



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0051]

RIN 1625-AA00

Safety Zones; Ice Covered Waterways in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On July 9, 2015, the Coast Guard published a notice of proposed rulemaking (NPRM) to establish a regulated navigation area (RNA) on the navigable waters of the Fifth Coast Guard District to allow the Coast Guard to impose and enforce restrictions on vessels operating within the RNA where a threat to navigation exists due to ice covered waterways. Based on consideration of the comments received in response to that NPRM and further analysis, the Coast Guard is now proposing to establish 11 safety zones on certain navigable waters of the Fifth Coast Guard District instead of 1 RNA. This action is necessary to promote navigational safety, provide for the safety of life and property, and facilitate the reasonable demands of commerce when navigation safety is threatened due to ice covered waterways. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE

FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-0051 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Tiffany Johnson, Fifth Coast Guard District, U.S. Coast Guard; telephone 757-398-6516, email tiffany.a.johnson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
RNA	Regulated Navigation Area
SNPRM	Supplemental Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

A. Regulatory History and Information

The purpose of this proposed regulation is to mitigate the potential threat ice poses to the maritime public in the Fifth Coast Guard District by implementing control measures on vessels operating in certain ice-covered waterways. During an average or severe winter, the presence of ice in waterways presents numerous hazards to vessels. Such hazards include vessels becoming beset or dragged off course, sinking or grounding and creating hazards to navigation. The presence of ice in a waterway may hamper a vessel’s ability to maneuver and impose additional loads on a vessel’s hull, propulsion system and appendages. Blockage of sea suction can cause the main engine cooling

system to overheat, requiring reduced power to be used or the engine to be shut down completely. Visual aids to navigation may become submerged, destroyed, or moved off station, potentially misleading the vessel operator to unsafe waters. Vessels operating in these hazardous conditions could introduce a clear and present danger to the maritime public and environment.

B. Discussion of Comments on NPRM and Changes

On July 9, 2015, the Coast Guard published an NPRM titled Regulated Navigation Area; Ice Covered Waterways in the Fifth Coast Guard District (80 FR 39403). The purpose of that proposed regulated navigation area (RNA) was to mitigate the aforementioned potential threat ice poses to the maritime public in the Fifth Coast Guard District by implementing control measures on vessels of certain characteristics. We invited comments on our proposed regulatory action related to that RNA. During the comment period that ended October 7, 2015, we received a total of six comments coming from six submitters. No public meeting was requested, and none was held.

Five comments assert that there is no need for this rule because existing Coast Guard methods for ensuring vessel safety are adequate given the practices they have witnessed while operating in the Fifth Coast Guard District in the past. The Coast Guard disagrees that no rule is needed to implement and enforce restrictions on vessels operating where a threat to navigation exists due to ice covered waterways. In the past, Captains of the Ports (COTP) in the Fifth Coast Guard District ensured navigation and vessel safety in ice-covered waterways by establishing temporary safety zones or using other COTP authorities.

This proposed rule would establish 11 permanent safety zones and eliminate the need for the Coast Guard to publish several temporary final rules throughout future ice seasons. The safety zones proposed in this SNPRM are the most appropriate from a regulatory perspective and will ensure consistency throughout the Fifth Coast Guard District. While the regulatory method may be different, the effect on the regulated public is largely the same in that there will be restrictions on navigating based upon prevailing ice conditions and vessel hull, propulsion, sea suction and appendage characteristics.

One comment specifically stated that the Coast Guard already has sufficient authority to control vessel movements under 33 CFR part 6, and therefore the proposed RNA is not needed. The Coast Guard finds relying solely on the authority provided by 33 CFR part 6 is not feasible when ice presents hazardous conditions. Sole reliance on this authority involving the protection and security of vessels, harbors, and waterfront facilities would require the COTP to take individualized action against every vessel desiring to operate in the area, which is counter to public interest due to the significant amount of time it would take to issue and administer an effective amount of orders.

Two comments noted that the decision to transit an ice-covered waterway is best made by an operator that is aware of the prevalent ice conditions and the proposed RNA is not needed. In addition to the aforementioned reasons why this rule is needed, the COTP considers the holistic risk on the waterway when restricting maritime traffic due to ice-related hazards, which is not the responsibility of any individual vessel or class of vessels. In fact, despite vessel restrictions being in place in March of 2015, two commercial vessels operating in the Fifth Coast Guard District during that time were negatively affected by ice, resulting in an emergency condition onboard that presented a

risk to other operators and the surrounding marine environment. This SNPRM proposed rule would afford vessels operators that believe they can safety operate in the prevailing conditions the opportunity to request permission from the COTP to deviate from the restrictions.

Three comments expressed concern regarding the burden this regulation would place on the Coast Guard. The safety zones established by this proposed rule would eliminate the need for the Coast Guard to publish several temporary final rules to establish safety zones throughout future periods of ice accumulation. The Coast Guard also concluded that the notification activities associated with this rule do not place any additional burden on the Coast Guard when compared with implementing other COTP control measures. Furthermore, this regulation would be a permanent rule, would provide for public participation in the rulemaking process, and would establish uniform ice condition control measures to be implemented in the Fifth Coast Guard District to facilitate safe navigation.

One comment received posited the proposed RNA would result in undue economic hardship for commercial vessels. The Coast Guard weighs many factors in its decision to restrict vessel operations in a waterway, specifically focused on ensuring the safe, secure, and environmentally sound transportation of people, goods, and material by water. The Coast Guard has and will continue to use all available resources to safely and efficiently monitor the conditions of the designated waters of the safety zones to minimize impact to waterway users.

Two comments were received that the geographic area defined in the NPRM would be difficult for the Coast Guard to implement or enforce due its size. As stated in

this SNPRM, the proposed regulated area has been delineated into 11 safety zones rather than 1 RNA. The cognizant COTPs enforce a wide array of control measures in these same geographic areas.

An anonymous commenter focused on North Carolina waters in the Fifth Coast Guard District. That person's comment recommended that regulators consider inland ponds, streams, marshes, rivers, lakes, reservoirs, and other waters, and concluded that the rule proposed in the NPRM – which would cover all navigable waters in the Fifth Coast Guard District, including those in North Carolina – appears redundant, and difficult to interpret or enforce outside of major seaport areas in North Carolina. We were unable to obtain clarification from this anonymous commenter regarding the desired consideration to be applied to the various waters mentioned, but we believe this SNPRM, which does not propose to regulate any North Carolina waters, addresses this commenter's concerns.

Upon review of the comments and further analysis, the Coast Guard is proposing to change the regulatory method by which control measures would be implemented from 1 regulated navigation area to 11 safety zones throughout the navigable waters of the Fifth Coast Guard District. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of SNPRM Proposed Rule

This proposed rule would establish 11 safety zones on the navigable waters of the Fifth Coast Guard District. We have placed an illustration of these safety zones in the docket for this rulemaking. This proposed rule would allow the Coast Guard to impose and enforce restrictions on vessels operating within the safety zones where a threat to

navigation exists due to ice covered waterways. This action is necessary to promote navigational safety, provide for the safety of life and property, and facilitate the reasonable demands of commerce. Vessels transiting in protected waters, such as within a marina, harbor or basin, for the purposes of facilitating icebreaking operations and protecting infrastructure and property would be exempt from the controls. Vessels capable of operating in the prevailing ice condition outside of protected waters may be allowed to operate within the safety zones if granted permission by the cognizant COTP.

Under this proposed rule, a vessel would need permission from the cognizant COTP or the District Commander to enter or continue transiting a zone if, when approaching or after entering a safety zone, the vessel encounters ice of a given thickness, unless the COTP or the District Commander has set an ice condition for the zone and the vessel meets the associated requirements to transit the zone. Here is a description of the three ice conditions and vessels requirements to transit. Under:

- Condition One, when 30 percent of a zone is reported covered with ice 1 to 3 inches thick, only steel hull vessels would be allowed to transit the zone;
- Condition Two, when 30 to 90 percent of a zone is reported covered with ice 3 to 9 inches thick, only steel hull vessels with a 1,500 minimum shaft horsepower and a main engine cooling system design that prevents blockage from ice would be allowed to transit the zone; and
- Condition Three, when 90 percent or more of a zone is reported covered with ice 9 inches thick, only steel hull vessels with a 1,500 minimum shaft

horsepower and a main engine cooling system design that prevents blockage from ice in a vessel convoy would be allowed to transit the zone. For non-steel-hull vessels, entry into or continuing to transit the zone would be prohibited without permission from the cognizant COTP or District Commander if, when approaching the zone or after entering the safety zone, the vessel encounters ice of 1/2-inch or more in thickness. When this thickness of ice is reached in a zone, non-steel hulled vessels moored or docked in the zone need not exit the zone, but these vessels may not transit the zone without permission of the cognizant COTP or District Commander. There would be an exemption for vessels that need to transit in protected waters, such as within a marina, harbor, or basin, to facilitate icebreaking operations and protect infrastructure and property. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not

been reviewed by the Office of Management and Budget.

Although this proposed regulation could limit or prevent marine traffic from transiting certain waterways in the Fifth Coast Guard District, the effect of this regulation would not be significant because there is little vessel traffic associated with recreational boating and commercial fishing during enforcement periods. The Coast Guard anticipates only having to implement control measures for limited durations of time. The cognizant COTP will make notifications of the regulated areas to the maritime public via Broadcast Notice to Mariners so mariners can adjust their plans accordingly. Moreover, vessel traffic capable of operating in such conditions will be allowed to enter into or transit within the safety zones as specified by the cognizant COTP.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated areas may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on

it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing safety zones. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this SNPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be

viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

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

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.550 to read as follows:

§ 165.550 Safety Zones; Ice Covered Waterways within the Fifth Coast Guard District.

- (a) Regulated areas. The following areas are established as safety zones:

(1) *Coast Guard Sector Delaware Bay- COTP Zone.* (i) *Delaware Bay:* All waters of Delaware Bay and Delaware River, shoreline to shoreline, in an area bound to the south by a line drawn across the entrance to Delaware Bay, commencing at Cape May Light (LLNR 155) latitude 38°55'59" N., longitude 074°57'37" W.; thence southwest to Cape Henlopen, latitude 38°48'20.3" N., longitude 075°05'44.5" W. The regulated area is bound to the north by a line drawn across the Delaware River, commencing at Liston Point, DE, latitude 39°25'03.07" N., longitude 075°32'25.5" W.; thence northeast to the shoreline at Hope Creek Jetty, latitude 39°27'05.04" N., longitude 075°30'12.55" W.

(ii) *Delaware River*: All waters of Delaware River, shoreline to shoreline, in an area bound to the south by a line drawn across the Delaware River, commencing at Liston Point, DE, latitude 39°25'03.07" N., longitude 075°32'25.5" W.; thence northeast to the shoreline at Hope Creek Jetty, latitude 39°27'05.04" N., longitude 075°30'12.55" W., including the navigable waters of the Salem River, Christina River, and Schuylkill River. The regulated area is bound to the north by a line drawn across the Delaware River, that is parallel with the Betsy Ross (state route 90) fixed highway Bridge.

(iii) *Upper Delaware River*: All waters of Delaware River, shoreline to shoreline, in an area bound to the south by a line drawn across the Delaware River, parallel with the Betsy Ross (state route 90) fixed highway Bridge. The regulated area is bound to the north by a line drawn across the Delaware River, that is parallel with the Trenton—Morrisville (state route 1) highway Bridge.

(iv) *New Jersey Intracoastal Waterway*: All waters of New Jersey Intracoastal Waterway (NJICW), shoreline to shoreline, commencing at entrance to Manasquan Inlet, continuing west along Manasquan River thence south at Junction Light NJICW (LLNR 34980), to the entrance of Point Pleasant Canal; and continuing south the entire length of NJICW, terminating at the entrance to Cape May Inlet, Cape May, NJ.

(2) *Coast Guard Sector Maryland-National Capital Region- COTP Zone. (i) Head of Chesapeake Bay to C&D Canal*: All waters of the Upper Chesapeake Bay, shoreline to shoreline, and its tributaries, bound to the north by a line drawn from Hylands Point, MD, latitude 39°30'18" N., longitude 075°55'37" W.; thence east across Elk River to the shoreline at Old Town Point Wharf, MD, latitude 39°30'11.3" N., longitude 075°54'57.1" W. The regulated area is bound to the south by a line drawn

across the Chesapeake Bay, commencing at North Point, MD, latitude 39°11'43.7" N., longitude 076°26'32.8" W.; thence east to the shoreline at Swan Point, latitude 39°08'41.7" N., longitude 076°16'42.4" W.

(ii) *Baltimore Harbor and approaches*: All waters of the Chesapeake Bay, shoreline to shoreline, and its tributaries, bound to the north by a line drawn across the Chesapeake Bay, commencing at North Point, MD, latitude 39°11'43.7" N., longitude 076°26'32.8" W.; thence east to the shoreline at Swan Point, latitude 39°08'41.7" N., longitude 076°16'42.4" W. The regulated area is bound to the south by a line drawn across the Chesapeake Bay, parallel with the north span of the William P. Lane, Jr (US-50/301) Memorial Bridges.

(iii) *Chesapeake Channel to Cove Point*: All waters of the Chesapeake Bay, shoreline to shoreline, and its tributaries, bound to the north by a line drawn across the Chesapeake Bay, parallel with the north span of the William P. Lane, Jr (US-50/301) Memorial Bridges. The regulated area is bound to the south by a line drawn across the Chesapeake Bay along latitude 38°23'10.5" N., commencing at Cove Point, in Calvert County, MD.

(iv) *Chesapeake Channel between Cove Point and Smith Point, and Lower Potomac River*: All waters of Chesapeake Bay, shoreline to shoreline, and its tributaries, bound to the north by a line drawn across the Chesapeake Bay along latitude 38°23'10.5" N., commencing at Cove Point, in Calvert County, MD; and all waters of the Potomac River, shoreline to shoreline, bound to the north by a line drawn across the Potomac River, parallel with the Governor Harry W. Nice (US-301) Memorial Bridge, connecting King George County, VA and Charles County, MD. The regulated area is bound to the

south by a line drawn across the Chesapeake Bay along the Virginia/Maryland state boundary line, commencing at Smith Point, VA.

(v) *Potomac River*: All waters of the Potomac River, shoreline to shoreline, bound to the north by a line drawn across the Potomac River, parallel with the Woodrow Wilson Memorial (I-95/I-495) Bridge, connecting Alexandria, VA and Prince George's County, MD. The regulated area is bound to the south by a line drawn across the Potomac River, parallel with the Governor Harry W. Nice (US-301) Memorial Bridge, connecting King George County, VA and Charles County, MD.

(vi) *Upper Potomac River and Anacostia River*: All waters of Potomac River, shoreline to shoreline, bound to the north by a line drawn across the Potomac River, parallel with the Francis Scott Key (US-29) Bridge, connecting Rosslyn, VA and Georgetown, Washington, D.C., and bound to the south by a line drawn across the Potomac River, parallel with the Woodrow Wilson Memorial (I-95/I-495) Bridge, connecting Alexandria, VA and Prince George's County, MD. All waters of Anacostia River and Washington Channel, shoreline to shoreline, bound to the north by a line drawn across the Anacostia River, parallel with the John Philip Sousa (Pennsylvania Avenue SE) Bridge, and bound to the south by a line drawn across the mouth of the Anacostia River, from Hains Point, south across Anacostia River Channel to Giesboro Point at latitude 38°50'51" N., longitude 077°01'14" W. at Joint Base Anacostia—Bolling military installation.

(3) *Coast Guard Sector Hampton Roads- COTP Zone*. (i) *Chesapeake Bay and Tangier Sound*: All waters of Chesapeake Bay, shoreline to shoreline, and its tributaries, bound to the north by a line drawn across the Chesapeake Bay along the

Virginia/Maryland state boundary line, commencing at Smith Point, in Northumberland County, VA. The regulated area is bound to the south by a line drawn across the Chesapeake Bay along latitude 37°45'00.0" N., commencing at Chesconessex, in Accomack County, VA.

(ii) [Reserved]

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

Convoy means a group of vessels led by U.S. Coast Guard assets or COTP-designated vessels to assist vessels moving through the ice.

COTP means the Coast Guard Captain of the Port with jurisdiction over the geographic area as defined in 33 CFR subpart 3.25.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the cognizant COTP to assist in enforcing the safety zones described in paragraph (a) of this section.

Horsepower means the total maximum continuous shaft horsepower of a vessel's main propulsion machinery.

Ice Condition One means when the COTP or District Commander has received reports that approximately 30 percent of a safety zone defined in paragraph (a) has been covered with ice whose thickness is approximately 1 to 3 inches.

Ice Condition Two means when the COTP or District Commander has received reports that approximately 30 percent to 90 percent of a safety zone defined in paragraph (a) has been covered with ice whose thickness is approximately 3 to 9 inches.

Ice Condition Three means when the COTP or District Commander has received reports that approximately 90 percent or more of a safety zone defined in paragraph (a)

has been covered with ice whose thickness is 9 inches or thicker.

Protected waters means sheltered waters such as harbors or basins that present no special hazards.

Public vessel means a vessel that is owned and operated by the United States Government and is not engaged in commercial service, as defined in 46 U.S.C. 2101.

(c) *Regulations.* (1) *Non-steel hull vessels.* Non-steel hull vessels may not enter or transit within a safety zone described in paragraph (a) of this section without permission from the cognizant COTP or District Commander if, when approaching the zone or after entering the zone, the vessel encounters ice of 1/2-inch or more in thickness. When ice in a zone is 1/2-inch thick or more, non-steel hull vessels moored or docked in the zone need not exit the zone. Except for as described in paragraph (d)(4), non-steel hull vessels may not enter or transit the zone without permission of the cognizant COTP or District Commander.

(2) *Steel hull vessels.* Except as provided in paragraph (d)(1) of this section, steel hull vessels may not enter or transit within a safety zone described in paragraph (a) of this section without permission from the cognizant COTP or District Commander in the following circumstances:

(i) The vessel has less than 1,500 minimum shaft horsepower and encounters ice 1 inch or more thick.

(ii) The vessel has a 1,500 minimum shaft horsepower and a main engine cooling system design that prevents blockage from ice and encounters ice 3 inches or more thick.

(iii) The vessel is part of a vessel convoy and has a 1,500 minimum shaft horsepower and a main engine cooling system design that prevents blockage from ice and

encounters ice 9 inches or more thick.

(d) *Permission to enter or transit.* (1) The COTP may set ice conditions, as defined in paragraph (b) of this section, for any zone described in paragraph (a) of this section, and announce those conditions via Broadcast Notice to Mariners and other methods described in 33 CFR 165.7. Steel hull vessels prohibited from entering or continuing transiting a safety zone under paragraph (c) of this section may nonetheless enter or continuing transiting the safety zone without contacting the COTP if the vessel is a public vessel, engaged in law enforcement, or the COTP has set an ice condition for the safety zone and the vessel meets these restrictions:

(i) *Ice Condition One.* Only steel hull vessels may enter, operate in, or transit though a safety zone when Ice Condition One has been set for that zone.

(ii) *Ice Condition Two.* Only steel hull vessels with a 1,500 minimum shaft horsepower and a main engine cooling system design that prevents blockage from ice, may enter, operate in, or transit though a safety zone when Ice Condition Two has been set for that zone.

(iii) *Ice Condition Three.* Only steel hull vessels with a 1,500 minimum shaft horsepower and a main engine cooling system design that prevents blockage from ice, and that are part of a vessel convoy, may enter, operate in, or transit though a safety zone when Ice Condition Three has been set for that zone. These vessels may only transit an Ice Condition Three zone during daylight hours.

(2) Vessels prohibited from entering or transiting a safety zone under paragraph (c) of this section may request permission to enter or continuing transiting by contacting the cognizant COTP on VHF-FM channel 16 (156.8 MHz) or via telephone, as follows:

(i) COTP Delaware Bay: 215-271-4940

(ii) COTP Maryland-National Capital Region: 410-576-2693

(iii) COTP Hampton Roads: 757-483-8567.

(3) Vessels granted permission to enter, operate in, or transit through a safety zone must do so in accordance with the directions provided by the cognizant COTP or designated representative.

(4) Vessels may transit within protected waters to facilitate icebreaking operations and protect infrastructure and property without COTP permission.

(e) *Enforcement.* The Coast Guard vessels enforcing this section can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz). The cognizant COTP and his or her designated representatives can be contacted at telephone number listed in paragraph (d)(2) of this section.

Dated: January 23, 2017.

MEREDITH L. AUSTIN,

Rear Admiral, U.S. Coast Guard,

Commander, Fifth Coast Guard District.

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