

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

USCG-2009-1062

RIN 1625-AA00

Safety Zone; Targeted Asian Carp Fishing and Rotenone Operations,
Little Calumet River, Chicago, IL.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Little Calumet River, Chicago, IL. This zone is intended to restrict vessels from a portion of the Little Calumet River during targeted fishing operations and a possible application of a fish toxicant sponsored by the Illinois Department of Natural Resources (IDNR). This temporary safety zone is necessary to protect personnel and equipment involved in the operations and restrict spectators and vessels from the operations site.

DATES: This rule is effective from 8:00 a.m. from December 04, 2009 until 4:00 p.m. December 16, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-1062 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-1062 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are 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 temporary final rule, call CDR Tim Cummins, Deputy Prevention Division, Ninth Coast Guard District, telephone 216-902-6045. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment

when an agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under U.S.C. 553 (b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because notice of the event was not given in time for the Coast Guard to provide prior notice and opportunity to comment. Safety of personnel involved in the fishing and fish toxicant application operations, and vessel traffic passing through the area, require the implementation of this rule.

Under 5 U.S.C. 553(d) (3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this operation and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

The IDNR has requested a safety zone to support fishing and fish toxicant application operations in the Little Calumet River during a period of already reduced traffic. IDNR is conducting these targeted fishing operations in support of preventing Asian Carp from entering the Great Lakes. This temporary safety zone is necessary to ensure the safety of fisherman while setting and

recovering nets in the targeted fishing operation and safety of the workers applying the toxicant (rotenone) and neutralizer in the affected area. This safety zone is also intended to restrict spectators during the fishing operations. Establishing a safety zone to control vessel movement around the location of the targeted fishing sites will help ensure the safety of persons and property involved in the operation.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of fisherman and IDNR personnel while conducting fishing and fish toxicant application operations. The safety zone encompasses all waters of the Little Calumet River between mile marker 321.0 and mile marker 326.5.0. The safety zone will be in effect from 8:00 a.m. on December 04, 2009 until 4:00 p.m. on December 16, 2009. The safety zone will be enforced while fishing operations are underway. As soon as the targeted fishing and rotenone application efforts are complete, the Captain of the Port Sector Lake Michigan will begin notifying waterway users by all appropriate means to effect the widest publicity that vessels engaged in normal operations are again being permitted to transit through the safety zone.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or their on-scene representative. Entry into, transiting, or anchoring within the

safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or their on-scene representative. The Captain of the Port or their on-scene representative may be contacted via VHF Channel 16.

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.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

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 will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor between mile marker 321.0 and mile marker 326.5.0 on the Little Calumet River from 8:00 a.m. until 4:00 p.m. from December 04, 2009 to December 16, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced temporarily and only while unsafe conditions exist. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of The Port Sector Lake Michigan to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

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. 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 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 would not result in such 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these

special local regulations and fishing rights protection need not be incompatible. We have also determined that this Proposed 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Proposed Rule or options for compliance are encourage to contact the point of contact listed under FOR FURTHER INFORMATION CONTACT.

Energy Effects

We have analyzed this proposed 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.

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 procedure; and related management system 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.

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 the establishment of a temporary safety zone, ships can safely pass around the zone, and the zone will be enforced for twelve days or less depending on the duration of fishing efforts. Therefore this rule is categorically excluded under paragraph 34(g) of the Instruction.

A final environmental analysis check list and categorical exclusion determination are available in the docket where indicated under ADDRESSES.

The Coast Guard's environmental responsibilities extend only to the creation of a safety and security zone and do not address the application of rotenone. Any questions regarding the rotenone operation should be addressed to Mr. Bill Bolen, U.S. Environmental Protection Agency, Senior Advisor, Great Lakes

National Program Office, 77 W. Jackson Blvd., Chicago, IL.
60604, at (312)353-6316.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 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.

2. A new temporary section 165.T09-1062 is added as follows:

§ 165.T09-1062 Safety zone; Targeted Asian Carp Fishing Operations, Little Calumet River, Chicago, IL.

(a) Location. The following area is a temporary safety zone: all waters of the Little Calumet River between mile marker 321.0 and mile marker 326.5.

(b) Effective period. This rule is effective from 8:00 a.m. on December 04, 2009 until 4 p.m. on December 16, 2009.

(c) Regulations.

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Sector Lake Michigan, or their on-scene representative.

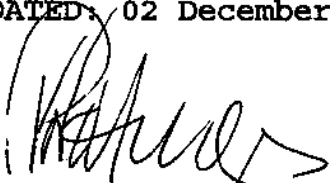
(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Sector Lake Michigan or their on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer, on board a Coast Guard, Coast Guard Auxiliary vessel, or local, state or federal law enforcement vessel who have been authorized to act on behalf of the Captain of the Port Sector Lake Michigan. The Captain of the Port or their on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or their on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate

in the safety zone must comply with all directions given to them by the Captain of the Port Sector Lake Michigan or their on-scene representative.

DATED: 02 December 2009

A handwritten signature in black ink, appearing to read 'P.V. Neffenger', written over the typed name.

P.V. NEFFENGER
Rear Admiral, U.S. Coast Guard
Commander, Ninth Coast Guard District

U.S. COAST GUARD
CATEGORICAL EXCLUSION DETERMINATION
FOR

TEMPORARY FINAL RULE:
ESTABLISHMENT OF A SAFETY ZONE
LITTLE CALUMET RIVER, CHICAGO, IL

The U.S. Coast Guard proposes establishing a Temporary Final Rule for a safety zone on the Little Calumet River near Chicago, Illinois, per Federal Register docket number USCG-2009-1062. This rule is effective from 8:00 a.m. on 04 December 2009 until 4:00 p.m. on 16 December 2009. This rulemaking is in response to the Illinois Department of Natural Resources (IDNR) decision to conduct targeted fishing and rotenone operations to prevent Asian Carp from entering Lake Michigan. Due to the possible hazards of rotenone to humans as well as the dangers of conducting fishing operations in a heavily travelled waterway, the Coast Guard plans to expedite enactment of safety measures around the fishing and rotenone operations by enacting a Temporary Final Rule to close the River until the IDNR completes its operations.

The safety zone encompass all waters of the Little Calumet River located between mile marker 321.0 and mile marker 326.5. While this safety zone is in effect, no vessels may enter the zone. Although this has the effect of closing the River down to all traffic, the Captain of the Port Lake Michigan has coordinated this closure with several other waterway closures to minimize the impact on commerce and will open the waterway up as soon as IDNR has completed their operations.

These restrictions are necessary to ensure the safety of vessels and their personnel as well as the public's safety due to the type of fishing operations and rotenone applications. A Categorical Exclusion Checklist is attached.

This action is not expected to result in any significant adverse environmental impacts as described in the National Environmental Policy Act of 1969 (NEPA). The proposed action has been thoroughly reviewed by the USCG, and the undersigned have determined this action to be categorically excluded under current USCG CE #34(g) from further environmental documentation, in accordance with Section 2.B.2 and Figure 2-1 of the National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1 D, since implementation of this action will not result in any:

1. Significant cumulative impacts on the human environment;
2. Substantial controversy or substantial change to existing environmental conditions;
3. Impacts which are more than minimal on properties protected under 4 (f) of the DOT Act as superseded by Public Law 97-449, and Section 106 of the National Historic Preservation Act; or,

Safety Zone Only

4. Inconsistencies with any Federal, State or local laws or administrative determinations relating to the environment.

12/2/9
Date

Andrew Synt, con
Preparer

SJA
Title/Position

12/02/09
Date

Raymond M. Hill
Environmental Reviewer

ACTING, USCG
CEV CLEVELAND
Title/Position

In reaching my decision/recommendation on the USCG's proposed action, I have considered the information contained in this CED (and in any attached environmental checklists or other supplemental environmental analyses) on the potential for environmental impacts.

DEC - 2 2009
Date

[Signature]
Responsible Official

COS, USCG-09
Title/Position

ENVIRONMENTAL CHECKLIST

NOTE: This checklist should be completed by the decision-maker in consultation with an **ENVIRONMENTAL PROTECTION SPECIALIST**. Please read the information on how to properly complete this checklist on pages 4-10 and make sure each question is answered using the accompanying explanations found on the pages cited after each question. Attempting to answer these questions without reading the accompanying explanations may result in an incorrect or incomplete environmental analysis.

***Project Description:**

The U.S. Coast Guard proposes establishing a Temporary Final Rule for a safety zone on the Little Calumet River near Chicago, Illinois, per Federal Register docket number USCG-2009-1062, This rule is effective from 8:00 a.m. on 04 December 2009 until 4:00 p.m. on 16 December 2009. This rulemaking is in response to the Illinois Department of Natural Resources targeted fishing operations and possible rotenone application ivo O'Brien Locks. Due to the involvement of fishing nets in the narrow waterway and the possible application of rotenone, a fish toxicant, the Coast Guard plans to expedite enactment of safety measures around the fish barriers by enacting a Temporary Final Rule to close the River until the Illinois Department of Natural Resources completes their operations.

The safety zone encompass all waters of the Little Calument River located between mile marker 321.0 and mile marker 326.5. While the safety zone is in effect, no vessels may enter the zone without permission from the Captain of the Port Sector Lake Michigan. Although this has the effect of closing the Canal down to all traffic, the Captain of the Port Lake Michigan may exercised her discretion to allow certain vessels to enter the zone under specified conditions on the need for emergent transit.

These restrictions are necessary to ensure the safety of vessels and their personnel as well as the public's safety due to the targeted fishing operation using nets in the river and the rotenone application.

Activity Year: 2009

Part I. Checklist Analysis.

**YES NO NEED
DATA**

1. Is there likely to be a significant effect on public health or safety? (p. 5)		X	
2. Does the proposed action occur on or near a unique characteristic of the geographic area, such as a historic or cultural resource, park land, prime farmland, wetland, wild and scenic river, ecologically critical area, or property requiring special consideration under 49 U.S.C. 303(c)? (p. 5-6)		X	
3. Is there a potential for effects on the quality of the environment that are likely to be highly controversial in terms of scientific validity or public opinion? (p. 7)		X	
4. Is there a potential for effects on the human environment that are highly uncertain or involve unique or unknown risks? (p. 7)		X	
5. Will the action set a precedent for future actions with significant effects or a decision in principle about a future consideration? (p. 7)		X	
6. Are the action's impacts individually insignificant, but cumulatively significant when considered along with other past, present, and reasonably foreseeable future actions? (p. 7-8)		X	
7. Is the proposed action likely to have a significant impact on a district, site, highway, structure, or object that is listed in or eligible for listing in the National Register of Historic Places, or to cause the loss or destruction of a significant scientific, cultural, or historic resource? (p.8)		X	
8. Will the proposed action have a significant effect on species or habitats protected by Federal law or Executive Order? (p. 9)		X	
9. Is there a potential or threatened violation of a Federal, State, or local law or requirement imposed for the protection of the environment? (p. 9-10)		X	
10. Is the action likely to have other significant effects on public health and safety or on any other environmental media or resources that are not specifically identified in this checklist? (p. 10)		X	

Part II. Comments or Additional Information Related to Part I:

The Coast Guard is only enforcing a safety zone

Part II. Comments or Additional Information Related to Part I (continued):

Part III. Conclusions.

1. A CE is recommended for this proposed action.



Comments: _____

2. An EA is recommended for this proposed action.



Comments: _____

3. An EIS is recommended for this proposed action.



Comments: _____

<u>12/2/9</u> Date	<u><i>Andrew S. J.</i></u> *Preparer/Environmental Project Manager	<u>SJA</u> Title/Position
<u>12/02/09</u> Date	<u><i>Ryan M. Kelly</i></u> **Environmental Reviewer	<u>ACTING ER, USCG CEU CLEVELAND</u> Title/Position

*The USCG preparer signs for NEPA documents prepared in-house. The USCG environmental project manager signs for NEPA documents prepared by an applicant, a contractor, or another outside party. **Signature of the Environmental Reviewer for the Bridge Administration Program may be that of the preparer's.