

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS

CHAPTER 25 - PORTS AND WATERWAYS SAFETY PROGRAM

§ 1223. Vessel operating requirements

(a) In general

Subject to the requirements of section 1224 of this title, 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 1230 of this title, may construct, operate, maintain, improve, or expand vessel traffic services, consisting of measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment and may include, but need not be limited to one or more of the following: reporting and operating requirements, surveillance and communications systems, routing systems, and fairways;
- (2) shall require appropriate vessels which operate in an area of a vessel traffic service to utilize or comply with that service;
- (3) 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 which is necessary in the interests of vessel safety: Provided, That the Secretary shall not require fishing vessels under 300 gross tons as measured under section 14502 of title 46, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title 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 which 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, draft limitations and vessel operating conditions; and
 - (D) restricting operation, in any hazardous area or under hazardous conditions, to vessels which have particular operating characteristics or capabilities which he 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 prior to port entry, which shall include any information which is not already a matter of record and which 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) 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 he directs if—

- (1) he has reasonable cause to believe such vessel does not comply with any regulation issued under this chapter or any other applicable law or treaty;
- (2) he determines that such vessel does not satisfy the conditions for port entry set forth in section 1228 of this title; or

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

(c) Port access routes

(1) 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, and subject to the requirements of paragraph (3) hereof, the Secretary 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.

(2) No designation may be made by the Secretary pursuant to this subsection, if 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: Provided, That such right has become vested prior to the time of publication of the notice required by clause (A) of paragraph (3) hereof: Provided further, That the determination as to whether the designation would so deprive any such person shall be made by the Secretary, after consultation with the responsible official under whose authority the lease was executed or the permit issued.

(3) Prior to making a designation pursuant to paragraph (1) hereof, and in accordance with the requirements of section 1224 of this title, the Secretary shall—

(A) within six months after date of enactment of this Act (and may, from time to time thereafter), 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 which may otherwise be considered and shall publish notice of such undertaking in the Federal Register;

(B) 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

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

(4) In carrying out his responsibilities under paragraph (3), the Secretary shall proceed expeditiously to complete any study undertaken. Thereafter, he shall promptly issue a notice of proposed rule-making for the designation contemplated or shall have published in the Federal Register a notice that no designation is contemplated as a result of the study and the reason for such determination.

(5) In connection with a designation made pursuant to this subsection, the Secretary—

(A) shall issue reasonable rules and regulations governing the use of such designated areas, including the applicability of rules 9 and 10 of the International Regulations for Preventing Collisions at Sea, 1972, relating to narrow channels and traffic separation schemes, respectively, in waters where such regulations apply;

(B) to the extent that he finds reasonable and necessary to effectuate the purposes of the designation, make the use of designated fairways and traffic separation schemes mandatory for specific types and sizes of vessels, foreign and domestic, operating in the territorial sea of the United States and for specific types and sizes of vessels of the United States operating on the high seas beyond the territorial sea of the United States;

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

(C) may, from time to time, as necessary, adjust the location or limits of designated fairways or traffic separation schemes, in order to accommodate the needs of other uses which cannot be reasonably accommodated otherwise: Provided, That such an adjustment will not, in the judgement of the Secretary, unacceptably adversely affect the purpose for which the existing designation was made and the need for which continues; and

(D) shall, through appropriate channels,

(i) notify cognizant international organizations of any designation, or adjustment thereof, and

(ii) take action to seek the cooperation of foreign States in making it mandatory for vessels under their control to use any fairway or traffic separation scheme designated pursuant to this subsection in any area of the high seas, to the same extent as required by the Secretary for vessels of the United States.

(d) Exception

Except pursuant to international treaty, convention, or agreement, to which the United States is a party, this chapter shall not apply to any foreign vessel that is not destined for, or departing from, a port or place subject to the jurisdiction of the United States and that is in—

(1) innocent passage through the territorial sea of the United States, or

(2) transit through the navigable waters of the United States which form a part of an international strait.

(e) Cooperative agreements

(1) 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) of this section.

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

(3) 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.

(Pub. L. 92–340, § 4, formerly title I, § 103, July 10, 1972, 86 Stat. 426; renumbered and amended Pub. L. 95–474, § 2, Oct. 17, 1978, 92 Stat. 1472; Pub. L. 101–380, title IV, § 4107(a), Aug. 18, 1990, 104 Stat. 514; Pub. L. 104–324, title VII, § 705, Oct. 19, 1996, 110 Stat. 3934; Pub. L. 108–293, title III, § 302, Aug. 9, 2004, 118 Stat. 1041; Pub. L. 109–241, title IX, § 901(d), July 11, 2006, 120 Stat. 564.)

References in Text

The date of enactment of this Act, referred to in subsec. (c)(3)(A), probably means the date of enactment of Pub. L. 95–474, which was approved Oct. 17, 1978.

The International Regulations for Preventing Collisions at Sea, 1972, referred to in subsec. (c)(5)(A), are maintained and published by the United States Coast Guard, U.S. Department of Homeland Security, in the publication Navigation Rules, which is available for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. See International Regulations for Preventing Collisions at Sea, 1972 note under section 1602 of this title.

Amendments

2006—Subsecs. (a)(6), (e). Pub. L. 109–241 amended directory language of Pub. L. 108–293, § 302. See 2004 Amendment note below.

2004—Subsec. (a)(6). Pub. L. 108–293, § 302(1), as amended by Pub. L. 109–241, added par. (6).

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

Subsec. (e). Pub. L. 108–293, § 302(2), as amended by Pub. L. 109–241, which directed the addition of subsec. (e) at the end of subsec. (a) of this section, was executed by adding subsec. (e) at the end of this section.

1996—Subsec. (a)(3). Pub. L. 104–324 inserted “as measured under section 14502 of title 46, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title” after “300 gross tons”.

1990—Subsec. (a). Pub. L. 101–380, § 4107(a)(1), substituted “Secretary—” for “Secretary may—”.

Subsec. (a)(1). Pub. L. 101–380, § 4107(a)(2), substituted “may construct, operate, maintain, improve, or expand” for “establish, operate, and maintain”.

Subsec. (a)(2). Pub. L. 101–380, § 4107(a)(3), substituted “shall require appropriate” for “require”.

Subsec. (a)(3). Pub. L. 101–380, § 4107(a)(4), inserted “may” before “require”, which was executed by making the insertion before “require” the first place it appeared to reflect the probable intent of Congress.

Subsec. (a)(4). Pub. L. 101–380, § 4107(a)(5), inserted “may” before “control”.

Subsec. (a)(5). Pub. L. 101–380, § 4107(a)(6), inserted “may” before “require”.

1978—Pub. L. 95–474 substituted provision relating to vessel operating requirements for provision relating to the investigatory powers of the Secretary, production of witnesses and documents, and fees and allowances for witnesses.

Effective Date of 2006 Amendment

Pub. L. 109–241, title IX, § 901(d), July 11, 2006, 120 Stat. 564, provided in part that the amendment made by section 901 (d) is effective Aug. 9, 2004.

Effective Date of 1990 Amendment

Amendment by Pub. L. 101–380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101–380, set out as an Effective Date note under section 2701 of this title.

Notice of Arrival for Foreign Vessels on the Outer Continental Shelf

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].”

Direction of Vessel Movement Study; Submittal of Report to Congress

Section 4107(b) of Pub. L. 101–380 provided that:

“(1) Study.—The Secretary shall conduct a study—

“(A) of whether the Secretary should be given additional authority to direct the movement of vessels on navigable waters and should exercise such authority; and

“(B) to determine and prioritize the United States ports and channels that are in need of new, expanded, or improved vessel traffic service systems, by evaluating—

“(i) the nature, volume, and frequency of vessel traffic;

“(ii) the risks of collisions, spills, and damages associated with that traffic;

“(iii) the impact of installation, expansion, or improvement of a vessel traffic service system; and

“(iv) all other relevant costs and data.

“(2) Report.—Not later than 1 year after the date of the enactment of this Act [Aug. 18, 1990], the Secretary shall submit to the Congress a report on the results of the study conducted under paragraph (1) and recommendations for implementing the results of that study.”

Territorial Sea of United States

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.