather Service to determine if lightering operations should proceed.

The Coast Guard has reviewed the provisions of several lightering manuals regarding weather restrictions and the

Coast Guard agrees that the decision to unmoor should rest with the masters of the respective vessels. Factors such as stability and structural limitations must be considered in tank vessel loading and ballasting operations. Consequently, to mandate an unmooring criteria for all vessels based solely on factors external to the vessel, such as weather and sea state conditions, would not be prudent. The Coast Guard also agrees that simplifying the weather conditions to consideration of only wind velocity and wave height adequately addresses the weather and sea state conditions which are significant to lightering and are parameters which can be more definitively observed by mariners. Additionally, the Coast Guard has determined that stipulating the maximum criteria under which cargo transfers may be safely conducted is a better approach for environmental and occupational safety reasons. The Coast Guard also agrees that lightering vessels can disconnect relatively quickly and unmoor. Having a maximum wave height and wind speed criteria makes it unnecessary to specifically address hurricane evasion. As previously stated, the master of a vessel is ultimately responsible for the safety of the ship, its crew, and its cargo. Therefore, § 156.320 has been renamed as "Maximum operating conditions" and has been revised to remove the proposed restrictions of lightering operations based on relative wind and wave directions and on swell heights, to remove the proposed hurricane restrictions, and to specify a maximum wind velocity and wave height for cargo transfers. Nothing prohibits terminating lightering operations under less severe conditions, and the Coast Guard encourages the development of conservative company policies in this regard.

*Section 156.330 Operational Restrictions*

Several comments responded to this section of the NPRM. Two comment writers noted that the definition of "bunkering" was excluded. Two other commenters also addressed the issue of bunkering. Comments from industry cautioned the Coast Guard against using the rulemaking as a basis for limiting other operations, such as bunkering, which can safely occur during lightering operations, and that any interpretation of the rulemaking which could ban bunkering operations would be unnecessary and unwarranted. The Texas GLO pointed out that the explosion and resultant spill from the tankship FLORIDA EXPRESS in the Gulf of Mexico on February 27, 1995,

indicates the need for expanding the scope of the rulemaking to include bunkering activities. It argued that the difference in the threat of an oil spill from bunkering and from lightering is really not distinguishable and that both should be subject to weather, operation, and work hour limitations. It suggested that the Coast Guard propose a rule in the near future to correct this.

Bunkering a large (VLCC or ULCC) crude carrier from another tankship in the offshore environment is not categorized as lightering under current regulations. The definition of lightering in 33 CFR 156.205(b) specifically excludes cargo which is intended only for use as a fuel or lubricant aboard the receiving vessel. The FLORIDA EXPRESS incident is still under investigation, but it is noted that the vessel was not involved in bunkering when the incident occurred. Should a safety issue be identified by the investigation, the Coast Guard may consider regulations specifically for ship to ship bunkering in the future. One primary safety concern when bunkering while also conducting cargo transfer operations is in providing adequate personnel for both operations. Under Coast Guard regulations, tankships are not prohibited from bunkering while also transferring cargo. It would be inconsistent to restrict this activity in offshore lightering zones while allowing its occurrence elsewhere in the Gulf of Mexico and on the inland waters of coastal ports which are in areas much more likely to be affected by oil spills. Paragraph (g) in § 156.330 has been revised to more clearly state that bunkering is not within the definition of lightering.

Five comments at the public meeting recommended that the proposed operational restrictions in paragraphs (h) and (i) of § 156.330, which refer to minimum distances to offshore structures and mobile offshore drilling units (MODUs), be consistent. They noted that the proposed § 156.330(i) requires that lightering operations not be conducted while underway within 3 miles of an offshore structure or MODU, while § 156.330(h) allows lightering operations to be conducted while anchored up to 1 mile from an offshore structure or MODU. They stated that vessels lightering underway maintain a navigation watch and can maneuver, and that there is no compromise to safety by allowing both anchored lightering vessels and vessels lightering underway to operate subject to the 1-mile restriction. They stated that a 1-mile buffer provides adequate protection under present operating



conditions and should be permitted to continue.

The Coast Guard has considered these comments and agrees that the requirement of § 156.330(i) prohibiting underway lightering operations within 3 nautical miles of an offshore structure or MODU is inconsistent with the 1-mile range given in § 156.330(h) for lightering at anchor. The definition for lightering operations in § 156.205(b) includes both drifting and transiting under power while moored alongside. The Coast Guard agrees that the current practice of using 1 nautical mile clearance from offshore structures and MODUs when involved in lightering as defined under § 156.205(b) has provided an adequate margin of safety in the past and agrees that there is insufficient justification to further expand this range. The Coast Guard also acknowledges that, when moored alongside, these vessels typically advance at speeds of less than 4 knots and can adequately maneuver around stationary objects such as production platforms. Therefore, § 156.330(i) has been modified to reflect a 1 nautical mile range for all modes of lightering.

MMS generally supported the provisions of this section, but suggested that it also address pipelines because anchors could rupture a pipeline when the vessels are setting the anchor or dragging the anchor during rough weather. MMS also indicated that the largest spills in the Gulf of Mexico have been from pipelines that were ruptured by anchors.

With reference to pipeline safety, the Coast Guard notes that, since 1992, offshore pipelines have been required to be surveyed annually and reports submitted to the Research and Special Programs Administration (RSPA) by the pipeline operators (49 CFR 195.413). Under current regulations (49 CFR part 190), an offshore pipeline is considered a hazard to navigation only when the top of the pipeline is closer than 12 inches to the seabed in waters less than 15 feet deep. Regardless of whether a pipeline is officially considered a hazard to navigation, the Coast Guard agrees that mariners should not anchor over such structures when their location is known. In order to avoid pipeline damage when anchoring in designated lightering zones, the mariner must rely on charts depicting pipeline locations. Therefore, § 156.330(j) has been revised to provide that, during lightering operations, vessels may not anchor over charted pipelines, artificial reefs, or historical resources.

Additionally, the Norwegian Maritime Administration provided to the Coast Guard preliminary statements which

were taken during the investigation of the BERGE BANKER and SKAUBAY collision. These statements indicate that the BERGE BANKER, the vessel to be lightered, and the SKAUBAY, the service vessel, were on nearly reciprocal courses when the collision occurred. Normal practice in the industry is for the vessel to be lightered to maintain a constant heading during the approach by the service ship immediately prior to mooring alongside. The service vessel approaches from astern, generally broad on the quarter, which means that the service ship is aft of the vessel to be lightered on a heading within 45 degrees to port, or 45 degrees to starboard, of the course maintained by the vessel to be lightered. This industry practice is recognized in the Oil Companies International Marine Forum (OCIMF) Ship to Ship Transfer Guide (Petroleum), Second Edition, 1988, as the best approach when preparing to moor alongside. In order to reduce the risk of a similar collision, paragraph (k) has been added to § 156.330 in the final rule mandating this approach and requiring a minimum safe distance of 1000 meters between the two vessels prior to the service vessel being positioned broad on the quarter of the ship to be lightered. The Coast Guard has renamed this section in the final rule as "Operations".

#### **Incorporation by Reference**

The Director of the Federal Register has approved the material in § 156.111 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

#### **Assessment**

A draft Regulatory Assessment was prepared in support of the NPRM for the designation of lightering zones, which was published in the **Federal Register** on January 5, 1995 (60 FR 1958). An Addendum to that Assessment has been prepared to update statistical data and other information since the publication of the NPRM.

The Addendum indicates that changes which have occurred since the publication of the NPRM do not materially alter the findings and conclusions of the draft Regulatory Assessment which, as amended, are adopted as the findings and conclusions of the Final Regulatory Assessment.

This Final Regulatory Assessment was prepared in accordance with Executive Order 12866. Under the criteria of Executive Order 12866, the designation of lightering zones in the Gulf of Mexico is not a significant regulatory action and will not have a significant economic

impact on the maritime industry. However, this rulemaking is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979) and has been reviewed by the Office of Management and Budget (OMB). The Regulatory Assessment is available in the docket for inspection or copying where indicated under **ADDRESSES**.

#### **Small Entities**

Adoption of this final rule will avert adverse small entity impacts and preserve the current revenues derived by small entities from tanker lightering in the Gulf of Mexico, and the adverse impact of this final rule on small business is expected to be minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

#### **Collection of Information**

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

#### **Environment**

The Coast Guard considered the environmental impact of this rule and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a 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; and other relevant safety, environmental, and economic data. The Coast Guard also specifically looked at wildlife and marine habitats and topographic features in the proposed lightering zones.

The topographic features of the Gulf of Mexico considered during this rulemaking 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 considered sensitive ecosystems. These areas are particularly vulnerable to damage from anchoring and, to a lesser extent, from oil spills. While oil spills on the surface of these areas are not expected to have a significant effect on the biota of concern, the Coast Guard is establishing three "prohibited areas" where lightering will not be permitted. Establishment of "prohibited areas" over these features will further ensure protection of these vital ecosystems. Operational restrictions for designated lightering zones would also reduce the likelihood of spillage from the tank vessels utilizing these zones. Although the likelihood is remote, the Coast Guard is also concerned with catastrophic casualties which could result in the sinking of a tanker. The potential sinking of a very large or ultra large crude carrier as a result of a collision or intrinsic casualty, with millions of barrels of oil on board or as cargo, could pose a serious long term environmental hazard to these ecosystems.

The Endangered Species Act of 1973 (16 U.S.C. 1531 through 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 regulations on endangered and threatened species as well as on sensitive environmental areas such as wildlife refuges. Both the NMFS and FWS have issued a written concurrence with the Coast Guard's finding that the proposed rule, including the designation of the South Sabine Point lightering zone discussed in the preamble of the NPRM, will not have an adverse effect on endangered or threatened species.

"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 lightering zones.

Military warning areas are located throughout the Gulf of Mexico and are clearly demarcated. The coordinates of the designated lightering zones will overlap Eglin Water Test Areas One and Three (EWTA 1, EWTA 3), and Military Warning Areas 92, 228, and 602 (W-92, W-228, W-602). Military operations are undertaken in each of these zones and have been considered in this rulemaking. Lightering operations have been conducted throughout the Gulf of Mexico for many years, often within these designated military zones. Lightering industry spokespersons report that they have never been asked by a military department to divert operations due to military exercises. Announcements for most military exercises are published in notices to mariners. The Department of Defense commands responsible for these warning areas were advised of the proposed rulemaking and have expressed no opposition to the establishment of these lightering zones. The Coast Guard does not expect the missions of these military warning areas to be adversely impacted by this rulemaking.

The Coast Guard has considered the implications of the Coastal Zone Management Act (16 U.S.C. 1451, *et seq.*) with regard to this rulemaking. Under this Act, the Coast Guard must determine whether the activities proposed by it are consistent with activities covered by a federally approved coastal zone management plan for each state which may be affected by this federal action. The States of Louisiana, Mississippi, Florida, and Alabama have federally approved coastal zone management plans. The Governor of the State of Texas has

withdrawn its submission of the proposed Texas Coastal Management Plan to NOAA.

The Coast Guard has determined that the designation of lightering zones, as provided in this rulemaking, will have no effect on the coastal zones of Mississippi, Alabama, or Florida. Designation of the lightering zones has the potential of an indirect effect on the coastal zones of Louisiana and Texas.

The approved plan for Louisiana regulates a number of listed uses which "directly and substantially affect coastal waters and which are in need of coastal management, and which have impacts of greater than local significance or which significantly affect interests of regional, state, or national concerns." (La. Rev. Stat. 49:213.5(A)(1)). Louisiana has not listed the designation of offshore lightering zones as an activity subject to state review, and research and review of environmental effects indicate only a slight chance that these regulations would indirectly affect the coastal zone of Louisiana.

The Coast Guard consulted with the State of Louisiana after it had an opportunity to review the NPRM, Environmental Assessment, and draft Regulatory Assessment. The Administrator of the State Coast Management Division for Louisiana responded by a letter in which the Administrator stated that this rulemaking may affect the Louisiana coastal zone and requested that the Coast Guard make a consistency determination. The Coast Guard found that the regulations in the NPRM were consistent, to the maximum extent practicable, with the enforceable policies of the federally approved coastal zone management plan and submitted a consistency determination to that effect. The State Administrator responded, concurring with the Coast Guard consistency determination that establishing lightering zones would be consistent with the Louisiana Coastal Resource Program.

Also, during the preparation of this assessment, the Coast Guard informally contacted the Environmental Section of the Texas GLO's Legal Services Division, providing the NPRM, Environmental Assessment, and draft Regulatory Assessment for review. The State had recently approved a Coastal Management Plan and had submitted the Plan for federal approval. The Oil Spill Prevention and Response Division of the Texas GLO responded, informing the Coast Guard that it supports the Coast Guard's plan to establish four lightering zones and that the Governor of Texas has withdrawn the submission of the Texas Coastal Management Plan

to NOAA. It presently is unclear whether Texas will participate in the federal coastal zone management program. The Coast Guard's research and review of environmental effects indicate only a low probability that these regulations would indirectly affect the coastal zone of Texas.

Five comments specifically addressed items in the Environmental Assessment. The Fish and Wildlife Service concurred that the South Sabine Point and Southtex lightering zones are not likely to have a negative impact on marine species (sea turtles and coastal birds that use the Texas coastline) for which it is responsible. Another comment argued that the Environmental Assessment and the text of the NPRM do not substantiate the need for the proposed extensive prohibited areas. Two comments agreed with the Environmental Assessment's discussion of the dangers of anchoring. However, these comments also stated that section 5.5 of the Environmental Assessment, "Endangered and Threatened Species", needs clarification. The comments contend that this section indicates that there is an extremely low probability that spillage would contact an environmental resource, yet upon reviewing the Environmental Assessment, the commenter reasons that spills making land impact would cross over the prohibited areas. For clarification, the reference to contact with environmental resources used in the Environmental Assessment has been revised to specify land-based environmental resources in that particular section.

A fifth comment stated that the Environmental Assessment appeared to be based on crude oil demand and imports remaining constant. Instead, the Environmental Assessment should assume at least a 4 percent per annum increase in crude oil imports with a concomitant increase in transfer by lightering.

The Environmental Assessment for this rulemaking addressed the environmental considerations required under National Environmental Policy Act (NEPA). The Environmental Assessment discussed the environmental effects of creating these lightering zones versus taking a no action alternative and not designating these lightering zones. The Environmental Assessment also states that this rulemaking alone is not expected to significantly effect the volume of oil lightered. The Environmental Assessment supports a Finding of No Significant Impact and shows that, by establishing these lightering zones, there exists a

possibility that a portion of current and future lightering activity could be conducted at locations further offshore that pose less of an environmental threat than would otherwise occur.

Also, the Final Regulatory Assessment for this rulemaking considered 1994 waterborne oil import data. This data reflected an increase in U.S. oil imports from 6.8 million barrels per day (BPD) in 1993 to 7.0 million BPD in 1994. Yet, in contrast to this 0.2 million BPD increase in importation, offshore lightering's share of imports by water in the Gulf of Mexico declined from 32.0 percent in 1993 to 28.5 percent in 1994. In terms of volume, this corresponded to a decrease from 1.48 million BPD to 1.30 million BPD in 1994. This decline in demand for lightering was due to shifts from Arabian Gulf and West African supplies to closer Caribbean supplies. These closer supplies are generally transported in smaller tankers which are able to make direct deliveries, negating the need for lightering. The Regulatory Assessment shows that the small shifts in sources of origin which occurred in 1994 entailed a significant reduction in the distance transported, and consequently, the type of tanker used for its conveyance. This one example of cause and effect illustrates that the demand for offshore lightering is driven by many market factors which are unrelated to this rulemaking.

#### *Clean Air Act*

As stated in the NPRM, 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. Also, nitrogen oxides (NOX) are produced by ship engines. Both VOC and NOX are precursors of the National Ambient Air Quality Standards' (NAAQS) criteria pollutant ozone. However, since this rulemaking is not expected to materially affect the frequency or volume of oil currently transferred in the Gulf of Mexico, the designation of lightering zones should not lead to a net increase in air emissions.

The NPRM also noted that the NAAQS, 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 within a state's borders which do not attain the NAAQS (nonattainment areas) are subject to controls aimed at improving the air quality. Federal agencies taking actions in nonattainment or maintenance areas which would result in air emissions must make determinations of

conformity with the applicable controls, usually a State Implementation Plan (SIP), before acting. However, the lightering zones created by this rule are well outside the boundaries of the coastal states (more than 60 nautical miles from the baseline for the territorial sea) and, therefore, are outside any nonattainment or maintenance areas. Thus, by the terms of 40 CFR part 51, the conformity rule is not applicable to this rulemaking.

The Breton Wilderness Area is 112 nautical miles north of the Gulfmex No. 2 lightering zone and 67 nautical miles northwest of the Offshore Pascagoula No. 2 lightering zone. Between the two lightering zones and the Breton Wilderness Area are two transshipment areas (TSAs). Offshore Pascagoula TSA (39 nautical miles south of Mobile Point, Alabama) is located midway between the Breton Wilderness Area and the Offshore Pascagoula No. 2 lightering zone. Gulfmex No. 1 TSA (105 nautical miles south of Breton Wilderness Area) is located 7 nautical miles northeast of the Gulfmex No. 2 lightering zone. Both of these TSAs are sites of ongoing lightering operations.

Lightering is a traditional, well-established activity which occurs in a variety of near shore areas in the Gulf of Mexico. This rulemaking is not expected to materially affect the frequency or volume of oil transferred in the Gulf of Mexico. Thus, the designated lightering zones will not lead to a net increase in emissions. Moreover, to the extent that these lightering zones are used for oil transfer operations, it is expected that the practical effects of this rulemaking will be to facilitate transfers farther offshore than would otherwise occur. Since transfer operations are not practical nor economical outside 200 nautical miles, tankers limited to using these lightering zones would be expected to effectively reduce the lightering activity that would otherwise occur at the closer near shore areas currently used for lightering.

The Coast Guard considered the FWS comments regarding air quality and, for the reasons noted above, has concluded that the impact of these regulations, if any, will be to increase, on average, the separation between the location of lightering transfers and the Breton Wilderness Area.

The Coast Guard also notes that its authority does not include the regulation of vessel air emissions for the purposes of improving air quality. Furthermore, in its NPRM proposing Federal Standards for Marine Tank Vessel Loading and Unloading (59 FR 25004, May 13, 1994), EPA stated that those proposed regulations would not

apply to offshore lightering but that EPA might consider addressing offshore lightering operations as a separate source category in the future.

As discussed in the Environmental Assessment, this rulemaking is expected to have no significant effect on any State's attainment of air quality standards.

**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 amends 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 § 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, may grant an exemption or partial exemption from compliance with any requirement in this part, and the District Commander may grant 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)*

15th Floor, 96 Victoria Street, London SW1E 5JW, England.

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

*International Chamber of Shipping*

12 Carthusian Street, London EC1M 6EB, England.

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

4. Section 156.200 is revised to read as follows:

**§ 156.200 Applicability.**

This subpart applies to each vessel to be lightered and each service vessel engaged in a lightering operation in the marine environment beyond the baseline from which the territorial sea is measured when the oil or hazardous material lightered is destined for a port or place subject to the jurisdiction of the U.S. This subpart does not apply to lightering operations involving public vessels, or to the dedicated response vessels and vessels of opportunity in accordance with the National Contingency Plan (40 CFR parts 9 and 300) when conducting response activities. These rules are in addition to the rules of subpart A of this part, as well as the rules in the applicable sections of parts 151, 153, 155, 156, and 157 of this chapter.

5. In § 156.205, paragraph (a) and the introductory text to paragraph (b) are revised, and the definition of "work" is added in alphabetical order to read as follows:

**§ 156.205 Definitions.**

(a) In addition to the terms defined in this section, the definitions in § 154.105 of this chapter apply to this subpart and to subpart C.

(b) As used in this subpart and subpart C:

\* \* \* \* \*

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

6. In § 156.210, paragraph (d) is added to read as follows:

**§ 156.210 General.**

\* \* \* \* \*

(d) On vessels conducting lightering operations in a designated lightering zone, a licensed individual or seaman may not work, except in an emergency or a drill, more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, including the 24-hour and 72-hour periods prior to commencing lightering operations.

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

**§ 156.215 Pre-arrival notices.**

\* \* \* \* \*

(d) In addition to the other requirements in this section, the master, owner, or agent of a vessel that requires a Tank Vessel Examination (TVE) or other special Coast Guard inspection in order to lighter in a designated lightering zone must request the TVE or other inspection from the cognizant Captain of the Port at least 72 hours prior to commencement of lightering operations.

8. 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 Maximum operating conditions.
- 156.330 Operations.

**§ 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:

<i>Latitude N.</i>	<i>Longitude W.</i>
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.

(NAD 83)

(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:

<i>Latitude N.</i>	<i>Longitude W.</i>
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.

(NAD 83)

(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:

<i>Latitude N.</i>	<i>Longitude W.</i>
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.

(NAD 83)

(d) *South Sabine Point—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:

<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.

(NAD 83)

**§ 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.

(NAD 83)

(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.

(NAD 83)

(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.

(NAD 83)

**§ 156.320 Maximum operating conditions.**

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

(a) A tank vessel shall not attempt to moor alongside another vessel when either of the following conditions exist:

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

(2) The wave height is 3 meters (10 feet) or more.

(b) Cargo transfer operations shall cease and transfer hoses shall be drained when—

(1) The wind velocity exceeds 82 km/hr (44 knots); or

(2) Wave heights exceed 5 meters (16 feet).

**§ 156.330 Operations.**

(a) Unless otherwise specified in this subpart, or when otherwise authorized by the cognizant Captain of the Port (COTP) or District Commander, the master of a vessel lightering in a zone designated in this subpart shall ensure that all officers and appropriate members of the crew are familiar with the guidelines in paragraphs (b) and (c) of this section and that the requirements of paragraphs (d) through (l) of this section are complied with.

(b) Lightering operations should be conducted in accordance with the Oil Companies International Marine Forum Ship to Ship Transfer Guide (Petroleum), Second Edition, 1988, to the maximum extent practicable.

(c) Helicopter operations should be conducted in accordance with the International Chamber of Shipping Guide to Helicopter/Ship Operations, Third Edition, 1989, to the maximum extent practicable.

(d) The vessel to be lightered shall make a voice warning prior to the commencement of lightering activities via channel 13 VHF and 2182 Khz. The voice warning shall include:

(1) The names of the vessels involved;

(2) The vessels' geographical positions and general headings;

(3) A description of the operations;

(4) The expected time of commencement and duration of the operation; and

(5) Request for wide berth.

(e) 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 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.

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

(g) If any vessel not involved in the lightering operation or support activities approaches within 100 meters of vessels engaged in lightering, the vessel engaged in lightering shall warn the approaching vessel by sounding a loud hailer, ship's whistle, or any other appropriate means.

(h) Only a lightering tender, a supply boat, or a crew boat, equipped with a spark arrestor on its exhaust, or a tank vessel providing bunkers, may moor alongside a vessel engaged in lightering operations.

(i) Lightering operations shall not be conducted within 1 nautical mile of offshore structures or mobile offshore drilling units.

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

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

(l) In preparing to moor alongside the vessel to be lightered, a service vessel shall not approach the vessel to be lightered closer than 1000 meters unless the service vessel is positioned broad on the quarter of the vessel to be lightered. The service vessel must transition to a nearly parallel heading prior to closing to within 50 meters of the vessel to be lightered.

Dated: August 22, 1995.

**A.E. Henn,**

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

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