



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: Final rule.

SUMMARY: The Coast Guard is establishing 11 safety zones on certain navigable waters of the Fifth Coast Guard District. This action is necessary to promote navigational safety, provide for the safety of life and property, and facilitate the reasonable demands of commerce where a threat to navigation exists due to ice covered waterways. This rule is intended 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.

DATES: This rule is effective [INSERT DATE 30 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 Mr. Doug Simpson, Fifth Coast Guard District, U.S. Coast Guard; telephone 757-398-6346, email douglas.c.simpson@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 Information and Regulatory History

On July 9, 2015, the Coast Guard published a notice of proposed rulemaking (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.

Based on consideration of the comments received in response to the NPRM and further analysis, the Coast Guard proposed to establish 11 safety zones on certain navigable waters of the Fifth Coast Guard District instead of 1 RNA. On February 9, 2017, the Coast Guard published an SNPRM titled Safety Zones; Ice Covered Waterways

in the Fifth Coast Guard District (82 FR 9978). There we stated why we issued the SNPRM, replied to the comments received in response to the NPRM, and invited comments on the proposed regulatory action. During the comment period on the SNPRM that ended April 10, 2017, we received a total of 11 comments coming from four submitters. No public meeting was requested, and none was held.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Coast Guard has determined that 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. The purpose of this rule 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.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received 11 comments from four submitters on our SNPRM published February 9, 2017. One comment was generally supportive of the rule.

In response to one comment, we changed the regulatory text that defined the New Jersey Intracoastal Waterway to clarify the safety zone's northern boundaries. The safety zone's northern boundary uses the Fifth Coast Guard District's boundary as defined in 33 CFR 80.501(b)-(c) and 80.502. We changed the rule to define a position for the entrance to Manasquan Inlet. We also changed the rule to define the southern boundary of the zone at Cape May Inlet, Cape May, NJ as it is defined in 33 CFR 80.502 (g). We did not define the width of safety zone in areas where the New Jersey Intracoastal Waterway passes through open water areas, as the commenter requested. However, we changed the regulatory text to explicitly include the navigable waters Manasquan River at its tributaries, Metedeconk River and its tributaries, Toms River and Barnegat Bay and its tributaries, Mahahawkin Bay, Little Egg Harbor, Great Bay to Absecon Bay, Lakes Bay, Great Egg Harbor Bay, Peck Bay, Ludlam Bay, Townsend Sound, Stites Sound, Great Sound, Grassy Sound, Taylor Sound, Sunset Lake, Jarvis Sound and Cape May Harbor. The comment also requested we provide the horizontal Datum. We used NAD 83 and changed the regulatory text of each safety zone to incorporate that reference.

Two comments requested that the Coast Guard provide positions for the bridges that serve as boundaries for the Delaware River, Upper Delaware River, Baltimore Harbor and approaches, Chesapeake Channel to Cove Point, Chesapeake Channel between Cove Point and Smith Point, and Lower Potomac River, Potomac River, and the Upper Potomac River and Anacostia River zones. As a result, these positions were provided in the regulatory text where practical. The Coast Guard determined the positions by plotting the locations on National Oceanic and Atmospheric Administration (NOAA) nautical charts for the following bridges: Betsy Ross (state route 90) fixed

highway bridge, Trenton—Morrisville (state route 1) highway bridge, Governor Harry W. Nice (US-301) Memorial Bridge, Woodrow Wilson Memorial (I-95/I-495) Bridge, the Francis Scott Key (US-29) Bridge, and the John Philip Sousa (Pennsylvania Avenue SE) Bridge. The William P. Lane, Jr (US-50/301) Memorial Bridge is curved, and we find it impractical to sufficiently define this boundary using latitude and longitude in this rule. Instead, the southern boundary of the Baltimore Harbor and approaches safety zone and the northern boundary of the Chesapeake Channel to Cove Point safety zone were changed to the southernmost edge of the east-bound span of the of the William P. Lane, Jr (US-50/301) Memorial Bridge.

One comment requested that we describe the end and turning points of all the lines that run along the latitude parallel to another location. We changed the regulatory text of the following safety zones: Chesapeake Channel to Cove Point: provided positions for the eastern and western extent of the southern boundary; Chesapeake Channel between Cove Point and Smith Point, and Lower Potomac: provided positions for the eastern and western extent of the northern boundary, and the positions defining southern boundary across the Chesapeake Bay and Tangier Sound; Upper Potomac River and Anacostia River: provided position for Hains Point; Chesapeake Bay and Tangier Sound: the positions defining the eastern and western extent of the northern boundary across the Chesapeake Bay and Tangier Sound and the eastern and western extent of the southern boundary along latitude 37°45'00.0" N.

One comment proposed additional smaller zones, with the desire to minimize restriction in portions of the zones that are not impacted by ice. The Coast Guard does not agree with the addition of the proposed zones because the operational complexity and

feasibility of enacting those zones is counter to public interest due to the significant amount of time it would take to effectively manage compliance. However, to address the comments, we changed the regulatory text in § 165.550(d)(1) to allow each COTP to set ice conditions for any zone in this rule, or a portion thereof. The COTP may choose not to activate an entire zone if the ice prevalence and thickness is limited in such a way it would be too burdensome to activate the entire zone.

The same commenter stated that there are no provisions for Maryland Department of Natural Resources to request or obtain a waiver from the COTP for icebreaking operations. We changed the rule's definition of public vessels in response to this comment to mean vessels owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commercial service. Because this definition includes vessels engaged in law enforcement, we removed "engaged in law enforcement" from paragraph (d)(1).

An anonymous comment asserted that the Coast Guard did not evaluate the impact of a "business as usual approach" as an alternative to this rule. We do not agree with this assertion because the existing means by which the Coast Guard restricted vessel operations in ice covered waterways was specifically addressed in the NPRM and SNPRM (82 FR 9978). As stated in the SNPRM, permanent safety zones are the most appropriate from a regulatory perspective and will ensure consistency throughout the Fifth Coast Guard District. Furthermore, as stated in the SNPRM, 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 individual 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.

The same anonymous commenter stated that the Coast Guard did not adequately address "biophysical impacts," details of the "obvious cultural and social impacts" to recreational activities on the water, environmental justice, and economic impacts of alternatives to the proposed rule. The comment was vague and lacked sufficient supporting information needed to determine its validity. We were unable to obtain clarification from this anonymous commenter regarding the various issues mentioned, but the Coast Guard believes this rule remains as one that is a category of actions that do not individually or cumulatively have a significant effect on the human environment, and the analysis supporting this determination is available in the docket where indicated under ADDRESSES. Similarly, one commenter stated that these regulations would have an impact on persons who make a living by fishing, crabbing, and oystering on the Chesapeake Bay that act as small businesses. The Coast Guard received no comments from the Small Business Administration on this rulemaking, and the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

One comment stated, "Depending on which shoreline is being used for measurement, a percentage value of coverage may vary considerably, which will affect which areas are selected for closure. It is not known which shoreline standard is being used..." In the context of this rule, the shoreline is the extent of navigable waters as they

are defined in 33 CFR Part 2. We replaced the term shoreline with the term “the extent of navigable waters” to clarify the physical reference point from which ice accumulation will be measured for the purposes of enforcing the rule. The zones cover large geographic areas so that a disproportionate amount of ice accumulation along a shoreline will not have an impact on when the Ice Conditions are set. To clarify the jurisdictional extents of the safety zones, the term “and its tributaries” was added to Delaware Bay, Delaware River, and Upper Delaware River zones.

The same commenter expressed concern that the measurement errors or tolerance that would affect timings of “closure events” is unknown. No changes were made to this rule based on this comment. The Coast Guard finds it reasonable to expect that vessel operators can discern between the ice prevalence and thicknesses that are listed in the regulatory text in order to determine when restrictions are in place. The Coast Guard has consistently received reliable and accurate reports of ice conditions from these same vessel operators in the past. Furthermore, as stated in the regulatory text, the COTP can notify mariners of Ice Conditions and associated restrictions via Broadcast Notice to Mariners and other methods described in 33 CFR 165.7. Vessel operators that encounter ice covered waterways and are uncertain if the zone is in effect may contact the cognizant COTP to determine the waterway status.

The same commenter asked for a list of “protected waters” and their boundary coordinates. This rule defines “protected waters” as, “sheltered waters such as harbors or basins that present no special hazards.” This term is used in this regulation so “vessels may transit within protected waters to facilitate icebreaking operations and protect infrastructure and property without COTP permission.” The commenter specifically

asked if contractors moving work barges around bridges would be considered as operating in protected waters and if fishermen attempting to recover nets or other fisheries gear would be considered as protecting infrastructure or property. No changes were made based on this comment. It is not feasible for the Coast Guard to provide a list of activity in every area that could be considered “protected waters” in this rule because the conclusion would vary depending on the vessel, environment, nature of the activity, and infrastructure present at the time the Ice Condition is in effect. The Coast Guard concludes that the present definition provides sufficient parameters that will promote navigational safety, provide for the safety of life and property, and facilitate the reasonable demands of commerce.

Finally, one commenter requested the Coast Guard institute a process whereby the final rule is subject to future review and comment by industry stakeholders at regular intervals to ensure that it remains appropriate to current conditions. The Coast Guard will monitor the effectiveness when executing and enforcing the rule, and ensures that our agency will engage in proper notice-and-comment procedures if we see a need to change the rule.

This rule establishes 11 safety zones on the navigable waters of the Fifth Coast Guard District. This imposes restrictions on vessels operating within the safety zones or a portion of the zones where a threat to navigation exists due to ice covered waterways. 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 rule, a vessel needs 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 or a portion of the zone and the vessel meets the associated requirements to transit the zone. Descriptions of the three ice conditions and vessel requirements to transit are listed below. 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 is 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 hull

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 is 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 appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on our assessment that although this 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 implementing 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 received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will 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 V.A above, this rule would not have a significant economic impact on a substantial number of small entities.

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.

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.

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 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. If you believe this 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 (Act) (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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this 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 determined 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 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. An environmental analysis checklist and a Record of Environmental Consideration (REC) supporting this 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 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.

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. 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 navigable waters of Delaware Bay and Delaware River 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

extent of navigable waters at Hope Creek Jetty, latitude 39°27'05.04" N., longitude 075°30'12.55" W. (Datum NAD 83)

(ii) *Delaware River*: All navigable waters of Delaware River and its tributaries, 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 extent of navigable waters 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 at the Betsy Ross (state route 90) fixed highway bridge from latitude 39°59'10.43" N, longitude 075°04'11.03" W to latitude 39°58'58.65" N., longitude 075°03'43.23" W. (Datum NAD 83)

(iii) *Upper Delaware River*: All navigable waters of Delaware River and its tributaries in an area bound to the south by a line drawn across the Delaware River at the at the Betsy Ross (state route 90) fixed highway bridge from latitude 39°59'10.43" N., longitude 075°04'11.03" W. to latitude 39°58'58.65" N., longitude 075°03'43.23" W. The regulated area is bound to the north by a line drawn across the Delaware River at the Trenton—Morrisville (state route 1) highway bridge from latitude 40°12'29.86" N., longitude 074°46'11.00" W. to latitude 40°12'34.93" N., longitude 74°46'00.63" W. (Datum NAD 83)

(iv) *New Jersey Intracoastal Waterway*: All navigable waters of New Jersey Intracoastal Waterway (NJICW), bounded by the area defined by 33 CFR 80.501(b)-(c) and §80.502, commencing at the entrance to Manasquan Inlet at latitude 40°06'03" N., longitude 74°01'55" W., continuing the entire length of NJICW to include the navigable

waters Manasquan River at its tributaries, Metedeconk River and its tributaries, Toms River and Barnegat Bay and its tributaries, Mahahawkin Bay, Little Egg Harbor, Great Bay to Absecon Bay, Lakes Bay, Great Egg Harbor Bay, Peck Bay, Ludlam Bay, Townsend Sound, Stites Sound, Great Sound, Grassy Sound, Taylor Sound, Sunset Lake, Jarvis Sound and Cape May Harbor. This regulated area terminates in the east at line drawn across the seaward extremity of Cape May Inlet, Cape May, NJ and in the west at line drawn across the entrance to the Cape May Canal from latitude 38°58'03.72" N., longitude 074°58'00.00" W. to latitude 38°57'57.00" N., longitude 074°58'00.80" W. (Datum NAD 83)

(2) *Coast Guard Sector Maryland-National Capital Region- COTP Zone.* (i)

Head of Chesapeake Bay to C&D Canal: All navigable waters of the Upper Chesapeake Bay 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 extent of navigable waters at Swan Point, latitude 39°08'41.7" N., longitude 076°16'42.4" W. (Datum NAD 83)

(ii) *Baltimore Harbor and approaches:* All navigable waters of the Chesapeake

Bay 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 the southernmost edge of

the east-bound span of the of the William P. Lane, Jr (US-50/301) Memorial Bridge.
(Datum NAD 83)

(iii) *Chesapeake Channel to Cove Point*: All navigable waters of the Chesapeake Bay and its tributaries, bound to the north by the southernmost edge of the east-bound span of the of the William P. Lane, Jr (US-50/301) Memorial Bridge. The regulated area is bound to the south by a line drawn across the Chesapeake Bay commencing in Cove Point in Calvert County, MD at latitude 38°23'10.5" N., longitude 076°22'52.9"W. and ending at a point in Meekins Neck at latitude 38°23'14.9" N., longitude 076°16'48.3" W.
(Datum NAD 83)

(iv) *Chesapeake Channel between Cove Point and Smith Point, and Lower Potomac River*: All navigable waters of Chesapeake Bay and its tributaries, bound to the north by a line drawn across the Chesapeake Bay commencing in Cove Point in Calvert County, MD at latitude 38°23'10.5" N., longitude 076°22'52.9" W. and ending at a point in Meekins Neck at latitude 38°23'10.5" N., longitude 076°16'48.3" W.; and all navigable waters of the Potomac River bound to the north by a line drawn across the Potomac River at the Governor Harry W. Nice (US-301) Memorial Bridge from latitude 38°21'33.30" N., longitude 077°00'51.41"W. to latitude 38°21'48.22" N., longitude 76°58'59.83" W., connecting King George County, VA and Charles County, MD. (Datum NAD 83)

(v) *Potomac River*: All navigable waters of the Potomac River, bound to the north by a line drawn across the Potomac River at the Woodrow Wilson Memorial (I-95/I-495) Bridge from latitude 38°47'32.38" N., longitude 077°02'22.15" W. to latitude 38°47'33.83" N., longitude 077°01'30.58" W., 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 at the Governor Harry W. Nice (US-301) Memorial Bridge from latitude 38°21'33.30" N., longitude 077°00'51.41" W. to latitude 38°21'48.22" N., longitude 76°58'59.83" W., connecting King George County, VA and Charles County, MD. (Datum NAD 83)

(vi) *Upper Potomac River and Anacostia River*: All navigable waters of the Potomac River, bound to the north by a line drawn across the Potomac River at the Francis Scott Key (US-29) Bridge from latitude 38°54'03.51" N., longitude 077°04'13.18" W. to latitude 38°54'13.68" N., longitude 077°04'08.46" W., connecting Rosslyn, VA and Georgetown, Washington, D.C., and bound to the south by a line drawn across the Potomac River at the Woodrow Wilson Memorial (I-95/I-495) Bridge from latitude 38°47'32.38" N., longitude 077°02'22.15" W. to latitude 38°47'33.83" N., longitude 077°01'30.58" W., connecting Alexandria, VA and Prince George's County, MD. All navigable waters of Anacostia River and Washington Channel bound to the north by a line drawn across the Anacostia River at the John Philip Sousa (Pennsylvania Avenue SE) Bridge, latitude 38°52'38.97" N., longitude 076°58'46.48" W. to latitude 38°52'34.08" N., longitude 076°58'36.61" W. and bound to the south by a line drawn across the mouth of the Anacostia River, from Hains Point at latitude 38° 51' 24.34" N., longitude 077° 1' 20.14" W., 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. (Datum NAD 83)

(3) *Coast Guard Sector Hampton Roads- COTP Zone*—(i) *Chesapeake Bay and Tangier Sound*: All navigable waters of Chesapeake Bay, and its tributaries, bound to the north by a line drawn along the Maryland-Virginia boundary, commencing in Virginia at

latitude 37°53'11" N., longitude 76°14'15" W., thence east along the Maryland-Virginia boundary as it proceeds across the Chesapeake Bay and Pocomoke River, ending at the point latitude 37°59'39.8" N., longitude 75°37'27.4" W. The regulated area is bound to the south by a line drawn across the Chesapeake Bay along latitude 37°45'00.0" N., commencing in Northumberland County, VA at latitude 37°45'00.00" N., longitude 76°18'44.32" W. and ending in Chesconessex, in Accomack County, VA at latitude 37°45'00.00" N., longitude 75°48'39.53"W. (Datum NAD 83)

(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 vessels owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commercial service.

(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, or a portion thereof, 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 transiting a safety zone under paragraph (c) of this section may nonetheless enter or continue transiting the safety zone without contacting the COTP if the vessel is a public vessel 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 continue 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: August 2, 2017.

Meredith L. Austin,

Rear Admiral, U.S. Coast Guard,

Commander, Fifth Coast Guard District.

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