

terms to existing law, we published a notice of proposed rulemaking (NPRM) on August 14, 2002, entitled "Territorial Seas, Navigable Waters, and Jurisdiction" (67 FR 52906)(USCG—2001–9044, under former DOT RIN 2115–AG13). And on September 18, 2002, we published a correction to that proposed rule noting that we did not intend to omit the contents of a footnote in our proposed revision of 33 CFR part 2 (67 FR 58752). No public hearing was requested and none was held.

A little more than 3 months after we published our NPRM, the Maritime Transportation Security Act of 2002 (MTSA) was enacted (Pub. L. 107–295, 116 Stat. 2064). The MTSA extended the territorial seas jurisdiction from 3 to 12 nautical miles for two domestic statutes by amending section 1 of title XIII of the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 ("Magnuson Act"), 50 U.S.C. 195, and section 4(b) of the Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1203(b)).

On the same date the MTSA was enacted, November 25, 2002, the Homeland Security Act of 2002 (HLSA) (Pub. L. 107–296, 116 Stat. 2135) was also enacted. The HLSA established the Department of Homeland Security (DHS) and directed the transfer of the Coast Guard from the Department of Transportation to DHS.

Regulatory amendments reflecting these recent MTSA, non-discretionary changes in jurisdiction and revisions to reflect our move to DHS under the HLSA, concern only interpretations, agency organization, and rules of agency procedure, and thus, under 5 U.S.C. 553(b)(A), are exempt from the rulemaking notice requirement. Therefore, we have included these MTSA and HLSA changes in this final rule. All changes in the rule based on the recent passage of MTSA and HLSA are described below in the *Discussion of Comments and Changes* section.

### Background and Purpose

This rule changes definitions of jurisdictional terms, primarily in 33 CFR part 2, to reflect current statutes and other legal authorities on which these definitions are based. In the preamble of our NPRM, we discussed various legal authorities on which we based the proposed changes to our jurisdictional regulations (67 FR 52906–52908, August 14, 2002). The Coast Guard uses the definitions for these jurisdictional terms—e.g., "internal waters," "inland waters," "navigable waters," "territorial sea," "exclusive economic zone," "high seas," and "waters subject to the jurisdiction of the

United States"—to enforce treaties, laws, and regulations of the United States.

### Discussion of Comments and Changes

We received three letters commenting on the proposed rule. And, in response, we have incorporated changes in the final rule. The final rule also reflects changes from the proposed rule based on the November 25, 2002 enactment of the MTSA and HLSA.

#### Navigable Waters

One commentator wrote that our proposed definition of "navigable waters" differed from the U.S. Environmental Protection Agency's (EPA's) definition in 40 CFR part 110 (specifically in 40 CFR 110.1) and that with respect to the Federal Water Pollution Control Act Amendments, known as the Clean Water Act, EPA has the primary federal responsibility to define this jurisdictional term. We agree that EPA has the primary federal responsibility to define this term with respect to the Clean Water Act.

After conferring with the EPA, we have decided not to revise the text in 33 CFR 2.05–25, as we proposed. Instead, all we have revised in that section is: (1) The section number itself—to § 2.36—to conform to the renumbering of sections in 33 CFR part 2, and (2) we removed the footnote. As we explained in our September 18, 2002, correction (67 FR 58752), the contents of that footnote have been moved to the note for § 2.5, Specific definitions control. Also, because we had included references to paragraph (b) of our proposed § 2.36 in §§ 2.38, 62.3, 64.06, and 100.05, we have had to change those four references to paragraph (a) to reflect the corresponding § 2.36 language in the final rule.

The EPA, jointly with the Army Corps of Engineers (ACOE), has already issued an "Advanced Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of 'Waters of the United States'" (68 FR 1991, January 15, 2003). As we did in our NPRM, the EPA and ACOE's ANPRM discusses the U.S. Supreme Court's decision, *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001)(SWANCC), interpreting "waters of the United States" and "navigable waters" as used in the Clean Water Act. To ensure that our definitions are consonant with the EPA's and ACOE's, we will await the results of their rulemaking before amending our corresponding definitions in redesignated § 2.36. In the meantime, it should be understood that we are not taking a position in this rulemaking on

the definitions of those terms in the SWANCC case.

#### High Seas

We received two comments expressing concern that our definition of "high seas" in proposed § 2.32(d) would include the exclusive economic zones of both the United States and other nations and that this might undermine the doctrine that U.S. statutes are presumed not to apply outside of U.S. territory unless Congress expresses a clear statement of extraterritorial application. In response to these comments, the Coast Guard conferred with the Department of State, U.S. Navy, and other federal agencies, and has revised both § 2.32(c) and (d) to read:

(c) For the purposes of 14 U.S.C. 89(a), and 33 U.S.C. 1471 *et. seq.*, *high seas* includes the exclusive economic zones of the United States and other nations, as well as those waters that are seaward of territorial seas of the United States and other nations.

(d) Under customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea and without prejudice to high seas freedoms that may be exercised within exclusive economic zones pursuant to article 58 of the United Nations Convention on the Law of the Sea, and unless the context clearly requires otherwise (e.g., The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, including annexes thereto), *high seas* means all waters that are not the exclusive economic zone (as defined in 2.30), territorial sea (as defined in 2.22), or internal waters of the United States or any other nation.

We also received a comment that we are not required to include the Great Lakes as a discrete part of our "high seas" definition in § 2.32(a). We agree and have deleted the reference to the Great Lakes in that paragraph dealing with special maritime and territorial jurisdiction under 18 U.S.C. 7.

#### Exclusive Economic Zone

In conferring with the Department of State about the proposed rule, it was suggested that we insert the word "including" after the "United States" in proposed § 2.30 to match language in the President's Exclusive Economic Zone Proclamation 5030 of March 10, 1983 (97 Stat. 1557) and that we make certain other textual changes. We agree, and have made those revisions. Specifically, we have deleted a reference to the Covenant and the United Nations Trusteeship Agreement, and added reference to Guam, American Samoa, the U.S. Virgin Islands, and any other territory or possession over which the United States exercises sovereignty. Finally, we have clarified the rights of