

A complete exception for vessels in "innocent passage", as proposed in section 165.153(d)(3) and sought by the comment in section 165.153(d)(4) would permit any vessel bound for a port or place in the United States to transit within three nautical miles of the territorial sea baseline without invoking the regulation's inspection and authorization requirements. This would negate the operation and purpose of these protective measures. As a result, proposed sections 165.153 (d)(3) and (d)(4) were rewritten, and references to "innocent passage" were changed as described herein to allow certain exceptions as allowable or required by Treaty and Law, while still allowing for effective regulation.

Innocent passage rights will and must be impacted in certain situations in final sections 165.153(d)(3), (d)(4), and (d)(5), to maintain the purpose and effectiveness of this regulation. For example, any vessel transiting to a port in United States internal waters, by definition, is considered in "innocent passage" while still in the territorial sea (which includes the area within three nautical miles of the territorial sea baseline) during its transit. Final sections 165.153(d)(3), (d)(4), and (d)(5) impact the right of "innocent passage" because they impose requirements which vessels must meet before entering within three nautical miles of the territorial sea baseline when they are bound for ports or places in United States.

Even when within three nautical miles of the territorial sea baseline, these vessels are in "innocent passage" if they are en route to a United States port in United States internal waters because they are still within United States territorial waters and "proceeding to or from internal waters" as per Article 18 of UNCLOS II. Yet, if the COTP were not permitted to impose requirements on vessels in these situations, sections 165.153(d)(3), (d)(4), and (d)(5) of this regulation would be meaningless, and potentially dangerous vessels claiming "innocent passage" bound for United States internal ports could transit up to the territorial sea baseline without being investigated by the COTP.

Thus, with regards to innocent passage, only those vessels which are not bound for a port or place in the United States will be exempted from the requirements of sections 165.153(d)(3), (d)(4), and (d)(5). These vessels are of minimal security interest to the COTP. Additionally, under 33 U.S.C. 1223(d) such vessels are statutorily exempted from the requirements herein (33 U.S.C. 1223(d) falls under the Port and

Waterways Safety Act, which is one of the authorities under which this regulation is promulgated).

Vessels "bound for a port or place located in the United States or that must transit the internal waters of the United States" as dictated in final sections 165.153(d)(3), (d)(4), and (d)(5) will be subject to these regulations, even if in "innocent passage" by definition under Article 18 1. (b) of the UNCLOS II. Such vessels are not exempted from the Port and Waterways Safety Act under 33 U.S.C. 1223(d). In addition, imposing certain conditions on vessels in "innocent passage" is supported by Article 21 under UNCLOS II, which states that coastal nations may adopt laws and regulations relating to innocent passage through the territorial sea with respect to, among other items, "the safety of navigation and the regulation of maritime traffic \* \* \*, \* \* \* the protection of navigational aids and facilities and other facilities or installations \* \* \* and \* \* \* the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State."

The sixth comment addressed the appropriateness of proposed section 165.153(d)(3)'s applicability to all tonnages and recreational vessels, as many of the vessels impacted by this section are not required to carry radios, making it impossible for them to obtain authorization. Proposed section 165.153(d)(3) specifically exempted recreational vessels from these requirements, as well as other vessels. The intention of this section was to be able to monitor those vessels not engaged in commercial service arriving into the United States from a foreign port and ensure compliance with appropriate customs and immigration requirements. As such, this exemption has been narrowed and we have revised final rule sections 165.153(d)(3) and (d)(4) to exempt only those vessels not engaged in commercial service whose last port of call was in the United States. Vessels to which the regulation applies may obtain authorization from the Captain of the Port, Long Island Sound, in several ways, including via marine radio, telephone, facsimile, or letter. Final rule sections 165.153(d)(3) and (d)(4) have been revised to include these options for contacting the COTP.

The seventh comment raised concern with excluding primary towing vessels engaged in towing tank barges carrying petroleum oil in bulk as cargo from the inspection and authorization requirements of proposed regulation 165.153(d)(3). Specifically, it questioned why this requirement was not

applicable to tank barges carrying petroleum, and questions why these vessels are considered less of a safety and security threat. As discussed above, this section is being expanded to include all towing vessels engaged in towing in coastwise trade. This exemption permits coastwise tug and barge units to move freely within United States waters.

The eighth and ninth comments raised concern with the ability of vessels to contact commercial vessels which are moored or anchored to request permission to enter the restricted navigation area imposed by proposed section 165.153(d)(6). This comment recommended that anchored or moored commercial vessels be required to maintain a continuous radio watch, and also recommended that the regulation provide for delegation of the authority to authorize entry into the zone by the licensed master or operator of the vessel to subordinates. As discussed above in paragraph 3, the scope of the requirement in the final rule has been clarified to include vessels engaged in commercial service, vice all commercial vessels, which significantly limits the scope of this regulation. For example, this requirement would not apply to a small passenger vessel moored at a marina which is not engaged in carrying passengers or goods. The master of a vessel is responsible for ensuring compliance with this regulation, however, nothing in this regulation prohibits the master from developing procedures/orders for the crew to ensure its operation is in compliance with the laws and/or regulations herein. As such, it is unnecessary to specifically address the delegation of this authority in the regulatory text. Vessels seeking permission to enter within 100-yards of a vessel engaged in commercial service should use all means available to communicate with the vessel; if unable to contact the vessel to obtain permission, vessels are not permitted to enter within this 100-yard zone. No changes have been made to the final rule based on this comment.

The tenth comment raised questioned whether section 165.153(d)(6) created a "no authorized entry zone" around commercial vessels of any size. There is no size limitation within this regulation; the prohibition on entry within 100-yards of a vessel engaged in commercial service applies to all vessels engaged in commercial service, irrespective of size. No changes have been made to the final rule based on this comment.

The eleventh comment questions whether safety and security zones can be implemented around anchored Coast