

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 this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation since implementation of this action will not result in any significant cumulative impacts on the human environment; does not involve a substantial change to existing environmental conditions; and is consistent with Federal, State, and/or local laws or administrative determinations relating to the environment. This rule involves establishing a safety zone.

Pursuant to paragraph (34)(g) of the Instruction, an environmental checklist and a categorical exclusion checklist are available in the docket indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

#### PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

**Authority:** 14 U.S.C. 85; 43 U.S.C. 1333; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.T08-849 to read as follows:

#### § 147.T08-849 DEEPWATER HORIZON Mobile Offshore Drilling Unit Safety Zone.

(a) *Location.* All areas within 500 meters (1640.4 feet) around the position of the riser at 28-44-18N and 088-21-54W are part of a safety zone. This area surrounds the DEEPWATER HORIZON, a Mobile Offshore Drilling Unit (MODU), that sank in the deepwater area of the Gulf of Mexico near Mississippi Canyon 252. The riser, which is attached to the seabed of the Outer Continental Shelf, is still in place and discharging oil.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

- (1) An attending or first response vessel; or
- (2) A vessel authorized by the Commander, Eighth Coast Guard District or a designated representative.

Dated: May 24, 2010.

**J.E. Tunstall,**

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

[FR Doc. 2010-13644 Filed 6-7-10; 8:45 am]

**BILLING CODE 9110-04-P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0139]

RIN 1625-AA11

#### Regulated Navigation Area; Gulf Intracoastal Waterway, Inner Harbor Navigation Canal, Harvey Canal, Algiers Canal, New Orleans, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Coast Guard is establishing a regulated navigation area (RNA) to prohibit all vessels from being within the Inner Harbor Navigation Canal (IHNC), Harvey Canal, and Algiers Canal during severe hurricane

conditions. Vessels will not be permitted to stay in the RNA past 24 hours in advance of and through the storm passage, except those vessels moored pursuant to mooring plans approved by the Captain of the Port. Alternate routes exist for vessels to transit around or depart from the RNA. This RNA is needed to protect the floodwalls, levees, and adjacent communities within the IHNC, Harvey, and Algiers Canals from potential hazards associated with vessels being in this area during a hurricane.

**DATES:** This interim rule is effective in the CFR on June 8, 2010. This rule is effective with actual notice for purposes of enforcement on May 21, 2010. Comments and related material must be received by the Coast Guard on or before July 8, 2010. Requests for public meetings must be received by the Coast Guard on or before June 18, 2010.

**ADDRESSES:** You may submit comments identified by docket number USCG-2009-0139 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this interim rule, call or e-mail Lieutenant Commander (LCDR) Marty Daniels, Coast Guard; telephone 504-565-5044, e-mail [William.M.Daniels@uscg.mil](mailto:William.M.Daniels@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include

any personal information you have provided.

### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0139), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the “submit a comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu select “Proposed Rule” and insert “USCG–2009–0139” in the “Keyword” box. Click “Search” then click on the balloon shape in the “Actions” column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the “read comments” box, which will then become highlighted in blue. In the “Keyword” box insert “USCG–2009–0139” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington,

DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before 10 days after date of publication in the **Federal Register**, using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Regulatory Information

On 14 May, 2009 we published a notice of proposed rulemaking (NPRM) entitled “Regulated Navigation Area; Gulf Intracoastal Waterway, Inner Harbor Navigation Canal, New Orleans, LA” in the **Federal Register** (74 FR 22722). No public hearings were held. We received 7 comments on the proposed rule.

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**. A 30 day delay would be contrary to the public interest in avoiding floodwall or levee damage, and resulting flooding, in the event of a hurricane or other storm surge. The interim rule establishes a regulated navigation area that would be enforced only in the relatively infrequent event of such conditions. The hurricane season begins on June 1 of each year and a 30 day delay would leave the New Orleans area unprotected by this RNA for the first portion of the 2010 hurricane season.

### Basis and Purpose

The legal basis for this interim rule is the Coast Guard’s authority to establish regulated navigation areas under 33 CFR part 165 and the statutes and delegation cited therein. The purpose of this interim rule is to establish an RNA to protect floodwalls and levees in the New Orleans area from possible storm

surge damage from moored barges and vessels, and to avoid damaging flooding in the New Orleans area that could result from any resulting damage to floodwalls and levees. We request public comments on this interim rule and will amend or rescind it if public comments indicate a need to do so. Moreover, we intend to reevaluate the need for the RNA established by this interim rule, upon completion of the U.S. Army Corps of Engineers Gulf Intracoastal Waterway Surge Barrier project and the West Closure Complex project, both scheduled for completion by June 1, 2011.

During Hurricanes Katrina and Gustav, multiple barges and vessels were moored next to or nearby floodwalls and levees surrounding the City of New Orleans. During Hurricane Gustav, several vessels broke free in the Inner Harbor Navigation Canal and nearly damaged the Almonaster Street Bridge. If the storm surge had been higher, they might have struck and damaged nearby floodwalls, re-creating the flooding of New Orleans that followed Katrina. As a result, following the 2008 hurricane season, the State of Louisiana requested that the Coast Guard prohibit vessels from the IHNC, in New Orleans. Subsequent to this request, the Coast Guard determined that certain regions in the New Orleans area are at risk of flooding from vessels which might break free during a storm and damage floodwalls and levees. This interim rule attempts to respond to these perceived risks.

### Discussion of Comments and Changes

We received 7 comments in response to our NPRM. Some of these were received late but all late comments were reviewed and considered.

One commenter expressed three concerns with the NPRM’s proposed RNA: (1) It could eliminate a safe haven for over 100 barges that currently take refuge in the proposed restricted area during hurricane conditions; (2) it did not adequately address waivers; and (3) it did not address when it would terminate. The commenter also made two requests of the Coast Guard: (1) To identify alternate locations for vessels to moor during hurricanes to mitigate the risk from barges breaking away and causing damage; and (2) to establish a Command Center with the U.S. Army Corps of Engineers (USACE) and area stakeholders to identify the locking priority of USACE equipment located in the RNA before it takes effect.

There are many other waterways throughout the Eighth District in which vessels can travel and moor. The Coast Guard does not feel that a specific safe

haven needs to be identified. The interim rule allows vessels applying for a waiver to stay in the RNA pending approval of the waiver by the Captain of the Port, New Orleans (COTP).

With regard to termination of the RNA, the need for the RNA will be reevaluated upon completion of the U.S. Army Corps of Engineers' (USACE) Gulf Intracoastal Waterway Surge Barrier and West Closure Complex projects, which is anticipated by June 1, 2011. Since the publication of the NPRM, the USACE equipment located in the RNA has been reduced by 75% and the Coast Guard does not feel that a Command Center is needed to address this issue any longer. We will continue to cooperate with the maritime industry to ensure an efficient locking process is in place based on Joint Hurricane Team Protocols.

One commenter requested that the Algiers Canal be included in the RNA due to the potential for flooding of the New Orleans west bank area if a breakaway vessel caused a breach of the canal levees. The Coast Guard agrees and has added the Algiers Canal, from the Algiers Lock to the intersection of the Algiers Canal and the Harvey Canal, in this interim rule.

One commenter suggested that a contingency plan be developed for vessels that are prevented from departing the Inner Harbor Navigation Canal, due to a bridge or lock malfunction, prior to experiencing severe hurricane conditions. The Coast Guard agrees and this interim rule provides ways to request a waiver from the COTP if a vessel is prevented from departure due to a bridge or lock malfunction.

One commenter conveyed that the Harvey and Algiers Canals have traditionally been safe havens for vessels escaping the weather and water fluctuations on the Mississippi River. Concern was also expressed for the volume of equipment that would have to be evacuated from the Harvey Canal. The Coast Guard understands that the Harvey and Algiers Canals have been used as safe havens and considered this when drafting this interim rule. The interim rule addresses this concern by allowing vessels to stay in the RNA if they have mooring plans approved by the COTP. Concerns regarding the evacuation of equipment are largely resolved with the reduction of USACE construction equipment by 75% since last year. Vessel and equipment congestion transiting through these areas will continue to be tempered as time progresses. Additionally, some congestion during evacuation will be relieved by the interim rule's waiver

options; vessels with waivers will not be required to depart.

One commenter was concerned about the lack of tugs and personnel available to move equipment, the amount of time it would take to move equipment, and the congestion that would result from moving equipment out of the RNA. Additionally, the commenter was concerned about the inclusion of the Algiers Canal in the RNA due to the protection it affords vessels and equipment in the canal, and the vulnerability that would be created for the equipment and vessels by requiring evacuation of this area. The concerns regarding the equipment have been resolved by the 75% reduction in construction traffic in the regulated areas throughout the past year, and the Coast Guard believes that there will be a significant number of vessels and facilities which could have approved mooring plans. Therefore, with the reduced number of vessels that would need to be evacuated, the Coast Guard feels that the availability of tugs and personnel would be sufficient to move the equipment remaining in the RNA in the given amount of time. The Coast Guard notes the concern regarding inclusion of the Algiers Canal but feels that it needs to be included as a RNA. Concerns regarding the congestion that would result from moving equipment out of the RNA are reduced with the lower level of construction activity and the anticipated number of vessels with approved mooring plans.

One commenter requested that the Coast Guard conduct outreach efforts to provide companies with adequate notice about the rule. The commenter also requested that the RNA be implemented as a temporary measure to address the possibility of vessel breakaways until the new West Closure Complex flood protection system is constructed just west of the RNA. The concern regarding outreach has been addressed; the Coast Guard has and will continue to conduct outreach efforts to provide adequate notice for this rule. With the publication of this interim rule, the public has a second opportunity to provide comments on the RNA. The Coast Guard agrees with the reevaluation of the need for the RNA upon the completion of the West Closure Complex. This interim rule will be reevaluated upon completion of the USACE Gulf Intracoastal Waterway Surge Barrier project and the West Closure Complex project, both scheduled for completion by June 1, 2011.

Jefferson Parish officials called a public meeting to learn more about the issues after some of their constituents received COTP orders informing them

that they were not able to remain in their current location in the event of a hurricane during the 2009 season. Vessel and facility operators were ordered to immediately remove vessels and any other objects that might break free and cause damage, in anticipation of the imminent arrival of a hurricane. The COTP issued these orders as a result of previous events that occurred during the landfall of Hurricane Gustav, which made it clear to the COTP that preemptive measures must be taken to prevent damage to or destruction of bridges, floodwalls, and other structures on, in, or adjacent to the navigable waters on the IHNC. The COTP attended this meeting on August 13, 2009. A synopsis of this meeting can be found on the public docket. Based on comments received from the public at the meeting, we included in this interim rule the opportunity for vessels to request waivers to remain in the RNA.

#### Discussion of Rule

Under the interim rule, all vessels are prohibited from being within the Inner Harbor Navigation Canal, Harvey Canal, and Algiers Canal during severe hurricane conditions. Those conditions include:

(1) Predicted winds of 74 miles per hour (mph) or more and/or a predicted storm surge of 8 feet or more for the Inner Harbor Navigation Canal;

(2) Predicted winds of 111 mph or more and/or a predicted storm surge of 10.5 feet or more for the Harvey and Algiers Canals through post storm landfall, or other hurricane or tropical storm conditions as determined by the Captain of the Port; or

(3) Other hurricane or tropical storm conditions expected to inflict significant damage to low lying and vulnerable shoreline areas, as determined by the COTP through National Weather Service/Hurricane Center weather predictions.

The affected areas include:

(1) The Inner Harbor Navigation Canal from Mile Marker 22 (West of Chef Menteur Pass) on the Gulf Intracoastal Waterway, west through the Gulf Intracoastal Waterway and the Inner Harbor Navigation Canal, out to Lake Ponchartrain and to the Mississippi River in New Orleans, LA;

(2) The Harvey Canal, between the Lalpco Boulevard Bridge and the intersection of the Harvey Canal and the Algiers Canal; and

(3) The Algiers Canal, from the Algiers Lock to the intersection of the Algiers Canal and the Harvey Canal.

Vessels will not be permitted to stay in these areas past 24 hours in advance of and through the storm passage,

except with a mooring plan approved by the Captain of the Port. In the event that a particularly dangerous storm is predicted to have winds and/or storm surge which significantly exceeds the conditions outlined above, the Captain of the Port could implement the provisions of this regulated navigation area 72 hours in advance of the above stated conditions.

The surge levels of concern were determined to be at 8 feet for the IHNC and 10.5 feet for the Algiers and Harvey Canals respectively through collaboration between the U.S. Coast Guard, the National Weather Service (NWS), the National Oceanic and Atmospheric Administration (NOAA), and the U.S. Army Corps of Engineers (USACE). Currently, in the Harvey and Algiers Canals, a surge of 10.5 feet is required for vessels to reach and cause damage to floodwalls and levees. A surge of 8 feet is required to overtop portions of the Gulf Intracoastal Waterway floodgate, which will be protecting the IHNC from storm surge beginning in May 2010.

The need for the RNA will be reevaluated upon completion of the U.S. Army Corps of Engineers' Gulf Intracoastal Waterway Surge Barrier project and the West Closure Complex. Both are scheduled to be completed by June 1, 2011. The surge barriers are designed to reduce the risk of storm damage to some of the area's most vulnerable areas—New Orleans East, metro New Orleans, the 9th Ward, St. Bernard Parish, Gretna, and Algiers. These projects aim to protect these areas from storm surge coming from the Gulf of Mexico via adjacent bodies of water. This interim rule provides the necessary measures to protect the port infrastructure until these projects are completed. We intend to reevaluate these measures at that time. Under the interim rule, the COTP could impose measures, such as requirements for additional standby vessels, in addition to the barge mooring regulations in 33 CFR 165.803. Transient vessels (such as vessels from Houma, Fourchon, Lafitte, etc.) will only be permitted to seek safe haven in these areas during a hurricane if they have a prearranged agreement with a facility in the RNA, or a COTP-approved waiver for sheltering in place.

Alternate routes exist for vessels to transit around or depart from the areas affected by this interim rule.

We do not anticipate that this interim rule would need to be enforced very often. Historically, it would have been implemented only three times over the past five year period: For Hurricanes Cindy, Katrina, and Gustav.

### Regulatory Analyses

We developed this interim rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 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. This interim rule intends to regulate only during specified time periods and based on comments received and addressed and anticipated approved mooring plans, this interim rule will not reach the level of a significant regulatory action, requiring no assessment of potential costs and benefits under section 6(a)(3) of the Executive Order. The Office of Management and Budget has not reviewed it under that Order.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this interim rule 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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this interim rule would not have a significant economic impact on a substantial number of small entities. This interim rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the defined area effective in advance implementation of the measures of this interim rule. Small entities have the option of sheltering in place during tropical cyclone activity by submitting, and having approved, a mooring plan that explains how the small entity intends to ensure safe conditions on the navigable waterways during a hurricane. In addition, alternate routes for vessel traffic exist for transit around or departure from the area before the Regulated Navigation Area goes into effect.

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

### Collection of Information

This interim rule would call 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 interim 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 interim rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This interim rule would not cause 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 interim 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 interim rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This interim rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This interim rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this interim 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 interim rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this interim rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, 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 this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This interim rule involves establishing a regulated navigation area in the Inner Harbor Navigation Canal (IHNC), Harvey Canal and Algiers Canal which is categorically excluded under figure 2-1, paragraph (34)(g) of the Instruction. An environmental analysis checklist supporting this determination

is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this interim rule.

### 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 as follows:

**Authority:** 33 U.S.C. 1226, 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; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.838 to read as follows:

#### § 165.838 Regulated Navigation Area; New Orleans Area of Responsibility, New Orleans, LA

(a) *Regulated Navigation Area.* The following is a regulated navigation area (RNA):

(1) The Inner Harbor Navigation Canal (IHNC) from Mile Marker 22 (west of Chef Menteur Pass) on the Gulf Intracoastal Waterway, west through the Gulf Intracoastal Waterway and the Inner Harbor Navigation Canal, out to Lake Ponchartrain and to the Mississippi River in New Orleans, LA;

(2) The Harvey Canal, between the Lapalco Boulevard Bridge and the intersection of the Harvey Canal and the Algiers Canal of the Intracoastal Waterway; and

(3) The Algiers Canal, from the Algiers Lock to the intersection of the Algiers Canal and the Harvey Canal.

(b) *Definitions.* As used in this section:

*COTP* means the Captain of the Port, New Orleans; and

*Floating vessel* means any floating vessel to which the Ports and Waterways Safety Act, 33 U.S.C. 1221 *et seq.*, applies.

(c) *Enforcement.* (1) The provisions of this paragraph (c) will be enforced only 24 hours in advance of, and during the duration of, any of the following predicted weather conditions:

(i) Predicted winds of 74 miles per hour (mph) or more or a predicted storm surge of 8 feet or more for the Inner Harbor Navigation Canal;

(ii) Predicted winds of 111 mph or more and/or a predicted storm surge of

10.5 feet or more for the Harvey or Algiers Canals through post storm landfall, or other hurricane or tropical storm conditions as determined by the COTP; or

(iii) Other hurricane or tropical storm conditions expected to inflict significant damage to low lying and vulnerable shoreline areas, as determined by the COTP through National Weather Service/Hurricane Center weather predictions.

(2) In the event that a particularly dangerous storm is predicted to have winds or storm surge significantly exceeding the conditions specified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section, the COTP may begin enforcement 72 hours in advance of the predicted conditions.

(3) During enforcement:

(i) All floating vessels are prohibited from entering or remaining in the RNA except pending approval of a waiver request made in accordance with paragraph (d) of this section or as authorized by a waiver approved by the COTP in accordance with paragraph (d);

(ii) Transient vessels will not be permitted to seek safe haven in the RNA except in accordance with a prearranged agreement between the vessel and a facility within the RNA, or as authorized by a waiver approved by the COTP in accordance with paragraph (d) of this section.

(4) The COTP will announce enforcement periods through Marine Safety Information Bulletins and Safety Broadcast Notices to Mariners.

(d) *Waivers.* (1) Upon request of the vessel owner or operator, the COTP may waive any provision of paragraph (c) of this section, if the COTP finds that the vessel's proposed operation can be conducted safely under the terms of that waiver.

(2) A request for waiver must be in writing, except as provided by paragraph (d)(3) of this section, and must describe or provide:

(i) The reason for requesting the waiver;

(ii) The vessel's current operations;

(iii) The name of any intended mooring facility, the specific mooring location within that facility, and a list of vessels routinely engaged in business at that facility;

(iv) The vessel's proposed operation during the RNA enforcement period, including intended mooring arrangements that comply with 33 CFR 165.803 and the mooring facility's equipment for supporting those arrangements; and

(v) Contact information for the vessel owner or operator during the RNA enforcement period.

(3) Under unusual circumstances due to time constraints, such as the malfunction of a bridge or lock within the RNA, the person in charge of a vessel may orally request an immediate waiver from the COTP, but the vessel owner or operator must send written confirmation of the request, containing the information required by paragraph (d)(2) of this section, to the COTP within five days of the oral request.

(4) The COTP may condition approval of a waiver request on the vessel owner's or operator's taking measures additional to those proposed in the waiver request, and may terminate a waiver at any time, if the COTP deems it necessary to provide safety.

(e) *Penalties.* Failure to comply with this section may result in civil or criminal penalties pursuant to the Ports and Waterways Safety Act, 33 U.S.C. 1221 et seq.

(f) *Notice of enforcement.* The COTP will notify the maritime community of periods during which this regulated navigation area will be enforced by providing advance notice through a Marine Safety Information Bulletin and Safety Broadcast Notice to Mariners.

Dated: May 24, 2010.

**J.E. Tunstall,**

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

[FR Doc. 2010-13641 Filed 6-7-10; 8:45 am]

BILLING CODE 9110-04-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0315]

RIN 1625-AA00

#### Safety Zones; Marine Events Within the Captain of the Port Sector Northern New England Area of Responsibility, July Through September

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary interim rule with request for comments.

**SUMMARY:** The Coast Guard is establishing 51 safety zones for marine events within the Captain of the Port Sector Northern New England area of responsibility for regattas, swim events, power boat races, row and paddle boat races, parades, and firework displays. This action is necessary to provide for the safety of life on navigable waters during the events. Entry into, transit through, mooring or anchoring within these zones is prohibited unless

authorized by the Captain of the Port Sector Northern New England.

**DATES:** This rule is effective in the CFR on June 8, 2010 through 11:59 p.m. on September 29, 2010. This rule is effective with actual notice for purposes of enforcement beginning at 8 p.m. on July 3, 2010. Comments and related material must reach the Coast Guard on or before July 23, 2010. Requests for public meetings must be received by the Coast Guard on or before June 29, 2010.

**ADDRESSES:** You may submit comments identified by docket number USCG-2010-0315 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0315 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0176 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 interim rule, call or e-mail Lieutenant Junior Grade Laura van der Pol, Waterways Management Division at Coast Guard Sector Northern New England, telephone 207-741-5421, e-mail [Laura.K.vanderPol1@uscg.mil](mailto:Laura.K.vanderPol1@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

As this temporary interim rule will be in effect before the end of the comment period, the Coast Guard will evaluate and revise this rule as necessary to address significant public comments.

### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2010-0315), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2010-0315" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble