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[Page 59098-59104]  
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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2008-1017]  
RIN 1625-AA11

Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: The Coast Guard is establishing Regulated Navigation Areas (RNA) covering specific bars along the coasts of Oregon and Washington. The RNAs are necessary to help ensure the safety of the persons and vessels operating in those hazardous bar areas. The RNAs will do so by establishing clear procedures for restricting and/or closing the bars and mandating additional safety requirements for recreational and small commercial vessels operating in the RNAs when certain conditions exist.

DATES: This rule is effective December 17, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2008-1017 and are available online by going to <http://www.regulations.gov>, inserting USCG-2008-1017 in the ``Keyword'' box, and then clicking ``Search.'' This material is 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 rule, call or e-mail LT Kion Evans, Thirteenth Coast Guard District, Prevention Division, Inspections and Investigations Branch; telephone (206)-220-7232, e-mail [Kion.J.Evans@uscg.mil](mailto:Kion.J.Evans@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 12, 2009, we published a notice of proposed rulemaking

(NPRM) entitled ``Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington'' in the Federal Register (74 FR 7022). We received 168 comments on the proposed rule. Public meetings were requested and three were held at the following dates and locations: April 14, 2009 in Astoria, Oregon; April 15, 2009 in Newport, Oregon; and June 2, 2009 in Coos Bay, Oregon.

#### Background and Purpose

The bars along the coasts of Oregon and Washington are a maritime operating environment unique to the Pacific Northwest. More importantly, the bars can and very often do become extremely hazardous for all types of maritime traffic. In fact, a review of recreational, passenger, and commercial fishing vessel casualty data shows that since 1992 there have been 39 vessel capsizings on or in the vicinity of the bars, resulting in 66 fatalities. Some notable recent vessel casualties include the capsizing of the inspected charter vessel TAKI-TOOO while trying to cross the Tillamook Bay bar, resulting in the deaths of 11 people, and the capsizing of the uninspected passenger vessel SYDNEY MAE II while attempting to cross the Umpqua River bar, resulting in the deaths of 3 people. In addition, several commercial fishing vessels, including the CATHERINE M, the ASH, the STARRIGAVAN and the NETWORK have recently capsized on or in the vicinity of various bars, resulting in the deaths of 10 people.

As evidenced in part by the tragedies noted above, the current regulations governing maritime traffic operating on and in the vicinity of the bars along the coasts of Oregon and Washington are insufficient to ensure the safety of the persons and vessels operating in those areas. Additionally, multiple Coast Guard and National Transportation Safety Board (NTSB) casualty investigations have indicated a need for additional regulations to mitigate the risks associated with the bars and enhance the safety of the persons and vessels operating on and in the vicinity of them. As such, the Thirteenth Coast Guard District is establishing this rule to help ensure the safety of persons and vessels operating on or in the vicinity of the bars.

#### Discussion of Comments and Changes

The Coast Guard received a total of 168 comments, with 122 comments coming from the 91 documents submitted to the public docket and 46 comments coming from the public meetings. Nine comments requested additional time to comment and/or public meetings. In response to these comments the comment period was extended until June 30, 2009 and an additional public meeting was held in Coos Bay, Oregon.

#### Unsafe Condition Formula

Twenty-five comments were received about the formula used to determine what constitutes an Unsafe Condition as defined in 33 CFR 165.1325(b). The comments expressed concern that the formula is too conservative, prevents smaller recreational and fishing vessels from crossing the bar in even mild to moderate conditions, and doesn't address all the factors that should be

[[Page 59099]]

considered in determining whether an unsafe condition exists for a particular vessel such as wave period, swell period, vessel type, and direction of travel.

No changes to the rule were made based on these comments because

the formula is only one variable that will be considered by the Captain of the Port (COTP) or his designated representative in deciding whether or not to restrict a bar. As noted in 33 CFR 165.1325(c)(1)(i), they will also ``use their professional maritime experience and knowledge of local environmental conditions in making their determination. Factors that will be considered include, but are not limited to: size and type of vessel, sea state, winds, wave period, and tidal currents.'' The formula has been used for some time in 33 CFR 177.07 to define the phrase ``other unsafe condition.'' In addition, the COTP or his designated representative may permit vessels to cross a restricted bar on a case-by-case basis.

#### Reopening Restricted/Closed Bars

Twenty comments were received about how the Coast Guard will monitor and re-open restricted or closed bars. The comments expressed concern that the Coast Guard does not always re-open bars in a timely manner.

No changes to the rule were made based on these comments because the Coast Guard has and will continue to use all available resources to safely and efficiently monitor and, when possible, re-open restricted or closed bars as quickly as possible.

#### Exigent Circumstances

Several comments were received about when a vessel is trying to return to port to avoid bad weather and the bar is restricted or closed. In particular, the comments expressed a concern that vessels could be left in a more dangerous situation if they were not allowed to cross the bar.

No changes to the rule were made based on these comments because the rule allows the COTP or his designated representative to permit vessels to cross a restricted or closed bar on a case-by-case basis. As such, if a vessel operator were to find himself/herself in such a position they could request permission to cross the bar.

#### Application of Bar Closures to Deep Draft Vessels

Fourteen comments were received about the application of bar closures to deep draft vessels. Specifically, the comments requested that deep draft vessels be exempt from the rule because of their size, use of licensed pilots, design and construction, and onboard life saving equipment as well as the economic cost of delaying such vessels.

A change to the rule was made based on these comments. In 33 CFR 165.1325(c)(1)(ii), a provision was added so that the COTP will be required to consult with the local pilots association, when practicable, prior to closing any bar having deep draft vessel access. In addition, it is important to note that the rule also allows the COTP or his designated representative to permit vessels to cross a closed bar on a case-by-case basis.

#### Economic Effects

Sixteen comments were received about the possible economic effects of the proposed rule on small entities and local economies. Specifically, the comments expressed concern that the rule would reduce recreational boating opportunities, force recreational boaters to purchase larger vessels, reduce tourism activity on passenger vessels, and/or interfere with commercial fishing activities.

No changes to the rule were made based on these comments because

the rule will not increase the number of bar restrictions or closures from past years. The rule is essentially a codification of how the decisions have been made in the past.

#### Checking-In on VHF Channel 16

Six comments were received about the requirement to check in on VHF Channel 16 when crossing a restricted bar. The comments noted that depending on the season the number of vessels affected could potentially overload the frequency. In addition, one comment expressed concern about passing sensitive information about a vessel's destination.

A change to the rule was made based on these comments. The rule now designates VHF Channel 22A as the designated ``check-in'' frequency. The rule was not changed to address the concern about passing sensitive information about a vessel's destination because the requirement to provide a vessel's destination can be met simply by saying the vessel is heading ``outbound,'' ``offshore,'' ``inbound,'' or by using any other similarly descriptive language.

#### Go/No-Go Plan Exemption

Several comments were received that requested uninspected passenger vessels (6-pack) 30 feet and greater having a Coast Guard accepted and/or reviewed Go/No-Go Plan be given the same exemption to the application of the rule as provided for inspected small passenger vessels.

No changes to the rule were made based on these comments because the exemption was implemented for inspected vessels since such vessels are regularly inspected by the Coast Guard to ensure their safe operation. Uninspected vessels, on the other hand, are not subject to regular inspections so there are fewer assurances regarding their safety.

#### Use of the Term ``Restriction''

One comment was received about the use of the term ``restriction.'' The commenter felt that it was misleading because it was not being used in accordance with its common meaning.

Two changes to the rule were made based on this comment. The definition of ``bar restriction'' was clarified and a definition of ``bar closure'' was added to ensure the terms are easily understandable as used in the rule.

#### Ceremonial/Subsistence Crossings

One comment was received about the application of the rule to vessels transiting the bar for ceremonial or subsistence purposes.

No changes to the rule were made based on this comment. The rule covers such vessels, however, the rule does allow the COTP or his designated representative to permit vessels to cross a restricted or closed bar on a case-by-case basis. As such, a vessel wishing to cross a restricted or closed bar regardless of its purpose may request permission to do so from the COTP or his designated representative.

#### Lifejackets

Sixteen comments were received suggesting that lifejacket wear be required by all persons on board vessels crossing a bar. Three of the comments suggested that lifejackets be required to be worn both inside

and outside the cabin of such vessels.

No changes to the rule were made based on these comments because the provisions requiring that lifejackets be readily accessible to all persons in the enclosed areas of vessels provide sufficient opportunity for those persons to properly don a lifejacket if a need to do so arises. The term ``immediately available'' was changed to ``readily accessible'' in order to better align with other related Coast Guard regulations.

#### Bar Cameras

One comment recommended the use of bar cameras and requested public access to the video feeds from those cameras.

[[Page 59100]]

No changes to the rule were made based on this comment because it is outside the scope of the rule to address this recommendation. The Coast Guard may consider this recommendation in the future.

#### Federalism

Two comments were received about federalism concerns based on a belief that the rule conflicts with state law and, in particular, the Oregon Board of Maritime Pilots responsibilities to ensure safe and efficient commercial vessel transportation.

No changes to the rule were made based on these comments because the Coast Guard has the statutory authority to implement this rule as referenced in the authority citation for 33 CFR part 165.

#### Reference in 33 CFR 177.04

One comment was received noting that the reference to 33 CFR 177.07(g) contained in 33 CFR 177.04 needs to be changed to reference 33 CFR 177.07(f). This suggestion has been forwarded to the responsible Coast Guard Headquarters unit. This rule makes no changes to 33 CFR Part 177 because such changes are beyond the authority of the Thirteenth Coast Guard District.

#### Other Comments

A variety of other comments were received expressing concern that, among other things, (1) all vessel operators are being penalized for the actions of a few bad operators, (2) the rule is one size fits all, (3) the rule does not take into account dredge spoil mound wave amplifications, and (4) the rule does not address the option of ``hanging close to shore'' for better sea conditions.

All comments received were considered in drafting the final rule. No comments other than those already mentioned, however, resulted in any changes to the rule because, although important, they were either outside the scope of the rule or appeared to be based on a misunderstanding of the rule. The Coast Guard encourages mariners having further questions about the rule and how to comply with it to contact the Coast Guard point of contact listed under FOR FURTHER INFORMATION CONTACT.

#### Regulatory Analyses

We developed this 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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard expects the economic impact of this proposed rule to be negligible in part because: (1) The rule does not require the purchase of equipment not already required to be on board the vessels affected. (2) The rule changes only the procedures for restricting and/or closing the bars, not the standards for determining when a restriction and/or closure will take place. (3) The restriction and/or closure of the bars is temporary and will only occur when necessary due to severe weather. (4) The maritime public will be advised of bar restrictions and/or closures via Broadcast Notice to Mariners and other methods of communication. (5) Vessels may be allowed to enter the RNAs when a bar restriction and/or closure is in place on a case-by-case basis with permission of the COTP or his designated representative.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this 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 rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: The owners and operators of recreational vessels, uninspected passenger vessels, inspected small passenger vessels, and commercial fishing vessels. The rule would not have a significant economic impact on a substantial number of small entities, however, for the following reasons: (1) The rule does not require the purchase of equipment not already required to be on board the vessels affected. (2) The rule changes only the procedures for restricting and/or closing the bars, not the standards for determining when a restriction and/or closure will take place. (3) The restriction and/or closure of the bars is temporary and will only occur when necessary due to severe weather. (4) The maritime public will be advised of bar restrictions and/or closures via Broadcast Notice to Mariners and other methods of communication. (5) Vessels may be allowed to enter the RNAs when a bar restriction and/or closure is in place on a case-by-case basis with permission of the COTP or his designated representative.

#### Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory

Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### Collection of Information

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

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. Two comments were received on this subject and were addressed in ``Discussion of Comments and Changes.''

#### 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

[[Page 59101]]

State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. No comments were received on this subject.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. No comments were received on this subject.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. No comments were received on this subject.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children. No comments were received on this subject.

## Indian Tribal Governments

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. No comments were received on this subject.

## Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ``significant energy action'' under that order because it is not a ``significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211. No comments were received on this subject.

## 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. No comments were received on this subject.

## 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 which 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. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

## List of Subjects in 33 CFR Part 165

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

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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

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

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2. Add Sec. 165.1325 to read as follows:

Sec. 165.1325 Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington.

(a) Regulated navigation areas. Each of the following areas is a regulated navigation area:

(1) Quillayute River Entrance, Wash.: From the west end of James Island 47[deg]54'23'' N., 124[deg]39'05'' W. southward to buoy No. 2 at 47[deg]53'42'' N., 124[deg]38'42'' W. eastward to the shoreline at 47[deg]53'42'' N., 124[deg]37'51'' W., thence northward along the shoreline to 47[deg]54'29'' N., 124[deg]38'20'' W. thence northward to 47[deg]54'36'' N., 124[deg]38'22'' W. thence westward to the beginning.

(2) Grays Harbor Entrance, Wash.: From a point on the shoreline at 46[deg]59[deg]00[sec] N., 124[deg]10[deg]10[sec] W. westward to 46[deg]59[deg]00[sec] N., 124[deg]15[deg]30[sec] W. thence southward to 46[deg]51[deg]00[sec] N., 124[deg]15[deg]30[sec] W. thence eastward to a point on the shoreline at 46[deg]51[deg]00[sec] N., 124[deg]06[deg]40[sec] W. thence northward along the shoreline to a point at the south jetty 46[deg]54[deg]20[sec] N., 124[deg]08[deg]07[sec] W. thence eastward to 46[deg]54[deg]10[sec] N., 124[deg]05[deg]00[sec] W. thence northward to 46[deg]55[deg]00[sec] N., 124[deg]03[deg]30[sec] W. thence northwestward to Damon Point at 46[deg]56[deg]50[sec] N., 124[deg]06[deg]30[sec] W. thence westward along the north shoreline of the harbor to the north jetty at 46[deg]55[deg]40[sec] N., 124[deg]10[deg]27[sec] W. thence northward along the shoreline to the beginning.

(3) Willapa Bay, Wash.: From a point on the shoreline at 46[deg]46[deg]00[sec] N., 124[deg]05[deg]40[sec] W. westward to 46[deg]44[deg]00[sec] N., 124[deg]10[deg]45[sec] W. thence eastward to a point on the shoreline at 46[deg]35[deg]00[sec] N., 124[deg]03[deg]45[sec] W. thence northward along the shoreline around the north end of Leadbetter Point thence southward along the east shoreline of Leadbetter Point to 46[deg]36[deg]00[sec] N., 124[deg]02[deg]15[sec] W. thence eastward to 46[deg]36[deg]00[sec] N., 124[deg]00[deg]00[sec] W. thence northward to Toke point at 46[deg]42[deg]15[sec] N., 123[deg]58[deg]00[sec] W. thence westward along the north shoreline of the harbor and northward along the seaward shoreline to the beginning.

(4) Columbia River Bar, Wash.-Oreg.: From a point on the shoreline at 46[deg]18[deg]00[sec] N., 124[deg]04[deg]39[sec] W. thence westward to 46[deg]18[deg]00[sec] N., 124[deg]09[deg]30[sec] W. thence southward to 46[deg]12[deg]00[sec] N., 124[deg]09[deg]30[sec] W. thence eastward to a point on the shoreline at 46[deg]12[deg]00[sec] N.,

123[deg]59[min]33[sec] W. thence eastward to Tansy Point Range Front Light at 46[deg]11[min]16[sec] N., 123[deg]55[min]05[sec] W.; thence northward to Chinook Point at 46[deg]15[min]08[sec] N., 123[deg]55[min]25[sec] W. thence northwestward to the north end of Sand Island at

[[Page 59102]]

46[deg]17[min]29[sec] N., 124[deg]01[min]25[sec] W. thence southwestward to a point on the north shoreline of the harbor at 46[deg]16[min]25[sec] N., 124[deg]02[min]28[sec] W. thence northwestward and southwestward along the north shoreline of the harbor and northward along the seaward shoreline to the beginning.

(5) Nehalem River Bar, Oreg.: From a point on the shoreline 45[deg]41[min]25[sec] N., 123[deg]56[min]16[sec] W. thence westward 45[deg]41[min]25[sec] N., 123[deg]59[min]00[sec] W. thence southward to 45[deg]37[min]25[sec] N., 123[deg]59[min]00[sec] W. thence eastward to a point on the shoreline at 45[deg]37[min]25[sec] N., 123[deg]56[min]38[sec] W. thence northward along the shoreline to the north end of the south jetty at 45[deg]39[min]40[sec] N., 123[deg]55[min]45[sec] W. thence westward to a point on the shoreline at 45[deg]39[min]45[sec] N., 123[deg]56[min]19[sec] W. thence northward along the shoreline to the beginning.

(6) Tillamook Bay Bar, Oreg.: From a point on the shoreline at 45[deg]35[min]15[sec] N., 123[deg]57[min]05[sec] W. thence westward 45[deg]35[min]15[sec] N., 124[deg]00[min]00[sec] W. thence southward to 45[deg]30[min]00[sec] N., 124[deg]00[min]00[sec] W. thence eastward to a point on the shoreline at 45[deg]30[min]00[sec] N., 123[deg]57[min]40[sec] W. thence northward along the shoreline to the north end of Kincheloe Point at 45[deg]33[min]30[sec] N., 123[deg]56[min]05[sec] W. thence northward to a point on the north shoreline of the harbor at 45[deg]33[min]40[sec] N., 123[deg]55[min]59[sec] W. thence westward along the north shoreline of the harbor then northward along the seaward shoreline to the beginning.

(7) Netarts Bay Bar, Oreg.: From a point on the shoreline at 45[deg]28[min]05[sec] N. thence westward to 45[deg]28[min]05[sec] N., 124[deg]00[min]00[sec] W. thence southward to 45[deg]24[min]00[sec] N., 124[deg]00[min]00[sec] W. thence eastward to a point on the shoreline at 45[deg]24[min]00[sec] N., 123[deg]57[min]45[sec] W. thence northward along the shoreline to 45[deg]26[min]03[sec] N., 123[deg]57[min]15[sec] W. thence eastward to a point on the north shoreline of the harbor at 45[deg]26[min]00[sec] N., 123[deg]56[min]57[sec] W. thence northward along the shoreline to the beginning.

(8) Siletz Bay Bar, Oreg.: From a point on the shoreline at 44[deg]56[min]32[sec] N., 124[deg]01[min]29[sec] W. thence westward to 44[deg]56[min]32[sec] N., 124[deg]03[min]00[sec] W. thence southward to 44[deg]54[min]40[sec] N., 124[deg]03[min]15[sec] W. thence eastward to a point on the shoreline at 44[deg]54[min]40[sec] N., 124[deg]01[min]55[sec] W. thence northward along the shoreline to 44[deg]55[min]35[sec] N., 124[deg]01[min]25[sec] W. thence northward to a point on the north shoreline of the harbor at 44[deg]55[min]45[sec] N., 124[deg]01[min]20[sec] W. thence westward and northward along the shoreline to the beginning.

(9) Depoe Bay Bar, Oreg.: From a point on the shoreline at 44[deg]49[min]15[sec] N., 124[deg]04[min]00[sec] W. thence westward to 44[deg]49[min]15[sec] N., 124[deg]04[min]35[sec] W. thence southward to 44[deg]47[min]55[sec] N., 124[deg]04[min]55[sec] W. thence eastward to a point on the shoreline at 44[deg]47[min]53[sec] N., 124[deg]04[min]25[sec] W. thence northward along the shoreline and eastward along the south bank of the entrance channel to the highway



42[deg]26'25'' N., 124[deg]26'03'' W. thence westward to 42[deg]26'10'' N., 124[deg]27'05'' W. thence southward to 42[deg]24'15'' N., 124[deg]27'05'' W. thence eastward to a point on the shoreline at 42[deg]24'15'' N., 124[deg]25'30'' W. thence northward along the shoreline and eastward along the south shoreline of the entrance channel to the highway bridge thence northward across the inner harbor jetty to a point on the north shoreline of the entrance channel at the highway bridge thence westward along the north shoreline of the entrance channel thence northward along the seaward shoreline to the beginning.

(16) Chetco River Bar, Oreg.: From a point on the shoreline at 42[deg]02'35'' N., 124[deg]17'20'' W. thence southeastward to 42[deg]01'45'' N., 124[deg]16'30'' W. thence northwestward to a point on the shoreline at 42[deg]02'10'' N., 124[deg]15'35'' W. thence northwestward along the shoreline thence northward along the east shoreline of the channel entrance to 42[deg]02'47'' N., 124[deg]16'03'' W. thence northward along the west face of the inner jetty and east shoreline of the channel entrance to the highway bridge thence westward to the west shoreline of the channel at the highway bridge thence southward along the west shoreline of the channel thence westward along the seaward shoreline to the beginning.

(b) Definitions. For the purposes of this section:

(1) Bar closure means that the operation of any vessel within a regulated navigation area established in

[[Page 59103]]

paragraph (a) of this section has been prohibited by the Coast Guard.

(2) Bar crossing plan (also known as a Go/No-Go plan) means a plan developed by local industry professionals, in coordination with the Coast Guard, for a bar within a regulated navigation area established in paragraph (a) of this section and adopted by the master or operator of a small passenger vessel to guide his vessel's operations on and in the vicinity of that bar.

(3) Bar restriction means that operation of a recreational or uninspected passenger vessel within a regulated navigation area established in paragraph (a) of this section has been prohibited by the Coast Guard.

(4) Commercial fishing industry vessel means a fishing vessel, fish tender vessel, or a fish processing vessel.

(5) Designated representative means any Coast Guard commissioned, warrant, or petty officer that has been authorized by the Captain of the Port to act on his behalf.

(6) Fish processing vessel means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

(7) Fish tender vessel means a vessel that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or a fish processing facility.

(8) Fishing vessel means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

(9) Readily accessible means equipment that is taken out of stowage and is available within the same space as any person for immediate use during an emergency.

(10) Recreational vessel is any vessel manufactured or used primarily for non-commercial use or leased, rented, or chartered to

another for the latter's non-commercial use. It does not include a vessel engaged in carrying paying passengers.

(11) Small passenger vessel means a vessel inspected under 46 CFR subchapter T or 46 CFR subchapter K.

(12) Uninspected passenger vessel means an uninspected vessel--

(i) Of at least 100 gross tons;

(A) Carrying not more than 12 passengers, including at least one passenger-for-hire; or

(B) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 12 passengers; or

(ii) Of less than 100 gross tons;

(A) Carrying not more than six passengers, including at least one passenger-for-hire; or

(B) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than six passengers.

(13) Unsafe condition exists when the wave height within a regulated navigation area identified in paragraph (a) of this section is equal to or greater than the maximum wave height determined by the formula  $L/10 + F = W$  where:

L = Overall length of a vessel measured in feet in a straight horizontal line along and parallel with the centerline between the intersections of this line with the vertical planes of the stem and stern profiles excluding deckhouses and equipment.

F = The minimum freeboard when measured in feet from the lowest point along the upper strake edge to the surface of the water.

W = Maximum wave height in feet to the nearest highest whole number.

(c) Regulations--(1) (i) Bar restriction. Passage across the bars located in the regulated navigation areas established in paragraph (a) of this section will be restricted for recreational and uninspected passenger vessels as determined by the Captain of the Port (COTP) or his designated representative. In making this determination, the COTP or his designated representative will determine whether an unsafe condition exists for such vessels as defined in paragraph (b) of this section. Additionally, the COTP or his designated representative will use their professional maritime experience and knowledge of local environmental conditions in making their determination. Factors that will be considered include, but are not limited to: size and type of vessel, sea state, winds, wave period, and tidal currents. When a bar is restricted, the operation of recreational and uninspected passenger vessels in the regulated navigation area established in paragraph (a) of this section in which the restricted bar is located is prohibited unless specifically authorized by the COTP or his designated representative.

(ii) Bar closure. The bars located in the regulated navigation areas established in paragraph (a) of this section will be closed to all vessels whenever environmental conditions exceed the operational limitations of the relevant Coast Guard search and rescue resources as determined by the COTP. When a bar is closed, the operation of any vessel in the regulated navigation area established in paragraph (a) of this section in which the closed bar is located is prohibited unless specifically authorized by the COTP or his designated representative. For bars having deep draft vessel access, the COTP will consult with the local pilots association, when practicable, prior to closing the affected bar.

(iii) The Coast Guard will notify the public of bar restrictions and bar closures via a Broadcast Notice to Mariners on VHF-FM Channel

165 and 22A. Additionally, Coast Guard personnel may be on-scene to advise the public of any bar restrictions and/or closures.

(2) Safety Requirements for Recreational Vessels. The operator of any recreational vessel operating in a regulated navigation area established in paragraph (a) of this section shall ensure that whenever their vessel is being towed or escorted across a bar by the Coast Guard all persons located in any unenclosed areas of their vessel are wearing lifejackets and that lifejackets are readily accessible for/to all persons located in any enclosed areas of their vessel.

(3) Safety Requirements for Uninspected Passenger Vessels (UPV).

(i) The master or operator of any uninspected passenger vessel operating in a regulated navigation area established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of their vessel are wearing lifejackets and that lifejackets are readily accessible for/to all persons located in any enclosed areas of their vessel:

(A) When crossing the bar and a bar restriction exists for recreational vessels of the same length or

(B) Whenever their vessel is being towed or escorted across the bar by the Coast Guard.

(ii) The master or operator of any uninspected passenger vessel operating in a regulated navigation area established in paragraph (a) of this section during the conditions described in paragraph (c)(3)(i)(A) of this section shall contact the Coast Guard on VHF-FM Channel 22A prior to crossing the bar between sunset and sunrise. The master or operator shall report the following:

(A) Vessel name,

(B) Vessel location or position,

(C) Number of persons onboard the vessel, and

(D) Vessel destination.

(4) Safety Requirements for Small Passenger Vessels (SPV).

(i) The master or operator of any small passenger vessel operating in a

[[Page 59104]]

regulated navigation area established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of their vessel are wearing lifejackets and that lifejackets are readily accessible for/to all persons located in any enclosed areas of their vessel:

(A) When crossing the bar and a bar restriction exists for recreational vessels or uninspected passenger vessels of the same length or

(B) Whenever their vessel is being towed or escorted across the bar by the Coast Guard.

(ii) Small passenger vessels with bar crossing plans that have been reviewed by and accepted by the Officer in Charge, Marine Inspection (OCMI) are exempt from the safety requirements provided in paragraph (c)(4)(i) of this section during the conditions described in paragraph (c)(4)(i)(A) of this section so long as when crossing the bar the master or operator ensures that all persons on their vessel wear lifejackets in accordance with their bar crossing plan. If the vessel's bar crossing plan does not specify the conditions when the persons on their vessel must wear lifejackets, however, then the master or operator must comply with the safety requirements provided in paragraph (c)(4)(i) of this section in their entirety.

(iii) The master or operator of any small passenger vessel operating in a regulated navigation area established in paragraph (a) of this section during the conditions described in paragraph

(c)(4)(i)(A) of this section shall contact the Coast Guard on VHF-FM Channel 22A prior to crossing the bar between sunset and sunrise. The master or operator shall report the following:

- (A) Vessel name,
- (B) Vessel location or position,
- (C) Number of persons onboard the vessel, and
- (D) Vessel destination.

(5) Safety Requirements for Commercial Fishing Vessels (CFV). (i) The master or operator of any commercial fishing vessel operating in a regulated navigation area established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of their vessel are wearing lifejackets or immersion suits and that lifejackets or immersion suits are readily accessible for/to all persons located in any enclosed spaces of their vessel:

- (A) When crossing the bar and a bar restriction exists for recreational vessels or uninspected passenger vessels of the same length or
- (B) Whenever their vessel is being towed or escorted across the bar by the Coast Guard.

(ii) The master or operator of any commercial fishing vessel operating in a regulated navigation area established in paragraph (a) of this section during the conditions described in paragraph (c)(5)(i)(A) of this section shall contact the Coast Guard on VHF-FM Channel 22A prior to crossing the bar between sunset and sunrise. The master or operator shall report the following:

- (A) Vessel name,
- (B) Vessel location or position,
- (C) Number of persons onboard the vessel, and
- (D) Vessel destination.

(6) All persons and vessels within the regulated navigation areas established in paragraph (a) of this section must comply with the orders of Coast Guard personnel. Coast Guard personnel include commissioned, warrant, and petty officers of the United States Coast Guard.

Dated: October 15, 2009.

G.T. Blore,  
Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

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