

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 165**

[CGD09-02-522]

RIN 2115-AA97

Safety Zone; M/V ROY A. JODREY Shipwreck, Wellesley Island, NY**AGENCY:** Coast Guard, DOT.**ACTION:** Final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the St. Lawrence River around the shipwreck of the M/V ROY A. JODREY. This safety zone is necessary to ensure the safety of site workers, recreational divers and the general public from the hazards associated with a pollution cleanup operation being conducted on the M/V ROY A. JODREY. This safety zone is intended to restrict vessels from anchoring, and unauthorized individuals from diving, on or around the shipwreck.

DATES: This rule is effective from 11 a.m. (local) on October 10, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD09-02-522 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Craig Wyatt, U.S. Coast Guard Marine Safety Office Buffalo, at (716) 843-9574.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard just recently became aware of oil being released from the wreck of the M/V ROY A. JODREY. Further investigation indicates that oil is located in spaces throughout the vessel and that a recovery operation is necessary to ensure against future oil pollution.

Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or

damage to property. The safety zone will protect divers and individuals involved in the recovery process by creating an area free of vessels anchoring and unknown divers being in close proximity to recovery machinery. In addition, it will assist in protecting the integrity of the hull from possible damage due to vessels anchoring in the area or recreational divers inadvertently causing further discharge prior to the completion of the recovery operation. The recovery operation is planned to start immediately to prevent, as much as possible, future oil pollution.

Background and Purpose

This safety zone is necessary to ensure the safety of divers and the general public from exposure to oil or hazardous materials both at the wreck and at downstream sites to which oil and hazardous material may be liberated by recreational diving activity or anchors of other vessels. The Captain of the Port Buffalo has authorized all vessels transiting through this area to pass through the safety zone, all vessels intending to stop and any divers intending on visiting the wreckage of the M/V ROY A. JODREY must request permission from the Captain of the Port Buffalo or his designated on-scene representative prior to entry.

The safety zone will consist of all waters and adjacent shoreline of the St. Lawrence River encompassed by the arc of a circle with a 150-yard radius with its center in approximate position 44°19.55 N, 075°56.00 W. These coordinates are based upon North American Datum 1983 (NAD 83). This location is in close vicinity to U.S. Coast Guard Station Alexandria Bay.

Regulatory Evaluation

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. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), 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. 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 Marine Safety Office Buffalo (*see ADDRESSES*.)

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).

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.

Unfunded Mandates Reform Act

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

effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this 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.

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.

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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2-1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination"

is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subject in 33 CFR Part 165

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

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

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(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. Add § 165.917 to read as follows:

§ 165.917 Safety Zone; M/V ROY A. JODREY, St. Lawrence River, Wellesley Island, New York.

(a) *Location.* The following area is safety zone: all waters and adjacent shoreline encompassed by the arc of a circle with a 150-yard radius of the wreck of the M/V ROY A. JODREY, with its center in approximate position 44°19.55 N, 075°56.00 W (NAD 83).

(b) *Regulations.*

(1) The regulations in § 165.23 apply to this section.

(2) Except as provided in this section, no vessel or person may enter or remain in this safety zone without the permission of the Captain of the Port.

(3) The Captain of the Port Buffalo has authorized all vessels to transit through the safety zone on the condition that they proceed directly through the zone without stopping.

(4) Any vessel wanting to stop, fish, anchor or discharge divers inside the zone, or any divers wanting to visit the wreckage of the M/V ROY A. JODREY, must request permission from the Captain of the Port Buffalo or his designated on-scene representative prior to entry into the zone.

Dated: October 10, 2002.

P.M. Gugg,

Commander, U.S. Coast Guard, Captain of the Port Buffalo.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA-082-FOAa; FRL-7397-5]

Determination of Attainment of the 1-Hour Ozone Standard for San Diego County, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking contains EPA's final determination that the San Diego area has attained the 1-hour ozone national ambient air quality standard (NAAQS) by the deadline required by the Clean Air Act (CAA). Elsewhere in this **Federal Register**, we are withdrawing our prior direct final determination, because an adverse comment was submitted on that action. In this rulemaking, we are responding to that comment and issuing our final determination of attainment.

EFFECTIVE DATE: This determination is effective on November 22, 2002.

ADDRESSES: You can inspect the docket for this action at EPA's Region 9 office during normal business hours, at the following location: Air Planning Office, USEPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, U.S. EPA Region 9, at (415) 972-3957, or jesson.david@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

I. Background

For background on the San Diego 1-hour ozone classification, status, and air quality, please refer to our direct final determination of attainment, which was published on August 23, 2002 (67 FR 54580). In that same issue, we published an accompanying proposed determination of attainment, whose public comment period expired on September 23, 2002 (67 FR 54601). Because we received an adverse comment during the public comment period, we are withdrawing the direct final determination elsewhere in this **Federal Register**, responding to the comment, and finalizing our determination of attainment. As stated in our proposal, we will not institute a second comment period on this action.

II. Response to Public Comment

We received one public comment from the Environmental Health Coalition of San Diego (EHC). We summarize the content of that comment and respond below.