

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2023–0368]

RIN 1625–AA11

#### Regulated Navigation Area; St. Louis River/Duluth-Superior Harbor, Duluth, MN

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a regulated navigation area for certain waters of the Duluth-Superior Harbor and the St. Louis River in Duluth, MN. This action is necessary to prevent disrupting engineered remedies that are a part of the St. Louis River Area of Concern sediment remediation project. This proposed rulemaking would prohibit anchoring, dredging, laying cable, dragging, seining, bottom fishing, conducting salvage operations, or any other activity which could potentially disturb the riverbed in the designated area unless authorized by the District Commander or the Captain of the Port. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before September 22, 2023.

**ADDRESSES:** You may submit comments identified by docket number USCG–2023–0368 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LT Joseph R. McGinnis, telephone 218–725–3818, email [DuluthWWM@uscg.mil](mailto:DuluthWWM@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  
§ Section  
U.S.C. United States Code

##### II. Background, Purpose, and Legal Basis

In 2019, the Minnesota Pollution Control Agency (MPCA) began discussions with the Coast Guard and

other stakeholders to explore establishing Regulated Navigation Areas for some of the St. Louis River Area of Concern project sites. The purpose of these Regulated Navigation Areas is to prevent disrupting engineered remedies that are a part of the St. Louis River Area of Concern sediment remediation projects from unauthorized human disturbance at several remedial action sites containing contaminated sediment. The Federal Great Lakes Restoration Initiative funded these remedial actions under the Great Lakes Legacy Act provisions in order to improve human and environmental health by reducing exposure to contaminated riverbed sediments via a variety of engineered methods. To prevent future exposure to the contained contaminants, the engineered remedies need protection from disturbance. In 2022, the Minnesota Pollution Control Agency notified the Coast Guard which sites and areas would be appropriate for Regulated Navigation Areas. The Captain of the Port of Duluth (COTP) has determined that protection of these remedies will also protect human and environmental health.

The purpose of this rulemaking is to ensure the protection of the remedies, human health, and the environment in the suggested Regulated Navigation Areas. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

##### III. Discussion of Proposed Rule

Coast Guard District Nine is proposing to establish the Regulated Navigation Areas in order to mitigate any potential unforeseen disruption to the remediated St. Louis River Area of Concern sites. The Regulated Navigation Areas would cover these six remediation sites: Minnesota Slip, Duluth, MN; Slip 3, Duluth, MN; Slip C, Duluth, MN; Azcon/Duluth Seaway Port Authority Grafield Slip C, Duluth, MN; St. Louis River/Interlake/Duluth Tar, Duluth, MN; U.S. Steel/Spirit Lake, Duluth, MN. Specific coordinates are included in the supplemental regulatory text. All vessels and persons are prohibited from activities that would disturb the integrity of the engineered remedies designed to address contaminated sediments at these sites. Activities may include, but are not limited to: anchoring, dragging, spudding, propeller scouring, or dredging. The regulatory text we are proposing appears at the end of this document.

The creation of the Regulated Navigation Areas will render the need for established safety zones at two sites

obsolete, so this rulemaking would also repeal § 165.905 USX Superfund Site Safety Zones: St. Louis River and § 165.927 Safety Zone; St. Louis River, Duluth/Interlake Tar Remediation Site, Duluth, MN.

##### IV. Regulatory Analyses

We developed this proposed 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. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the necessity to avoid disrupting these remediated St. Louis River Area of Concern sites under most circumstances. Dredging projects for slips in the impacted areas which may need to be dredged in the future require review by state agencies prior to dredging. Thus, there should be little disruption and/or plans to resolve any disturbance to existing remedies prior to dredging projects.

###### B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the Regulated Navigation Areas may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

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

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

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

### C. Collection of Information

This proposed rule would 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 proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nothing in this proposed rule will preempt the rights to hunt, fish, and gather granted to Indian tribes under the 1854 Treaty with the U.S. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### E. Unfunded Mandates Reform Act

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

### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves all vessels. Normally such actions are categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### G. Protest Activities

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

### V. Public Participation and Request for Comments

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

**Submitting comments.** We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2023–0369 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

**Viewing material in docket.** To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

**Personal information.** We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

### 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 is proposing to amend 33 CFR part 165 as follows:

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

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

**Authority:** 46 U.S.C. 70034, 70051; 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.945 to read as follows:

**§ 165.945 Regulated navigation area; St. Louis River Area of Concern, Duluth, Minnesota**

(a) *Location.* The following areas are a regulated navigation area:

TABLE 1 TO PARAGRAPH (a)

| Number  | Site name   | Regulated area<br>(Note: all geographic coordinates expressed in term of latitude and longitude datum<br>are based on WGS 84 coordinates)  |
|---------|---|--|
| 1 ..... | Minnesota Slip, Duluth, MN .....                                | <p>The aquatic area within a polygon connected by the following points:</p> <ul style="list-style-type: none"> <li>• 46°46'53.4268" N 092°05'45.2210" W.</li> <li>• 46°46'53.1146" N 092°05'46.1287" W.</li> <li>• 46°46'52.1716" N 092°05'45.4669" W.</li> <li>• 46°46'51.8253" N 092°05'46.6317" W.</li> <li>• 46°46'52.1940" N 092°05'46.7526" W.</li> <li>• 46°47'01.7900" N 092°05'50.8326" W.</li> <li>• 46°47'00.8887" N 092°05'52.4477" W.</li> </ul>  |
| 2 ..... | Slip 3, Duluth, MN .....  | <p>The aquatic area within a polygon connected by the following points:</p> <ul style="list-style-type: none"> <li>• 46°46'34.9277" N 092°06'18.2902" W.</li> <li>• 46°46'36.8355" N 092°06'18.7654" W.</li> <li>• 46°46'38.5299" N 092°06'21.5290" W.</li> <li>• 46°46'37.6368" N 092°06'22.6961" W.</li> </ul>   |
| 3 ..... | Slip C, Duluth, MN .....  | <p>The aquatic area to the southwest of a line connected by the following points:</p> <ul style="list-style-type: none"> <li>• 46°46'22.1579" N 092°06'31.4489" W.</li> <li>• 46°46'21.0546" N 092°06'27.9639" W.</li> </ul>   |
| 4 ..... | Azcon/Duluth Seaway Port Authority Garfield Slip C, Duluth, MN. | <p>The aquatic area within a polygon connected by the following points:</p> <ul style="list-style-type: none"> <li>• 46°45'41.9081" N 092°06'11.5069" W.</li> <li>• 46°45'41.7040" N 092°06'11.5337" W.</li> <li>• 46°45'41.2503" N 092°06'12.6746" W.</li> <li>• 46°45'40.8467" N 092°06'12.3733" W.</li> <li>• 46°45'40.3784" N 092°06'13.6404" W.</li> <li>• 46°45'40.1196" N 092°06'13.7025" W.</li> <li>• 46°45'39.3277" N 092°06'13.0539" W.</li> <li>• 46°45'37.0413" N 092°06'19.3995" W.</li> <li>• 46°45'37.8242" N 092°06'19.9225" W.</li> <li>• 46°45'38.2401" N 092°06'19.8461" W.</li> <li>• 46°45'38.7466" N 092°06'20.2255" W.</li> </ul>  |
| 5 ..... | St. Louis River/Interlake/Duluth Tar, Duluth, MN.               | <p>The aquatic area north of a line connected by the following points:</p> <ul style="list-style-type: none"> <li>• 46°43'12.8964" N 092°10'30.7956" W.</li> <li>• 46°43'12.1656" N 092°10'28.1136" W.</li> <li>• 46°43'09.3576" N 092°10'26.0256" W.</li> <li>• 46°43'09.2748" N 092°10'25.9932" W.</li> <li>• 46°43'08.8500" N 092°10'25.6872" W.</li> <li>• 46°43'08.8320" N 092°10'21.8352" W.</li> <li>• 46°43'08.0436" N 092°10'19.5564" W.</li> <li>• 46°43'08.4936" N 092°10'19.0236" W.</li> <li>• 46°43'09.3828" N 092°10'21.4140" W.</li> <li>• 46°43'10.1640" N 092°10'22.0224" W.</li> <li>• 46°43'10.8192" N 092°10'21.6264" W.</li> </ul> <p>and the aquatic area to the north of a line connected by the following points:</p> <ul style="list-style-type: none"> <li>• 46°43'11.9208" N 092°10'03.2772" W.</li> <li>• 46°43'12.1620" N 092°10'01.6500" W.</li> <li>• 46°43'07.6872" N 092°09'48.3840" W.</li> <li>• 46°43'08.1300" N 092°09'42.4980" W.</li> <li>• 46°43'10.2072" N 092°09'42.4620" W.</li> </ul>   |
| 6 ..... | U.S. Steel/Spirit Lake, Duluth, MN .....                        | <p>The aquatic area to the west of a line connected by the following points:</p> <ul style="list-style-type: none"> <li>• 46°41'38.8208" N 092°12'12.7736" W.</li> <li>• 46°41'39.6166" N 092°12'08.8750" W.</li> <li>• 46°41'39.3879" N 092°12'05.5895" W.</li> <li>• 46°41'39.2250" N 092°12'04.3468" W.</li> <li>• 46°41'39.1231" N 092°12'02.9108" W.</li> <li>• 46°41'38.9452" N 092°12'01.1111" W.</li> <li>• 46°41'38.6133" N 092°11'59.4509" W.</li> <li>• 46°41'38.3046" N 092°11'57.7306" W.</li> <li>• 46°41'37.2472" N 092°11'53.6615" W.</li> <li>• 46°41'36.1915" N 092°11'49.7903" W.</li> <li>• 46°41'34.5164" N 092°11'45.6293" W.</li> <li>• 46°41'33.5446" N 092°11'43.9431" W.</li> <li>• 46°41'30.8242" N 092°11'43.9684" W.</li> <li>• 46°41'30.8278" N 092°11'39.9806" W.</li> <li>• 46°41'29.1156" N 092°11'38.2350" W.</li> <li>• 46°41'27.0671" N 092°11'37.5149" W.</li> <li>• 46°41'25.4408" N 092°11'36.7605" W.</li> <li>• 46°41'25.0347" N 092°11'36.5722" W.</li> <li>• 46°41'22.7528" N 092°11'36.0788" W.</li> <li>• 46°41'20.7010" N 092°11'35.6137" W.</li> <li>• 46°41'19.6484" N 092°11'35.5431" W.</li> <li>• 46°41'19.6484" N 092°11'35.5431" W.</li> <li>• 46°41'18.5660" N 092°11'35.0700" W.</li> </ul> |

TABLE 1 TO PARAGRAPH (a)—Continued

| Number | Site name | Regulated area<br>(Note: all geographic coordinates expressed in term of latitude and longitude datum<br>are based on WGS 84 coordinates)  |
|--------|-----------|--|
|        |           | <ul style="list-style-type: none"> <li>• 46°41'16.5697" N 092°11'34.5434" W.</li> <li>• 46°41'14.4790" N 092°11'33.9685" W.</li> <li>• 46°41'12.3306" N 092°11'33.9221" W.</li> <li>• 46°41'12.7159" N 092°11'44.4501" W.</li> <li>• 46°41'02.1240" N 092°11'44.4501" W.</li> <li>• 46°41'01.9943" N 092°11'40.5819" W.</li> <li>• 46°41'04.0665" N 092°11'39.1344" W.</li> <li>• 46°41'03.8696" N 092°11'36.2223" W.</li> <li>• 46°41'02.0724" N 092°11'34.3605" W.</li> <li>• 46°40'56.9795" N 092°11'32.1366" W.</li> <li>• 46°40'55.9436" N 092°11'32.3531" W.</li> <li>• 46°40'53.8981" N 092°11'32.7804" W.</li> <li>• 46°40'51.2261" N 092°11'33.1191" W.</li> <li>• 46°40'48.9634" N 092°11'33.1528" W.</li> <li>• 46°40'46.4928" N 092°11'32.8907" W.</li> <li>• 46°40'45.2017" N 092°11'32.5057" W.</li> <li>• 46°40'42.1916" N 092°11'38.3025" W.</li> <li>• 46°40'38.9992" N 092°11'44.4501" W.</li> <li>• 46°40'32.6805" N 092°11'44.4595" W.</li> <li>• 46°40'28.8937" N 092°11'44.7158" W.</li> <li>• 46°40'27.5301" N 092°11'46.0856" W.</li> <li>• 46°40'26.6103" N 092°11'47.3902" W.</li> <li>• 46°40'26.2216" N 092°11'48.4650" W.</li> <li>• 46°40'25.0613" N 092°11'51.2108" W.</li> </ul> |

(b) *Regulations.* In addition to the general Regulated Navigation Area regulations in §§ 165.10, 165.11, and 165.13:

(1) All vessels and persons are prohibited from activities that would disturb the integrity of engineered remedies designed to address contaminated sediments at the sites identified above that are described in the St. Louis River Area of Concern Remedial Action Plan. Such activities may include, but are not limited to: anchoring, dragging, spudding, propeller scouring, or dredging.

(2) The prohibitions described in paragraph (b)(1) of this section shall not apply to vessels or persons engaged in activities associated with future contaminated sediment remediation projects or other state or federally approved and permitted construction or monitoring projects, provided that the Captain of the Port (COTP), Duluth, is given advance notice of those activities by the local, state, or Federal agencies or by the regulated private entities conducting those activities.

(3) The prohibitions described in paragraph (b)(1) of this section shall not supersede restrictions outlined in executed Records of Decision for Superfund sites.

(4) Vessels may otherwise transit or navigate within this area without reservation.

(c) *Waivers.* Upon written request stating the need for and proposed conditions of the waiver and any

proposed precautionary measures, the Captain of the Port (COTP) Duluth may, in consultation with local, state, and Federal agencies or regulated private entities, authorize a waiver from this section if the COTP determines that activity for which the waiver is sought can take place without undue risk to environmental remediation construction, monitoring, and maintenance. Requests for waivers should be submitted in writing to Commander, U.S. Coast Guard Marine Safety Unit, Duluth, 515 West First Street, Room 145, Duluth, MN 55802 to facilitate review by the U.S. Coast Guard.

(d) *Penalties.* Those who violate this section are subject to the penalties set forth in 46 U.S.C. 70036.

(e) *Enforcement period.* This Regulated Navigation Area's requirements are enforceable 24 hours a day as long as this Regulated Navigation Area is in place.

(f) *Contact information.* If you observe violations of the regulations in this section, you may notify the COTP by email, at [DuluthWWM@uscg.mil](mailto:DuluthWWM@uscg.mil), or by phone, 218-725-3818.

Dated: August 17, 2023.

**Jonathan P. Hickey,**

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA-HQ-OAR-2020-0430; FRL-7522-05-OAR]

RIN 2060-AU63

### National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Supplemental notice of proposed rulemaking; extension of public comment period.

**SUMMARY:** On July 24, 2023, the U.S. Environmental Protection Agency (EPA) published a supplemental proposed rule titled "National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting." The EPA is extending the comment period on this proposed rule that currently closes on September 7, 2023, by 15 days. The comment period will now remain open until September 22, 2023, to allow additional time for Tribal Nations and stakeholders to review and comment on the proposal.

**DATES:** The public comment period for the proposed rule published in the **Federal Register** on July 24, 2023 (88 FR 47415), originally ending September 7, 2023, is being extended by 15 days. Written comments must now be