

SUBCHAPTER I—VESSEL OPERATIONS

§ 70001. Vessel traffic services

(a) Subject to the requirements of section 70004, the Secretary—

(1) in any port or place under the jurisdiction of the United States, in the navigable waters of the United States, or in any area covered by an international agreement negotiated pursuant to section 70005, may construct, operate, maintain, improve, or expand vessel traffic services, that consist of measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment and that may include one or more of reporting and operating requirements, surveillance and communications systems, routing systems, and fairways;

(2) shall require appropriate vessels that operate in an area of a vessel traffic service to utilize or comply with that service;

(3)(A) may require vessels to install and use specified navigation equipment, communications equipment, electronic relative motion analyzer equipment, or any electronic or other device necessary to comply with a vessel traffic service or that is necessary in the interests of vessel safety.

(B) Notwithstanding subparagraph (A), the Secretary shall not require fishing vessels under 300 gross tons as measured under section 14502, or an alternate tonnage measured under section 14302 as prescribed by the Secretary under section 14104, or recreational vessels 65 feet or less to possess or use the equipment or devices required by this subsection solely under the authority of this chapter;

(4) may control vessel traffic in areas subject to the jurisdiction of the United States that the Secretary determines to be hazardous, or under conditions of reduced visibility, adverse weather, vessel congestion, or other hazardous circumstances, by—

(A) specifying times of entry, movement, or departure;

(B) establishing vessel traffic routing schemes;

(C) establishing vessel size, speed, or draft limitations and vessel operating conditions; and

(D) restricting operation, in any hazardous area or under hazardous conditions, to vessels that have particular operating characteristics or capabilities that the Secretary considers necessary for safe operation under the circumstances;

(5) may require the receipt of prearrival messages from any vessel, destined for a port or place subject to the jurisdiction of the United States, in sufficient time to permit advance vessel traffic planning before port entry, which shall include any information that is not already a matter of record and that the Secretary determines necessary for the control of the vessel and the safety of the port or the marine environment; and

(6) may prohibit the use on vessels of electronic or other devices that interfere with communication and navigation equipment, except that such authority shall not apply to electronic or other devices certified to transmit in the maritime services by the Federal Communications Commission and used within the frequency bands 157.1875–157.4375 MHz and 161.7875–162.0375 MHz.

(b) COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—The Secretary may enter into cooperative agreements with public or private agencies, authorities, associations, institutions, corporations, organizations, or other persons to carry out the functions under subsection (a)(1).

(2) LIMITATION.—

(A) A nongovernmental entity may not under this subsection carry out an inherently governmental function.

(B) As used in this paragraph, the term “inherently governmental function” means any activity that is so intimately related to the public interest as to mandate performance by an officer or employee of the Federal Government, including an activity that requires either the exercise of discretion in applying the authority of the Government or the use of judgment in making a decision for the Government.

(c) LIMITATION OF LIABILITY FOR COAST GUARD VESSEL TRAFFIC SERVICE PILOTS AND NON-FEDERAL VESSEL TRAFFIC SERVICE OPERATORS.—

(1) COAST GUARD VESSEL TRAFFIC SERVICE PILOTS.—Any pilot, acting in the course and scope of his or her duties while at a Coast Guard Vessel Traffic Service, who provides information, advice, or communication assistance while under the supervision of a Coast Guard officer, member, or employee shall not be liable for damages caused by or related to such assistance unless the acts or omissions of such pilot constitute gross negligence or willful misconduct.

(2) NON-FEDERAL VESSEL TRAFFIC SERVICE OPERATORS.—An entity operating a non-Federal vessel traffic information service or advisory service pursuant to a duly executed written agreement with the Coast Guard, and any pilot acting on behalf of such entity, is not liable for damages caused by or related to information, advice, or communication assistance provided by such entity or pilot while so operating or acting unless the acts or omissions of such entity or pilot constitute gross negligence or willful misconduct.

(Added Pub. L. 115–282, title IV, § 401(a), Dec. 4, 2018, 132 Stat. 4253.)

NO WAKE ZONES IN NAVIGATION CHANNELS

Pub. L. 114–322, title I, § 1149, Dec. 16, 2016, 130 Stat. 1660, provided that:

“(a) IN GENERAL.—At the request of a State or local official, the Secretary [of the Army], in consultation with the Commandant of the Coast Guard, shall promptly identify and, subject to the considerations in subsection (b), allow the implementation of measures for addressing navigation safety hazards in a covered navigation channel resulting from wakes created by recreational vessels identified by such official, while maintaining the navigability of the channel.

“(b) CONSIDERATIONS.—In identifying measures under subsection (a) with respect to a covered navigation channel, the Secretary shall consider, at a minimum, whether—

“(1) State or local law enforcement officers have documented the existence of safety hazards in the channel that are the direct result of excessive wakes from recreational vessels present in the channel;

“(2) the Secretary has made a determination that safety concerns exist in the channel and that the proposed measures will remedy those concerns without significant impacts to the navigable capacity of the channel; and

“(3) the measures are consistent with any recommendations made by the Commandant of the Coast Guard to ensure the safety of vessels operating in the channel and the safety of the passengers and crew aboard such vessels.

“(c) COVERED NAVIGATION CHANNEL DEFINED.—In this section, the term ‘covered navigation channel’ means a navigation channel that—

“(1) is federally marked or maintained;

“(2) is part of the Atlantic Intracoastal Waterway; and

“(3) is adjacent to a marina.

“(d) SAVINGS CLAUSE.—Nothing in this section shall be construed to relieve the master, pilot, or other person responsible for determining the speed of a vessel from the obligation to comply with the inland navigation regulations promulgated pursuant to section 3 of the Inland Navigational Rules Act of 1980 (33 U.S.C. 2071) or any other applicable laws or regulations governing the safe navigation of a vessel.”

NOTICE OF ARRIVAL FOR FOREIGN VESSELS ON THE OUTER CONTINENTAL SHELF

Pub. L. 112–213, title VII, § 704, Dec. 20, 2012, 126 Stat. 1580, provided that: “The regulations required under section 109(a) of the Security and Accountability For Every Port Act of 2006 [Pub. L. 109–347] (33 U.S.C. 1223 note) [now 46 U.S.C. 70001 note] dealing with notice of arrival requirements for foreign vessels on the Outer Continental Shelf shall not apply to a vessel documented under section 12105 of title 46, United States Code, unless the vessel arrives from a foreign port or place.”

Pub. L. 109–347, title I, § 109, Oct. 13, 2006, 120 Stat. 1893, provided that:

“(a) NOTICE OF ARRIVAL.—Not later than 180 days after the date of the enactment of this Act [Oct. 13, 2006], the Secretary of the department in which the Coast Guard is operating shall update and finalize the rulemaking on notice of arrival for foreign vessels on the Outer Continental Shelf.

“(b) CONTENT OF REGULATIONS.—The regulations promulgated pursuant to subsection (a) shall be consistent with information required under the Notice of Arrival under section 160.206 of title 33, Code of Federal Regulations, as in effect on the date of the enactment of this Act [Oct. 13, 2006].”

§ 70002. Special powers

The Secretary may order any vessel, in a port or place subject to the jurisdiction of the United States or in the navigable waters of the United States, to operate or anchor in a manner the Secretary directs if—

(1) the Secretary has reasonable cause to believe such vessel does not comply with any regulation issued under section 70034 or any other applicable law or treaty;

(2) the Secretary determines such vessel does not satisfy the conditions for port entry set forth in section 70021 of this title; or

(3) by reason of weather, visibility, sea conditions, port congestion, other hazardous circumstances, or the condition of such vessel, the Secretary is satisfied such direction is justified in the interest of safety.

(Added Pub. L. 115–282, title IV, § 401(a), Dec. 4, 2018, 132 Stat. 4255.)

§ 70003. Port access routes

(a) AUTHORITY TO DESIGNATE.—Except as provided in subsection (b) and subject to the requirements of subsection (c), in order to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places subject to the jurisdiction of the United States, the Secre-

tary shall designate necessary fairways and traffic separation schemes for vessels operating in the territorial sea of the United States and in high seas approaches, outside the territorial sea, to such ports or places. Such a designation shall recognize, within the designated area, the paramount right of navigation over all other uses.

(b) LIMITATION.—

(1) IN GENERAL.—No designation may be made by the Secretary under this section if—

(A) the Secretary determines such a designation, as implemented, would deprive any person of the effective exercise of a right granted by a lease or permit executed or issued under other applicable provisions of law; and

(B) such right has become vested before the time of publication of the notice required by paragraph (1) of subsection (c).

(2) CONSULTATION REQUIRED.—The Secretary shall make the determination under paragraph (1)(A) after consultation with the head of the agency responsible for executing the lease or issuing the permit.

(c) CONSIDERATION OF OTHER USES.—Before making a designation under subsection (a), and in accordance with the requirements of section 70004, the Secretary shall—

(1) undertake a study of the potential traffic density and the need for safe access routes for vessels in any area for which fairways or traffic separation schemes are proposed or that may otherwise be considered and publish notice of such undertaking in the Federal Register;

(2) in consultation with the Secretary of State, the Secretary of the Interior, the Secretary of Commerce, the Secretary of the Army, and the Governors of affected States, as their responsibilities may require, take into account all other uses of the area under consideration, including, as appropriate, the exploration for, or exploitation of, oil, gas, or other mineral resources, the construction or operation of deepwater ports or other structures on or above the seabed or subsoil of the submerged lands or the Outer Continental Shelf of the United States, the establishment or operation of marine or estuarine sanctuaries, and activities involving recreational or commercial fishing; and

(3) to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved.

(d) STUDY.—In carrying out the Secretary’s responsibilities under subsection (c), the Secretary shall—

(1) proceed expeditiously to complete any study undertaken; and

(2) after completion of such a study, promptly—

(A) issue a notice of proposed rulemaking for the designation contemplated; or

(B) publish in the Federal Register a notice that no designation is contemplated as a result of the study and the reason for such determination.

(e) IMPLEMENTATION OF DESIGNATION.—In connection with a designation made under this section, the Secretary—

(1) shall issue reasonable rules and regulations governing the use of such designated areas, including rules and regulations regarding the