

**Regulated Navigation Area; New Orleans Area of Responsibility, New Orleans, LA**

**SUMMARY:** This final rule revises an existing interim rule to permanently establish a Regulated Navigation Area (RNA) protecting floodwalls and levees in the New Orleans area from possible damage caused by vessels that can breakaway during certain tropical storm and hurricane conditions. This final rule also addresses comments from the public on the previously published Supplemental Notice of Proposed Rulemaking (SNPRM) and economic review for this RNA. This action is necessary for the flood protection of high-risk areas throughout the Greater New Orleans Area when a tropical event threatens to approach and impact the area.

**DATES:** This interim rule is effective in the CFR on April 15, 2014. This rule has been enforced with actual notice since April 1, 2014.

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

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.

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

(a) *Location.* The following is a regulated navigation area (RNA):

- (1) The Gulf Intracoastal Waterway (GIWW) from Mile Marker (MM) 22 East of Harvey Locks (EHL), west on the GIWW, including the Michoud Canal and the Inner Harbor Navigation Canal (IHNC), extending North  $\frac{1}{2}$  mile from the Seabrook Flood Gate Complex out into Lake Pontchartrain and South to the IHNC Lock.
- (2) The Harvey Canal, between the Lapalco Boulevard Bridge and the confluence of the Harvey Canal and the Algiers Canal;
- (3) The Algiers Canal, from the Algiers Lock to the confluence of the Algiers Canal and the Harvey Canal;
- (4) The GIWW from the confluence of Harvey Canal and Algiers Canal to MM 7.5 West of Harvey Locks (WHL)

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

- (1) *Breakaway* means a floating vessel that is adrift and that is not under its own power or the control of a towboat, or secured to its moorings.
- (2) *COTP* means the Captain of the Port, New Orleans;
- (3) *Facility* means a fleeting, mooring, industrial facility or marina along the shoreline at which vessels are or can be moored and which owns, possesses, moors, or leases vessels located in the areas described in paragraph (a) of this section.
- (4) *Fleet* includes one or more tiers of barges.

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- (5) *Fleeting or mooring facility* means the area along the shoreline at which vessels are or can be moored.
- (6) *Floating vessel* means any floating vessel to which the Ports and Waterways Safety Act, 33 U.S.C. 1221 *et seq.*, applies.
- (7) *Mooring barge or spar barge* means a barge moored to mooring devices or secured to the ground by spuds, and to which other barges may be moored.
- (8) *Mooring device* includes a deadman, anchor, pile or other reliable holding apparatus.
- (9) *Navigational structures* are the Seabrook Floodgate Complex, the IHNC Lake Borgne Surge Barrier, and the West Closure Complex components of the Hurricane and Storm Damage Risk Reduction System (HSDRRS).
- (10) *Person in charge* includes any owner, agent, pilot, master, officer, operator, crewmember, supervisor, dispatcher or other person navigating, controlling, directing or otherwise responsible for the movement, action, securing, or security of any vessel, barge, tier, fleet or fleeting or mooring facility subject to the regulations in this section.
- (11) *Tier* means barges moored interdependently in rows or groups.
- (12) *Port Coordination Team* is a body of public and private port stakeholders led by the COTP whose purpose is to share information, establish priorities, recommend and implement actions to address risks to ports and waterways during incidents and events.
- (13) *Tropical Event* means the time period immediately preceding, during, and immediately following the expected impact of heavy weather from a tropical cyclone.

### (c) *Enforcement.*

- (1) The provisions of paragraph (d) of this section will be enforced during a tropical event beginning 24 hours in advance of the predicted closure of the IHNC Lake Borgne Surge Barrier structure within the HSDRRS (IHNC & GIWW) in the area defined in paragraph (a)(1) of this section.
- (2) The provisions of paragraph (d) of this section will be enforced beginning 24 hours in advance of the predicted closure of the West Closure Complex within the HSDRRS (Harvey & Algiers Canals) in the area defined in paragraphs (a)(2) through (4) of this section.
- (3) If the Coast Guard receives notice of a closure less than 24 hours before closure, the provisions of paragraph (d) of this section will be enforced upon the COTP receiving the notice of predicted closing.
- (4) In the event that a particularly dangerous storm is predicted, the COTP, in consultation with the Port Coordination Team, may require all floating vessels to evacuate the RNA beginning as early as 72 hours before predicted closure of any navigational structure or upon notice that particularly dangerous storm conditions are approaching, whichever is less.
- (5) The COTP will notify the maritime community of the enforcement periods for this RNA through Marine Safety Information Bulletins and Safety Broadcast Notices to Mariners.

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(d) *Regulations.* During the period that the RNA is enforced and before closure of the navigational structures, all floating vessels must depart the RNA except as follows:

(1) Floating vessels may remain in the Harvey and Algiers Canals, provided they are moored sufficiently to prevent a breakaway and meet the minimum mooring requirements and conditions set forth in paragraphs (f) and (g) of this section.

(2) Floating vessels may remain in the Michoud Canal at least  $\frac{1}{4}$  mile north of the intersection of the Michoud Canal and the GIWW, the GIWW from MM 15 EHL to MM 10 EHL, provided they are moored sufficiently to prevent a breakaway and meet the minimum mooring requirements and conditions set forth in paragraphs (f) and (g) of this section.

(3) During the period that the RNA is enforced and before closure of the navigational structures, vessels may transit through the RNA en route to a destination outside of the RNA given there is sufficient time to transit prior to the closure of a navigational structure, or they may transit to a facility within the RNA with which they have a prearranged agreement. These vessel movements and time critical decisions will be made by the COTP in consultation with the Port Coordination Team.

(4) The COTP may review, on a case-by-case basis, alternatives to minimum mooring requirements and conditions set forth in paragraphs (f) and (g) of this section and may approve a deviation to these requirements and conditions should they provide an equivalent level of safety.

(e) *Special requirements for facilities.* In addition to the mooring and towboat requirements discussed in paragraph (f) and (g) of this section, Facilities within the area described in paragraph (a) of this section that wish to deviate from these restrictions because they have vessels intending to remain within the areas allowed in paragraphs (d)(1) and (2) of this section shall comply with the below documentation and maintenance requirements in order to obtain the COTP's approval for their vessel(s) to remain in the closed RNA.

(1) *Annual Hurricane Operations Plan.* All facilities that have vessels intending to deviate from this RNA and remain within the areas allowed in paragraphs (d)(1) and (2) of this section shall develop an operations plan. The operations plan shall be readily available by May 1st of each calendar year for review by the COTP. The Annual Hurricane Operations Plan shall include:

(i) A description of the maximum number of vessels the facility intends to have remaining at any one time during hurricane season.

(ii) A detailed plan for any vessel(s) that are intended to be sunk/grounded in place when the RNA is enforced if evacuation is not possible.

(iii) A diagram of the waterfront facility and fleeting area.

(iv) Name, call sign, official number, and operational status of machinery on board (*i.e.*, engines, generators, fire fighting pumps, bilge pumps, anchors, mooring machinery, etc.) each standby towboat.

(v) Characteristics for each vessel remaining at the fleeting or mooring facility, as applicable (length, breadth, draft, air draft, gross tonnage, hull type, horsepower, single or twin screw);

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(vi) Details of mooring arrangements in accordance with mooring requirements and conditions set forth in paragraphs (g) and (h) of this section or COTP case-by-case approved deviations;

(vii) Certification by a professional engineer that the mooring arrangements are able to withstand winds of up to 140 mph, a surge water level of eleven feet, a current of four mph and a wave height of three feet within the canal basin in the area defined in paragraph (a)(1) of this section and a surge water level of eight feet, a current of four mph, and a wave height of two and a half feet within the canal basin in the area defined in paragraphs (a)(2) through (4) of this section;

(viii) Emergency contact information for the owner/operator, and/or agent of the facility/property.

(ix) 24-hour emergency contact information for qualified individuals empowered in writing by the owners/operators to make on-site decisions and authorize expenditures for any required pollution response or salvage.

(x) Full insurance disclosure to the COTP. Vessels moored to a facility shall provide insurance information to the facility.

(2) *Storm Specific Verification Report.* 72 hrs prior to predicted closure of the navigational structures, those facilities which have vessels that intend to remain within the RNA shall submit a Storm Specific Verification Report to the COTP New Orleans. The requirements for this Storm Specific Verification Report are located in the Canal Hurricane Operations Plan, which is Enclosure Six to the Sector New Orleans Maritime Hurricane Contingency Port Plan, <http://homeport.uscg.mil/nola>. The report shall include:

(i) Updated contact information, including names of manned towboat(s) and individuals remaining on the towboat(s).

(ii) Number of vessels currently moored and mooring configurations if less than stated in Annual Hurricane Operations Plan.

(iii) If the number of vessels exceeds the amount listed in the Annual Hurricane Operations Plan, describe process and timeframe for evacuating vessels to bring total number of vessels into alignment with the Annual Hurricane Operations Plan.

(3) The person in charge of a facility shall inspect each mooring wire, chain, line and connecting gear between mooring devices and each wire, line and connecting equipment used to moor each vessel, and each mooring device. Inspections shall be performed according to the following timelines and guidance:

(i) Annually between May 1 and June 1 of each calendar year; and

(ii) After vessels are added to, withdrawn from, or moved at a facility, each mooring wire, line, and connecting equipment of each barge within each tier affected by that operation; and

(iii) At least weekly between June 1 and November 30; and

(iv) 72 hrs prior to predicted closure of the navigation structures within this RNA; or within 6 hrs of the predicted closure, if the notice of predicted closure is less than 72 hrs.

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(4) The person who inspects moorings shall take immediate action to correct any deficiency.

(5) *Facility records.* The person in charge of a fleeting or mooring facility shall maintain, and make available to the COTP, records containing the following information:

(i) The time of commencement and termination of each inspection.

(ii) The name of each person who makes the inspection.

(iii) The identification of each vessel, barge entering or departing the fleeting or mooring facility, along with the following information:

(A) Date and time of entry and departure; and

(B) The names of any hazardous cargo which the vessel is carrying.

(6) The person in charge of a facility shall ensure continuous visual surveillance of all vessels at the facility.

(7) The person who observes the vessels shall:

(i) Inspect for movements that are unusual for properly secured vessels; and

(ii) Take immediate action to correct each deficiency.

(f) *Mooring requirements.* Facility owners shall consider all requirements within this section as minimum standards. Title 33 CFR 165.803, United Facilities Criteria (UFC) 4-159 and American Society of the Civil Engineers (ASCE)7 should be utilized by Professional Engineers in the certification of the Annual Hurricane Operations Plan.

(1) No person may secure a vessel to trees or to other vegetation.

(2) No person may allow a vessel to be moored with unraveled or frayed lines or other defective or worn mooring.

(3) No person may moor barges side to side unless they are secured to each other from fittings as close to each corner of abutting sides as practicable.

(4) No person may moor barges end to end unless they are secured to each other from fittings as close to each corner of abutting ends as practicable.

(5) A vessel may be moored to mooring devices if both ends of that vessel are secured to mooring devices.

(6) Barges may be moored in tiers if each shoreward barge is secured to mooring devices at each end.

(7) A vessel must be secured as near as practicable to each abutting corner by:

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- (i) Three parts of wire rope of at least 1¼ inch diameter with an eye at each end of the rope passed around the timberhead, caval, or button;
- (ii) A mooring of natural or synthetic fiber rope that has at least the breaking strength of three parts of 1¼ inch diameter wire rope; or
- (iii) Fixed rigging that is at least equivalent to three parts of 1¼ inch diameter wire rope.

(8) The person in charge shall ensure that all mooring devices, wires, chains, lines and connecting gear are of sufficient strength and in sufficient number to withstand forces that may be exerted on them by moored vessels/barges.

(g) *Towboat Requirements.* The person in charge of a fleeting or mooring facility must ensure:

(1) Each facility consisting of eight or more vessels that are not under their own power must be attended by at least one radar-equipped towboat for every 50 vessels.

(2) Each towboat required must be:

- (i) Able to secure any breakaways;
- (ii) Capable of safely withdrawing or moving any vessel at the fleeting or mooring facility;
- (iii) Immediately operational;
- (iv) Radio-equipped;
- (v) No less than 800 horsepower;
- (vi) Within 500 yards of the vessels.

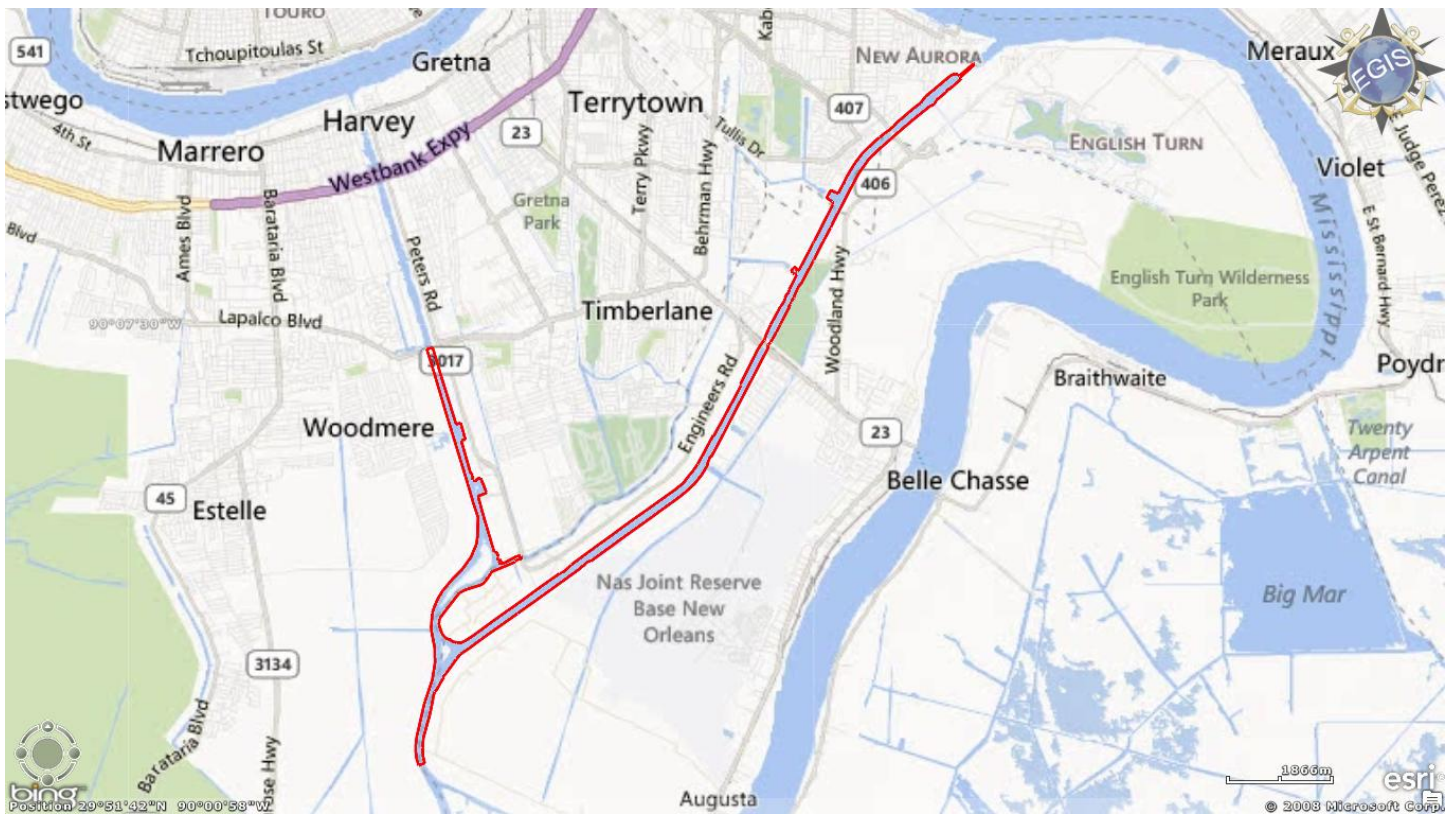
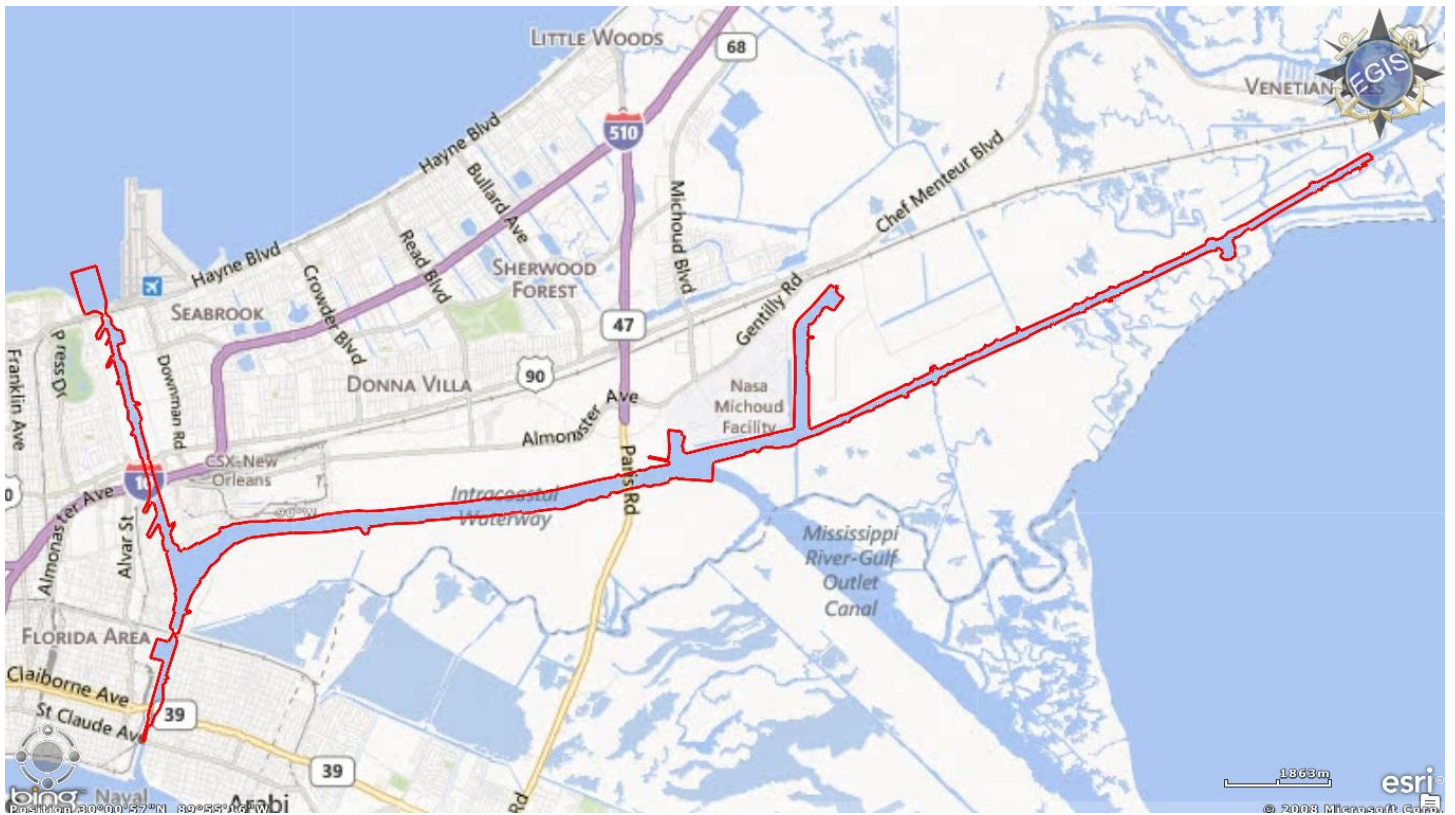
(3) The person in charge of each towboat required must maintain a continuous guard on the frequency specified by current Federal Communications Commission regulations found in 47 CFR part 83; a continuous watch on the vessels moored at facility; and report any breakaway as soon as possible to the COTP via telephone, radio or other means of rapid communication.

(h) 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.

(i) *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.*

[USCG-2009-0139, 79 FR 21135, Apr. 15, 2014]

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