

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket No. USCG-2009-1004]

RIN 1625-AA11

Safety and Security Zone, Chicago Sanitary and Ship Canal, Romeoville, IL**AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety and security zones on the Chicago Sanitary and Ship Canal (CSSC) near Romeoville, IL. This temporary final rule is intended to restrict all vessels from transiting the navigable waters of the CSSC. The safety and security zones are necessary to protect the waters, waterway users and vessels from hazards associated with the U.S. Army Corps of Engineers (USACE) electrical dispersal barrier and for the preparation and safe application of a fish toxicant during a period of time when the barrier will be disabled to conduct maintenance.

DATES: This temporary final rule is effective from 5 p.m. on November 24, 2009, until 5 p.m. on December 18, 2009. This temporary final rule is enforceable with actual notice by Coast Guard personnel beginning November 16, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-1004 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-1004 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call CDR Tim Cummins, Deputy Prevention Division, Ninth Coast Guard District, telephone 216-902-6045. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior

notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for, good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because the USACE made the decision, without time for a proper notice period, to permanently increase the voltage of the fish barrier to two-volts per inch in response to data which indicates that Asian carp are closer to the Great Lakes waterway system than originally thought. The electric current in the water created by the electrical dispersal barriers coupled with the uncertainty of the effects of the increased voltage poses a safety risk to commercial vessels and recreational boaters who transit the area. As such, a safety and security zone is being enacted to ensure the safety of vessels operating in the vicinity of the electrical dispersal barrier.

In addition, the emergent planning and execution of maintenance to Barrier IIA by the USACE and the preventative application of the fish toxicant (rotenone), under the direction of the Illinois Department of Natural Resources (IDNR) and the Federal coordination of the U.S. Environmental Protection Agency (EPA) resulted in good cause for not publishing an NPRM as there was insufficient time for proper notice. During IDNR's deployment of rotenone, the Coast Guard will enact a safety and security zone to provide for the safety and security of the waters, the waterway facilities and the vessels operating between the Lockport Lock and Dam and the electrical dispersal barrier.

The application of rotenone to the CSSC will ensure Asian carp do not transit across the fish barrier when Barrier IIA is taken off line and Barrier I, which only operates at one volt per inch, is the sole prophylactic from preventing the Asian carp from entering the Great Lakes. The effective application of rotenone is essential in preventing the Asian carp from surviving the application. IDNR reports indicate that vessels moored along the Canal wall could create pockets or eddies where the fish toxicant is not able to reach all of the Asian Carp necessitating the Captain of the Port (COTP) Sector Lake Michigan to order their immediate removal from the safety and security zone. Exceptions may

possibly be granted upon the review of COTP Sector Lake Michigan.

Rotenone has potential for adverse effects on humans. As such, delaying this rule would be contrary to the public interest of ensuring the safety and security of waterway users and vessels during the preparations, application and clean-up from the use of rotenone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because of the safety and security risk to the waters, commercial vessels and recreational boaters who transit the area. The following discussion and the Background and Purpose section below provide additional support of the Coast Guard's determination that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication.

In 2002, the USACE energized a demonstration electrical dispersal barrier located in the Chicago Sanitary and Ship Canal. The demonstration barrier, commonly referred to as "Barrier I," generates a low-voltage electric field (one-volt per inch) across the canal, which connects the Illinois River to Lake Michigan. Barrier I was built to block the passage of aquatic nuisance species, such as Asian carp, and prevent them from moving between the Mississippi River basin and Great Lakes via the canal.

In 2006, the USACE completed construction of a new barrier, "Barrier IIA." Because of its design, Barrier IIA can generate a more powerful electric field (up to four-volts per inch), over a larger area within the Chicago Sanitary and Ship Canal, than Barrier I. Testing was conducted by the USACE which indicated that two-volts per inch is the optimal voltage to deter aquatic nuisance species. The USACE's original plan was to perform testing on the effects of the increased voltage on vessels passing through the fish barrier prior to permanently increasing the voltage. However, after receiving data that the Asian carp were closer to the Great Lakes than expected, the decision was made to immediately energize the barrier to two-volts per inch without prior testing.

A comprehensive, independent analysis of Barrier IIA, conducted in 2008 by the USACE at the one-volt per inch level, found a serious risk of injury or death to persons immersed in the water located adjacent to and over the barrier. Additionally, sparking between barges transiting the barrier (a risk to flammable cargoes) occurred at the one-volt per inch level. The Coast Guard and

USACE developed regulations and safety guidelines, with stakeholder input, which addressed the risks and hazards associated with operating the barriers at the one-volt per inch level. These regulations were published in 33 CFR 165.923, 70 FR 76692 (Dec 28, 2005) and in a series of temporary final rules: 71 FR 4488 (Jan 27, 2006); 71 FR 19648 (Apr 17, 2006); 73 FR 33337 (Jun 12, 2008); 73 FR 37810 (Jul 2, 2008); 73 FR 45875 (Aug 7, 2008); and 73 FR 63633 (Oct 27, 2008). A temporary interim rule was issued on February 9, 2009 (74 FR 6352). Finally, an NPRM was issued on May 26, 2009 (74 FR 24722).

In October of 2009, the USACE notified the Coast Guard that barrier IIA needed to be shut-down for required maintenance. As a result, the IDNR, in the coordination of the EPA, will apply rotenone to the CSSC to ensure Asian Carp do not transit through the CSSC while Barrier IIA is disabled. The Coast Guard's understanding is that the application of the rotenone will take approximately fifteen (15) hours followed by neutralizing and clean-up. The application, neutralizing and clean-up is expected to take a minimum of five days and a maximum of ten (10) days. For any questions related to the application of rotenone, please contact Mr. Bill Bolen, U.S. Environmental Protection Agency, Senior Advisor, Great Lakes National Program Office, 77 W. Jackson Blvd., Chicago, IL 60604, at (312) 353-6316.

Until Barrier IIA is shut-down, the risks to persons and vessels are on-going and immediate action is needed to prevent injury to the people, vessels and waters. When the electrical power to Barrier IIA is secured for maintenance and rotenone is applied to the CSSC, the risk to persons and vessels continues to exist although now from an alternative source. The timing of the decision to use rotenone during the maintenance did not provide an opportunity for full notice and comment period. Until on-scene preparations begin on December 2, 2009, for the application of rotenone, the Captain of the Port Sector Lake Michigan will make every effort to permit vessels to pass over the fish barrier while it is operating at the two volt per inch level. Once preparations begin on December 2, 2009, until clean-up is complete which at the earliest will be December 7 but may last until December 14, no vessels, except those being used for the rotenone application and clean-up, will be permitted to enter or remain in the safety and security zones. As areas become neutralized and the necessary clean up action has been completed, the Captain of the Port

Sector Lake Michigan will re-open certain portions of the waterways in an effort to minimize commerce disruption.

Prior to December 2, 2009, vessels that comply with the regulations as set forth in this temporary rule may transit through the safety and security zones. After December 2, 2009, all vessels desiring to enter the safety and security zones must receive permission from the Captain of the Port Sector Lake Michigan to do so and must follow all orders from the Captain of the Port Sector Lake Michigan or her designated on-scene representative while in the zone. As soon as the rotenone clean-up efforts are complete, the security and safety zone from the Lockport Lock and Dam to the electric dispersal barrier will be removed. Upon completion of the rotenone clean-up efforts, the safety and security zone encompassing the electric dispersal barrier will remain in place; however, the Captain of the Port Sector Lake Michigan will permit vessels complying with the regulations set forth in this rule to transit through the zone.

The Captain of the Port Sector Lake Michigan maintains a live radio watch on VHF-FM Channel 16 and a telephone line that is manned 24 hours a day, seven days a week. The public can obtain information concerning enforcement of the safety zone by contacting the Captain of the Port Sector Lake Michigan via the Coast Guard Sector Lake Michigan Command Center at 414-747-7182.

Background and Purpose

The Non-indigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended by the National Invasive Species Act of 1996, authorized the USACE to conduct a demonstration project to identify an environmentally sound method for preventing and reducing the dispersal of non-indigenous aquatic nuisance species through the Chicago Sanitary and Ship Canal. The USACE selected an electric barrier because it is a non-lethal deterrent with a proven history, which does not overtly interfere with navigation in the canal.

A demonstration dispersal barrier (Barrier I) was constructed and has been in operation since April 2002. It is located approximately 30 miles from Lake Michigan and creates an electric field in the water by pulsing low voltage DC current through steel cables secured to the bottom of the canal. A second barrier, Barrier IIA, was constructed 800 to 1300 feet downstream of the Barrier I. The potential field strength for Barrier IIA will be up to four times that of the Barrier I. Barrier IIA was successfully operated for the first time for

approximately seven weeks in September and October 2008, while Barrier I was taken down for maintenance. Construction on a third barrier (Barrier IIB) is in the initial stages; Barrier IIB will augment the capabilities of Barriers I and IIA.

In the spring of 2004, a commercial towboat operator reported an electrical arc between a wire rope and timberhead while making up a tow in the vicinity of the Barrier I. During subsequent USACE safety testing in January 2005, sparking was observed at points where metal-to-metal contact occurred between two barges in the barrier field.

The electric current in the water also poses a safety risk to commercial and recreational boaters transiting the area. The Navy Experimental Diving Unit (NEDU) was tasked with researching how the electric current from the barriers would affect a human body if immersed in the water. The NEDU concluded that the possible effects to a human body if immersed in the water include paralysis of body muscles, inability to breathe, and ventricular fibrillation.

Based on the safety hazards associated with electric current flowing through navigable waterways and the uncertainty of the effects of higher voltage on people and vessels that pass over and adjacent to the barriers, the Coast Guard implemented a safety zone restricting use of the waterway until proper testing and analysis of such testing can be completed by the USACE. As the testing results were, and continue to be analyzed, the Coast Guard has permitted, on a case by case basis, vessel transits so long as the vessels met certain operational restrictions.

As soon as safety testing and analysis are completed, the Coast Guard plans on publishing a new temporary interim rule (TIR) with requests for comments. Although the Coast Guard anticipates being able to continue to permit some vessels to transit through the fish barrier after testing is complete, it is currently anticipated that any subsequent TIR will continue to place restrictions on vessels including prohibiting some vessels from transiting through the fish barrier entirely. The Coast Guard will then likely follow with a supplemental notice of proposed rulemaking (SNPRM) in order to provide a complete notice and comment period for interested parties.

Until on-scene preparations begin on December 2, 2009, for the application of rotenone, the Captain of the Port Sector Lake Michigan will make every effort to permit vessels to pass over the fish barrier while it is operating at the two volt per inch level. Once preparations

begin on December 2, 2009, until clean-up is complete which at the earliest will be December 7 but may last until December 14, no vessels except those being used for the rotenone application and clean-up will be permitted to enter or remain in the safety and security zone. The Captain of the Port Sector Lake Michigan will cause notice of the Coast Guard again permitting vessels on a case by case basis, or those complying with this regulation set forth in this rule, to transit the safety zone to be made by all appropriate means to affect the widest publicity among the affected segments of the public.

Discussion of Rule

This temporary final rule removes 33 CFR 165.T09-0942. This rule suspends 33 CFR 65.923 until 5 p.m. on December 18, 2009. This rule places a safety and security zone on all waters of the Chicago Sanitary Ship Canal from mile-marker 291 (Lockport Lock and Dam) to mile-marker 296. The rule also placed a safety and security zone from mile-marker 296 to mile-marker 297.7 which is located adjacent to and over the electrical dispersal barriers on the Chicago Sanitary and Ship Canal.

The electrical dispersal barrier safety and security zone will be in effect at all times the USACE operates the electrical dispersal barrier. The Coast Guard has deemed this safety and security zone necessary from November 16, 2009, until December 18, 2009, because safety testing and analysis is still being conducted on vessels to determine whether and under what conditions vessels can safely pass adjacent to and over the electrical dispersal barriers. In addition, the safety and security zone is necessary to protect the waters, commercial vessels and recreational boaters who transit the area during the preparation, application and clean-up of the rotenone application.

Until 8 a.m. on December 2, 2009, vessels that comply with the following restrictions are permitted to transit the electrical dispersal barrier safety and security zone:

- (1) Vessels must be greater than twenty feet in length;
- (2) Vessel must not be a personal watercraft of any kind (*i.e.*, jet skis, wave runners, kayak, *etc.*);
- (3) All up-bound and down-bound tows that consist of barges carrying flammable liquid cargos (grade A through C, flashpoint below 140 degrees Fahrenheit, or heated to within 15 degrees Fahrenheit of flash point) must engage the services of a bow boat at all times until the entire tow is clear of the safety and security zone;

(4) Vessels engaged in commercial service, as defined in 46 U.S.C 2101(5), may not pass (meet or overtake) in the safety zone and must make a SECURITE call when approaching the safety and security zone to announce intentions and work out passing arrangements on either side;

(5) Commercial tows transiting the safety and security zone must be made up with wire rope to ensure electrical connectivity between all segments of the tow;

(6) All vessels are prohibited from loitering in the safety and security zone;

(7) Vessels may enter the safety zone for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the safety zone;

(8) All personnel in the safety zone on open decks must wear a Coast Guard approved Type I personal flotation device;

(9) Vessels may not moor or lay up on the right or left descending banks of the safety zone; and,

(10) Towboats may not make or break tows if any portion of the towboat or tow is located in the safety zone.

With respect to the safety and security zone from the Lockport Lock and Dam to the electrical dispersal barrier (from mile-marker 291 to 296), until December 2, 2009, all up-bound and down-bound vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), are permitted to transit through safety and security zone. Vessels may not moor or lay up in the safety and security zone unless preparing to, or engaging in, loading or unloading operations. Any vessel not actively preparing to, or currently engaged in, loading and unloading operations must ask for permission for the Captain of the Port to remain in the safety and security zone.

On December 2, 2009, preparations will begin for the application of rotenone at which time the Captain of the Port Sector Lake Michigan will prohibit all vessels from transiting either safety and security zone. As soon as the rotenone clean-up efforts are complete, the security and safety zone from the Lockport Lock and Dam to the electric dispersal barrier will be removed. Upon completion of the rotenone clean-up efforts, the safety and security zone encompassing the electric dispersal barrier will remain in place; however, the Captain of the Port Sector Lake Michigan will permit vessels complying with the regulations set forth in this rule to transit through the zone.

The Captain of the Port Sector Lake Michigan will cause notice of the Coast Guard again permitting vessels to transit the electrical dispersal barrier safety zone by all appropriate means to affect the widest publicity among the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. In addition, Captain of the Port Sector Lake Michigan maintains a telephone line that is manned 24 hours a day, seven days a week. The public can obtain information concerning enforcement of the safety and security zones by contacting the Captain of the Port Sector Lake Michigan via the Coast Guard Sector Lake Michigan Command Center at 414-747-7182.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on thirteen (13) of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be minimal. This determination is based the following: (1) Initial test results at the current operating parameters of two volts per inch indicate that the majority of commercial and recreational vessels that regularly transit the Chicago Sanitary and Ship Canal will be permitted to enter the safety zone under certain conditions; and, (2) every effort will be made to reduce the closure time of the canal following the shutdown of Barrier IIA for maintenance and rotenone application.

Because these safety and security zones must be implemented immediately without a full notice and comment period, the full economic impact of this rule is difficult to determine at this time. The Coast Guard urges interested parties to submit comments that specifically address the economic impacts of permanent or temporary closures of the Chicago Sanitary and Ship Canal. Comments can be made online by going to <http://www.regulations.gov>, inserting USCG-2009-0942 in the "Keyword" box, and then clicking "Search."

Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider whether regulatory actions would have a significant economic impact on a substantial number of small entities. 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. An RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). The Coast Guard determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(b)(B). Therefore, an RFA analysis is not required for this rule. The Coast Guard, nonetheless, expects that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have

determined that it does not have implications for federalism.

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 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate Tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that this rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of the category of actions which do not individually or cumulatively have significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2 Figure 2–1, paragraph (34)(g), of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves the establishing, disestablishing, or changing of a security or safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated

under **ADDRESSES**. The Coast Guard's environmental responsibilities extend only to the creation of a safety and security zone and do not address the application of rotenone. Any questions regarding the rotenone operation should be addressed to Mr. Bill Bolen, U.S. Environmental Protection Agency, Senior Advisor, Great Lakes National Program Office, 77 W. Jackson Blvd., Chicago, IL 60604, at (312) 353-6316.

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 amends 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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Public Law 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.T09-0942 [Removed]

■ 2. Remove § 165.T09-0942.

§ 165.923 [Suspended]

■ 3. Section 165.923 is suspended until December 18, 2009.

■ 4. A new temporary section 165.T09-1004 is added as follows:

§ 165.T09-1004 Safety and Security Zone, Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Lockport Lock to Electrical Dispersal Barrier Safety and Security Zone.* (1) The following area is a temporary safety and security zone: All waters of the Chicago Sanitary and Ship Canal located between mile marker 291.0 (Lockport Lock and Dam) and mile marker 296.0 (approximately 958 feet south of the Romeo Road Bridge).

(2) *Enforcement Period.* The safety and security zone will be enforced from 5 p.m. on November 16, 2009, until 5 p.m. on December 18, 2009. Beginning November 16, 2009, the Coast Guard will use actual notice to enforce this safety and security zone until this rule is published in the **Federal Register**.

(3) *Regulations.* (i) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety and security zone is prohibited unless authorized by the Captain of the Port Sector Lake Michigan, or her on-scene representative.

(ii) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Sector Lake Michigan to act on her behalf. The on-scene representative of the Captain of the Port Sector Lake Michigan will be aboard a Coast Guard, Coast Guard Auxiliary, or other designated vessel or will be on shore and will communicate with vessels via VHF-FM radio, loudhailer, or by phone. The Captain of the Port Sector Lake Michigan or her on-scene representative may be contacted via VHF-FM radio Channel 16 or the Coast Guard Sector Lake Michigan Command Center at 414-747-7182.

(iii) Vessel operators desiring to enter or operate within the safety and security zone must comply with the provisions of paragraph (a)(4)(iv) or contact the Captain of the Port Sector Lake Michigan or her on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety and security zone must comply with all directions given to them by the Captain of the Port Sector Lake Michigan or her on-scene representative.

(iv) Until 8 a.m. on December 2, 2009, all up-bound and down-bound vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), are permitted to transit through the safety zone. Vessels may not moor or lay up in the safety and security zone unless preparing to, or engaging in, loading or unloading operations. Any vessel not actively preparing to, or currently engaged in, loading and unloading operations must ask for permission for the Captain of the Port to remain in the safety and security zone.

(v) Starting at 8 a.m. on December 2, 2009, this safety zone and security zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Sector Lake Michigan or her on-scene representative. As soon as clean-up efforts from the rotenone application are complete, the Captain of the Port will cause notice of the enforcement of the safety and security zone being removed by all appropriate means to effect the widest publicity among the affected segments of the public. Such means of notification include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners.

(b) *Electrical Dispersal Barrier Safety and Security Zone.* (1) The following area is a temporary safety and security zone: All waters of the Chicago Sanitary and Ship Canal located between mile marker 296.0 (approximately 958 feet south of the Romeo Road Bridge) and mile marker 297.7 (approximately one

mile north of the electrical dispersal barrier).

(2) *Enforcement Period.* The safety zone will be enforced from 5 p.m. on November 16, 2009, until 5 p.m. on December 18, 2009. Beginning November 16, 2009, the Coast Guard will use actual notice to enforce this safety zone until this rule is published in the **Federal Register**.

(3) *Definitions.* The following definitions apply to paragraph (b) of this section:

Bow boat means a towing vessel capable of providing positive control of the bow of a tow containing one or more barges, while transiting the regulated navigation area. The bow boat must be capable of preventing a tow containing one or more barges from coming into contact with the shore and other moored vessels.

(4) *Regulations.* (i) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Sector Lake Michigan, or her representative.

(ii) The "representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Sector Lake Michigan to act on her behalf. The representative of the Captain of the Port Sector Lake Michigan will be aboard a Coast Guard, Coast Guard Auxiliary, or other designated vessel or will be on shore and will communicate with vessels via VHF-FM radio, loudhailer, or by phone. The Captain of the Port Sector Lake Michigan or her representative may be contacted via VHF-FM radio Channel 16 or the Coast Guard Sector Lake Michigan Command Center at 414-747-7182.

(iii) Vessel operators desiring to enter or operate within the safety and security zone must comply with the provisions of paragraph (b)(4)(iv) or shall contact the Captain of the Port Sector Lake Michigan or her representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety and security zone must comply with all directions given to them by the Captain of the Port Sector Lake Michigan or her representative.

(iv) Until 8 a.m. on December 2, 2009, vessels that comply with the following restrictions are permitted to transit the safety and security zone and the following regulations apply:

(A) Vessels must be greater than twenty feet in length.

(B) Vessel must not be a personal watercraft of any kind (*i.e.*, jet skis, wave runners, kayak, *etc.*).

(C) All up-bound and down-bound tows that consist of barges carrying flammable liquid cargos (grade A through C, flashpoint below 140 degrees Fahrenheit, or heated to within 15 degrees Fahrenheit of flash point) must engage the services of a bow boat at all times until the entire tow is clear of the safety and security zone.

(D) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the safety zone and must make a SECURITE call when approaching the safety zone to announce intentions and work out passing arrangements on either side.

(E) Commercial tows transiting the safety zone must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

(F) All vessels are prohibited from loitering in the safety and security zone.

(G) Vessels may enter the safety and security zone for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the safety and security zone.

(H) If a vessel is permitted by the Captain of the Port Sector Lake Michigan or her representative to transit the safety and security zone, all personnel should remain on open decks inside the cabin, or as inboard as practicable and wear a Coast Guard approved Type I personal flotation device. Alternatively, personnel on recreational vessels may wear a Coast Guard approved personal flotation device under 33 CFR Part 175 while in the safety zone.

(I) Vessels may not moor or lay up on the right or left descending banks of the safety zone.

(J) Towboats may not make or break tows if any portion of the towboat or tow is located in the safety zone.

(v) Starting at 8 a.m. on December 2, 2009, this safety and security zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Sector Lake Michigan or her representative. As soon as clean-up efforts from the rotenone application are complete, the Captain of the Port will cause notice of the safety and security zone being open to vessel transits, so long as the vessels comply with regulations described in paragraph (b)(4)(iv) of this section, by all appropriate means to effect the widest publicity among the affected segments of the public. Such means of notification include but are not limited

to, Broadcast Notice to Mariners or Local Notice to Mariners.

(vi) Persons on board any vessel transiting this safety and security zone in accordance with this rule or otherwise are advised they do so at their own risk.

Dated: November 16, 2009.

D.R. Callahan,

*Captain, U.S. Coast Guard, Commander,
Ninth Coast Guard District, Acting.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0808041043-9036-02]

RIN 0648-XS77

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Directed Butterfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the directed fishery for butterfish in the Exclusive Economic Zone (EEZ) will be closed effective 0001 hours, November 25, 2009. Vessels issued a Federal permit to harvest butterfish may not retain or land more than 600 lb (0.27-mt) of butterfish per trip for the remainder of the year (through December 31, 2009). This action is necessary to prevent the fishery from exceeding its domestic annual harvest (DAH) of 500 mt and to allow for effective management of this stock.

DATES: Effective 0001 hours, November 25, 2009, through 2400 hours, December 31, 2009.

FOR FURTHER INFORMATION CONTACT:

Lindsey Feldman, Fishery Management Specialist, 978-675-2179, Fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Regulations governing the butterfish fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing, and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel,

Squid, and Butterfish Fishery Management Plan (FMP). The procedures for setting the annual initial specifications are described in § 648.21.

The 2009 specification of DAH for butterfish was set at 500 mt (74 FR 6244, February 6, 2009).

Section 648.22 requires NMFS to close the directed butterfish fishery in the EEZ when 80 percent of the total annual DAH has been harvested. If 80 percent of the butterfish DAH is projected to be landed prior to October 1, a 250-lb (0.11-mt) incidental butterfish possession limit is put in effect for the remainder of the year, and if 80 percent of the butterfish DAH is projected to be landed on or after October 1, a 600-lb (0.27-mt) incidental butterfish possession limit is put in effect for the remainder of the year. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of butterfish permits at least 72 hr before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**.

The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 80 percent of the DAH for butterfish in 2009 fishing year will be harvested. Therefore, effective 0001 hours, November 25, 2009, the directed fishery for butterfish fishery is closed and vessels issued Federal permits for butterfish may not retain or land more than 600 lb (0.27 mt) of butterfish during a calendar day. The directed fishery will reopen effective 0001 hours, January 1, 2010, when the 2010 DAH becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action closes the butterfish fishery until December 31, 2009, under current regulations. The regulations at § 648.21 require such action to ensure that butterfish vessels do not exceed the 2009 TAC. Data indicating the butterfish fleet will have landed at least 80 percent of the 2009 TAC have only recently become available. If implementation of this closure is delayed to solicit prior