

decisions whether to (1) order a health care item or service, or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

#### *Criteria for Developing Special Fraud Alerts*

In determining whether to issue additional Special Fraud Alerts, we will also consider whether, and to what extent, the practices that would be identified in a new Special Fraud Alert may result in any of the consequences set forth above, as well as the volume and frequency of the conduct that would be identified in the Special Fraud Alert.

A detailed explanation of justifications for, or empirical data supporting, a suggestion for a safe harbor or Special Fraud Alert would be helpful and should, if possible, be included in any response to this solicitation.

Dated: November 26, 2003.

**Dara Corrigan,**

*Acting Principal Deputy Inspector General.*

[FR Doc. 03-30803 Filed 12-11-03; 8:45 am]

BILLING CODE 4150-04-P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Parts 192 and 195

[Docket Number RSPA-97-3001]

RIN 2137-AC54

#### Pipeline Safety: Periodic Underwater Inspections

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would amend the pipeline safety regulations to require operators of gas and hazardous liquid pipelines to have procedures for periodic inspections of pipeline facilities in offshore waters less than 15 feet deep or crossing under a navigable waterway. These inspections would ensure that the pipeline is not exposed or a hazard to navigation.

**DATES:** Interested persons are invited to submit written comments by February 10, 2004. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:**

#### Filing Information

You may submit written comments by mail or delivery to the Dockets Facility, U.S. Department of Transportation,

Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone desiring confirmation of mailed comments must include a self-addressed stamped postcard.

#### Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477-78), or you may visit <http://dms.dot.gov>.

#### Electronic Access

You may also submit written comments to the docket electronically. To submit comments electronically, log onto the following Internet Web address: <http://dms.dot.gov>. Click on "Help & Information" for instructions on how to file a document electronically.

#### General Information

You may contact the Dockets Facility by phone at (202) 366-9329, for copies of this proposed rule or other material in the docket. All materials in this docket may be accessed electronically at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** L.E. Herrick by phone at (202) 366-5523, by fax at (202) 366-4566, or by e-mail at [le.herrick@rspa.dot.gov](mailto:le.herrick@rspa.dot.gov), regarding the subject matter of this proposed rule. General information about RSPA's Office of Pipeline Safety (OPS) programs may be obtained by accessing OPS's Internet page at <http://ops.dot.gov>.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### *RSPA/OPS Pipeline Safety Mission*

RSPA/OPS has responsibility for ensuring safety and environmental protection against risks posed by the nation's approximately two million miles of gas and hazardous liquid pipelines. RSPA/OPS shares responsibility for inspecting and overseeing the nation's pipelines with State pipeline safety offices.

#### *The Need for Periodic Underwater Inspections*

On July 24, 1987, the fishing vessel *Sea Chief* struck and ruptured an 8 inch submerged natural gas liquids pipeline in the Gulf of Mexico. The escaping gas ignited and exploded, killing two crew members. A similar accident occurred on October 3, 1989, when the fishing vessel *Northumberland* struck and ruptured a 16 inch submerged gas pipeline, killing 11 crew members.

The National Transportation Safety Board (NTSB) investigated the *Northumberland* accident and found that the probable cause of the accident was the failure of the pipeline operator to maintain the pipeline at the burial depth to which it was initially installed. NTSB also found that the failure of RSPA/OPS to require pipeline operators to inspect and maintain submerged pipelines in a protected condition contributed to the accident. The NTSB subsequently issued Safety Recommendation P-90-29, which directed RSPA/OPS to "develop and implement with the assistance of the Mineral Management Service (MMS), the United States Coast Guard (USCG), and the United States Army Corp of Engineers (USACE), effective methods and requirements to bury, protect, inspect the burial depth of and maintain all submerged pipelines in areas subject to damage by surface vessels and their operations."

#### *Joint Task Force Report on Offshore Pipelines*

In response to this recommendation a multi-agency task force on offshore pipelines was formed to study the issue. The task force consisted of representatives from RSPA/OPS, USCG, Department of the Interior, MMS, Department of Commerce, National Oceanic and Atmospheric Administration/National Oceans Service, Department of Defense/USACE, Louisiana Office of Conservation, and the Texas Railroad Commission.

The task force reviewed information, views, and concerns provided by the government and the marine and pipeline industries. The assessment focused on the extent and adequacy of federal regulations, the technology for determining pipeline location and cover, the extent and availability of maps and charts depicting the location of pipelines, and possible government initiatives to enhance safety.

The task force concluded that exposed pipelines pose a potential risk to navigation safety, especially for mariners operating in the shallow, near-shore waters. The task force also

concluded that underwater inspections for depth of burial of those pipelines were not being performed despite a requirement to place pipelines below the sea floor in shallow water. To reduce the likelihood of further casualties, the task force recommended that operators inspect these pipelines at regular intervals and rebury exposed pipelines.

The task force further concluded that safety problems with submerged pipelines are not confined to the offshore areas of the Gulf of Mexico. Although the Gulf contains many submerged pipelines and has sea bottoms most prone to erosion, pipelines under a river, shipping channel, or other body of water are also susceptible to being exposed and damaged or ruptured by a vessel. The task force recommended periodic depth of burial inspections for all submerged pipelines that could pose a hazard to navigation. A copy of the report is available in the docket for this rulemaking.

*Legislative Amendments*

In November 1990, Congress addressed this safety issue in amendments to the Hazardous Liquid Pipeline Safety Act of 1979 and the Natural Gas Pipeline Safety Act of 1968 (Pub. L. 101-599). These amendments, in part, required the operators of offshore pipeline facilities in the Gulf of Mexico and its inlets to conduct an underwater depth-of-burial inspection of the pipeline facility and to report any exposed portion or any portion of the pipeline facility which posed a hazard to navigation to the Secretary of Transportation. The 1990 amendments also required the Secretary of Transportation to establish a mandatory, systematic, and, where appropriate, periodic pipeline inspection and reburial program for all shallow water submerged pipelines in the Gulf of Mexico and its inlets.

On December 5, 1991, RSPA/OPS published regulations requiring underwater inspections (56 FR 63764). Over 1,560 miles of pipeline in the Gulf of Mexico were inspected. Approximately 25 miles, less than two percent of the inspected pipeline was reported to be exposed or to be a hazard to navigation. In 1992, Congress expanded the requirement to include all offshore pipelines, (including over 600 miles of pipelines off California and Alaska), underwater abandoned pipeline facilities, and all other pipeline facilities which cross under, over, or through navigable waters, if the location could pose a hazard to navigation (Pub. L. 102-508).

*National Research Council Report*

To gain a perspective on risks to be addressed by the Congressionally mandated inspections, RSPA/OPS, in conjunction with other Federal agencies, requested that the Marine Board of the National Research Council conduct an interdisciplinary review and assessment of the many technical, regulatory, and jurisdictional issues that affect the safety of the marine pipelines in the United States' offshore waters. The Committee on the Safety of Marine Pipelines reviewed the causes of past pipeline failures, the potential for future failures, and the means of preventing or mitigating these failures. In 1994, the Marine Board issued a report, *Improving the Safety of Marine Pipelines*. A copy of this report is available for review in the docket for this rulemaking.

The committee determined that the marine pipeline network does not present an extraordinary threat to human life. Pipeline accidents involving deaths or injuries are rare. The most widespread risks are due to oil pollution, mainly from pipelines damaged by vessels and their gear. The report noted that "[d]amage from vessels (and especially from anchors and groundings) is dramatically more

significant than corrosion as a source of pollution. Ninety-five percent of the pipeline related pollution on the Outer Continental Shelf (OCS) was due to such incidents. Anchor damage alone accounted for 90 percent of the pipeline related pollution." The committee concluded that the risks generally could be managed with currently available technology and without major new regulations if enforcement of some current regulations is improved. Better coordination among operators and regulators in gathering safety data, assessing risks, and planning and implementing risk management programs was cited as a fundamental safety requirement. The committee noted that "[i]n shallow water the best protection against the interference of vessels and pipelines, generally, is burial of the pipelines, with enough weight coating to keep it in place \* \* \* [a]chieving and maintaining adequate burial requires care and vigilance." The committee recommended that operators inspect the depth of burial of underwater pipelines at intervals determined by analysis of the probabilities of risks. A detailed approach is outlined in the report.

High risk areas are zones of high density of pipelines; high density of vessel traffic; shallow waters; the immediate vicinity of platforms; areas of severe erosion or shift of the sea floor and high potential for flooding; and areas affected by hurricanes or severe storms. According to the Marine Board Report, surveys of pipelines could be scheduled in accordance with the relatively predictable behavior of sediment and shoreline erosion. Surveys could also be performed after the passage of major storms.

The Marine Board report identified the characteristics of the Gulf of Mexico shoreline and seabed dynamics and identified the pipeline safety issues and inspection needs associated with those dynamics as follows:

Region	Shoreline	Seabed	Pipeline safety issue
Nondeltaic .....	Localized retreat .....	Stable .....	Occasional exposure at shoreline deposition on seabed.
Chenier plain .....	Rapid and generalized retreat .....	Very dynamic top layer of unconsolidated muds.	Storm-induced cover loss; gradual cover loss.
Barrier Islands .....	Active dynamics primarily on the island and shoals.	Rapid to gradual generalized siltation; localized erosion and seabed shifting.	Rapidly changing shorelines and island/shoal crossing; storm-induced changes.
River mouth .....	Very rapid change; some retreat, some advance.	Slumping .....	Storm induced slides.

Depth of Cover inspection needs for different shorelines and seabed regimes:

Region	Without occurrence of storm	With occurrence of storm
Nondeltaic .....	Periodic monitoring of shoreline crossing. Monitored visually with biweekly route survey, but no less frequently than every three months.	Post storm inspection of shoreline crossing, if shoreline changes, then investigate near shore depth-of-cover. Post storm inspection of depth-of-cover is not necessary.
Chenier plain and barrier islands .....	Periodic monitoring of shoreline crossing. Monitored visually with biweekly route survey, but no less frequently than every three months. Periodic inspections of depth of cover. If shoreline changes, then investigate near shore depth of cover.	Post storm inspection of shoreline crossing and depth of cover.
River mouth .....	Periodic monitoring of shoreline crossing. Monitored visually with biweekly route survey, but no less frequently than every three months. If shoreline changes, then investigate near shore depth of cover. Periodic inspection of depth of cover is not necessary.	Post storm inspection of shoreline crossing and pipeline (in mudslide areas only).

*Analysis of Pipeline Burial Surveys in the Gulf of Mexico.*

In June 1997, a comprehensive study was completed by the Texas Transportation Institute to determine the need for inspections of pipeline burial depth in the Gulf of Mexico for pipelines subject to federal pipeline safety regulation. The study made several recommendations addressing administrative, depth of cover, and survey requirements. Comments on these recommendations are invited. A copy of the study is available in the docket for this rulemaking.

The study recommended that natural gas and hazardous liquid pipelines be regulated identically under the periodic depth of burial inspection regulation because the higher risk to persons or property posed by natural gas pipeline facilities is balanced by the higher risk to the environment posed by hazardous liquid pipeline facilities. The study further recommended that all pipeline facilities in waters less than 15 feet deep should be maintained 3 feet below the natural bottom and that the natural bottom should be defined in order to establish a reference point for measurement in the very soft, silty bottoms.

A risk based analysis model for the pipeline burial inspections is included as an appendix to the document.

*Proposed Requirements*

RSPA/OPS proposes that owners and operators of these underwater pipeline facilities be required to develop procedures to conduct periodic underwater depth of burial inspections of their submerged pipelines. The procedures would assess the risk of a pipeline becoming exposed or a hazard to navigation by taking into account the particular dynamics of the water bottom, including the probability of flotation, scour, erosion, and the

impacts of major storms. The operator should also establish a timetable for inspection of underwater pipelines based on their risks.

**II. Comments Requested**

RSPA/OPS requests comments from industry and the public on the following topics:

*A. Performance Versus Prescriptive*

Pipelines found exposed by inspections conducted under the initial inspection program ranged in age from 10 years to 46 years. They were in areas that experienced a variety of erosion levels and storms. Analysis of this information was not persuasive in eliminating any of the potentially affected pipeline from an underwater inspection requirement.

This proposed rulemaking is performance based. It would require an operator to determine the optimal inspection intervals for each of their pipeline facilities. A directionally bored crossing 25 feet beneath a stable river would have dramatically different inspection requirements than a pipeline in a soft, silty bottom prone to erosion or tidal scour.

A prescriptive requirement would mandate a specific inspection interval and protocol. These intervals would be the maximum allowable. Inspections would also be required following a major storm, earthquake, or period of increased or substantial erosion. Comments are solicited on the relative merits of these approaches.

*B. Hazard to Navigation*

Under the current regulations for offshore inspections in the Gulf of Mexico, "Navigational Hazard" is defined as a pipeline that is buried less than 12 inches below the sea bed in waters less than 15 feet deep, as measured from the mean low water (49

CFR 195.2). This proposed rule would increase the cover requirement to 24 inches and revise the definition to include inland navigable waterways. The increased depth of cover requirement is necessary because a vessel's hull or anchor can easily penetrate below 12 inches, especially in soft, silty bottoms.

Current regulations currently in effect for hazardous liquid pipelines require a burial depth of 48 inches for normal excavations or 24 inches in rock for deepwater port safety zones; 36 inches for normal excavation or 18 inches in rock for all other offshore areas underwater less than 12 feet deep as measured from the mean low tide; and 48 inches for normal excavation or 18 inches in rock for all crossings of inland bodies of water with a width of at least 100 feet from high water mark to high water mark (49 CFR 195.248).

*C. Navigable Waters*

The phrase "Navigable waters of the United States" (33 CFR 329.4) describes the Federal jurisdiction and can include water where there is little likelihood that vessels could be damaged by pipelines. Under this proposed rule, the affected navigable waterways are those waterways with a substantial likelihood of commercial navigation.

Oak Ridge National Laboratory and Vanderbilt University have created a geographic database of navigable waterways in and around the United States. The database, called the National Waterways Network, was created with input from the National Waterway GIS Design Committee, which is composed of representatives of the USACE, DOT's Bureau of Transportation Statistics (BTS), Volpe National Transportation Systems Center; Maritime Administration; Military Traffic Management Command; Tennessee Valley Authority; U.S. Environmental

Protection Agency; U.S. Census Bureau; USCG; and DOT's Federal Railroad Administration. The database includes commercially navigable waterways and non-commercially navigable waterways. The database can be downloaded from BTS' Web site at <http://www.bts.gov/gis/ntatlas/networks.html>. Pipeline operators will be able to determine which areas of their pipeline intersect these designated commercially navigable waterways.

#### D. Reporting Requirements

The Act requires the Secretary to establish requirements for the operators to report potential or existing navigational hazards to the Secretary of Transportation through the appropriate USCG office. Current regulations at 49 CFR 192.612 and 195.413 on depth of burial inspection and reburial programs require pipeline operators to report to the USCG Regional Response Center the location of any hazard to navigation within 24 hours of discovery. The operator is also required to file a project report with RSPA/OPS within 60 days after the completion of the inspection. This proposed rule would maintain these requirements. Comments are specifically requested regarding the burden this reporting requirement may place upon operators.

#### E. Marking Exposed Pipelines Pending their Reburial

The Act specifies that "[t]he operator shall mark the location of the hazardous part with a Coast Guard approved marine buoy or marker." This proposed rule would maintain the depth of burial inspection and reburial program required by 49 CFR 192.612 and 195.413. The location of the reported hazard to navigation would be marked with USCG approved markers, placed at the ends of the pipeline segment and at intervals of not over 500 yards, except that a pipeline segment of less than 200 yards need only be marked at the center.

#### F. Reburial Requirements

MMS issues rights-of-way permits for pipelines on the OCS and requires that all newly constructed pipelines be buried to a depth of 36 inches in water less than 200 feet (30 CFR 250.153). OPS construction standards require that all newly constructed gas and hazardous liquid pipelines in offshore waters less than 12 feet deep must have a minimum of 36 inches of cover or 18 inches of cover in consolidated rock. Newly constructed gas and hazardous liquid pipeline in offshore waters from 12 feet to 200 feet deep must be installed so that the top of the pipeline is below the sea bed (49 CFR 192.327, 192.248,

192.319, and 192.246). This proposed rule would require that the exposed pipelines or pipelines which are a hazard to navigation be reburied to meet these requirements.

#### G. Abandoned Pipelines

The Act mandated that "pipeline facility" include underwater abandoned pipeline facilities and that if the abandoned facility had no operator, then the most recent operator of the facility was to be deemed the operator of the facility. On September 8, 2000, OPS issued a final rule requiring the last operator of an abandoned pipeline, offshore or crossing under, over, or through commercially navigable waterways, to submit a report of the abandonment to the Secretary of Transportation. Because it does not appear that these abandoned lines pose a hazard to navigation, this proposal would not apply to abandoned lines. Information collected under 49 CFR 192.727 and 195.59 will be considered to assess the danger posed by abandoned lines. Any requirements found to be necessary for abandon lines will be considered in a separate rulemaking.

#### H. Exposed Pipeline

Under current regulations in 49 CFR parts 192 and 195, "Exposed pipeline" means a pipeline where the top of the pipe is protruding above the seabed in water less than 15 feet (4.6 meters) deep, as measured from the mean low water level. This proposed rule would revise that definition to read "exposed underwater pipeline" to clarify that a pipeline can also be exposed onshore.

#### I. Gulf of Mexico and Its Inlets

Under current regulations "Gulf of Mexico and its inlets" means the waters from the mean high water mark on the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes, and canals) seaward to include the territorial sea and OCS to a depth of 15 feet (4.6 meters), as measured from the mean low water level. This proposed rule would amend this definition to acknowledge that the Gulf of Mexico extends beyond a depth of 15 feet.

#### J. Underwater Natural Bottom

The Marine Board of the National Research Council recommended that the underwater natural bottom be defined to reduce confusion regarding the reference point for measuring cover. This proposed rule would establish this point as the surface which reflects a 50 kHz fathometer signal.

### III. Advisory Committees

The Technical Hazardous Liquid Pipeline Safety Standards Committee is a Federal advisory committee established under section 204 of the Hazardous Liquid Pipeline Safety Act of 1974 (HLPESA) (49 App. U.S.C. 2003). The Technical Pipeline Safety Standards Committee is a Federal advisory committee established under section 4 of the Natural Gas Pipeline Safety Act of 1968 (NGPSA). These committees advise DOT on the feasibility, reasonableness, and practicability of standards imposed under HLPESA and NGPSA. RSPA/OPS will submit this proposal to the advisory committees and report on their recommendations prior to the issuance of a final rule.

### IV. Regulatory Analyses and Notices

#### A. Paperwork Reduction Act

A copy of the Paperwork Reduction Analysis for this proposal has been put in the public docket for this rule. The following is a summary of the highlights of this analysis. Approximately 125 pipeline operators are potentially subject to this new requirement. It will take approximately 500 hours to develop and implement a program to determine the need for periodic inspection. The total industry time to develop this program is 62,500 hours.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

#### B. Executive Order 12866 and DOT Policies and Procedures

A regulatory evaluation for this proposed rule has been prepared and placed in the public docket for review and comment. Below is a summary of the findings of the regulatory evaluation. This proposed rule is a response to Congressional requirements that pipelines offshore and that cross under navigable waterways be periodically inspected and reburied if it is exposed or a hazard to navigation. The Congressional requirements come

in response to two accidents in 1980 in which fishing vessels hit underwater pipelines, resulting in multiple fatalities.

Approximately 125 companies operate underwater pipelines offshore and in navigable waterways. Under this proposal, each of these companies will be required to have formal written procedures for periodically inspecting their underwater pipeline facilities in waters less than 15 feet of depth.

A survey conducted by RSPA/OPS in 1992 determined that less than two percent of all underwater pipeline in waters of less than 15 feet were exposed or a hazard to navigation. Based on the above, RSPA/OPS believes that at most 10% of the affected underwater pipeline may need to be reinspected periodically. RSPA/OPS estimates that the initial cost of this proposal is \$6.25 million with annual reinspection costs of approximately \$200,000 per year. More details of the costs and benefits of this proposed rule can be found in the public docket.

C. Regulatory Flexibility Act

Based on the facts available about the anticipated impact of this rulemaking, I certify, pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this action will not have a significant economic impact on a substantial number of small entities. Few small entities operate pipelines subject to this proposed rule.

D. Environmental Assessment

A preliminary draft Environmental Assessment was conducted and is available in the docket. The inspection and reburial of the pipelines should not have a significant impact on the environment. Previous inspections of underwater pipelines in the Gulf of Mexico found less than two percent of the affected pipelines required reburial. This proposal only considers pipelines in less than 15 feet of water offshore and pipelines in navigable waterways. Because very little pipeline will actually require reburial this proposal will not have a significant impact on the human environment. If you disagree with the preliminary draft environmental assessment please submit your comments to the public docket.

E. Executive Order 12612—Federalism

RSPA/OPS has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 (52 FR 41685). RSPA/OPS has determined that the action does not have substantial direct effects on the States, on the relationship between the Federal government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore this rulemaking does not have sufficient federalism implications to warrant preparation of a federalism assessment.

List of Subjects

49 CFR Part 192

Administrative practice and procedure, Gas, Natural gas, Pipeline safety, Reports, Transportation.

49 CFR Part 195

Administrative practice and procedure, Hazardous liquid, Oil, Petroleum, Pipeline safety reports, Transportation.

In consideration of the foregoing, OPS proposes to amend parts 192 and 195 of title 49 of the Code of Federal Regulations as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

1. The authority citation for part 192 would continue to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60117, 60118, 60124; and 49 CFR 1.53.

2. Section 192.3 would be amended by removing the definition of “exposed pipeline”; revising the definitions of “Gulf of Mexico and its inlets” and “Hazard to navigation”; and adding definitions for “exposed underwater pipeline” and “underwater natural bottom” to read as follows:

§ 192.3 Definitions.

\* \* \* \* \*

Exposed underwater pipeline means an underwater pipeline where the top of the pipe protrudes above the bottom.

\* \* \* \* \*

Gulf of Mexico and its inlets means the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes, and canals) seaward to include the territorial sea and OCS.

Hazard to navigation means for the purpose of this part, a pipeline where the top of the pipe is less than 24 inches (610 millimeters) below the seabed in water less than 15 feet (4.6 meters) deep, as measured from the mean low water level.

\* \* \* \* \*

Underwater natural bottom means a surface that reflects a 50 kHz fathometer signal.

3. Section 192.612 would be amended by revising paragraph (a) to read as follows:

§ 192.612 Underwater inspection and reburial of pipelines.

(a) Each operator shall prepare and follow a procedure to conduct periodic underwater inspections of its offshore pipeline facilities and those crossing under navigable waterways in waters less than 15 feet deep to ensure that the pipeline is not exposed or a hazard to navigation. The procedures must be in effect one year from the publication date of the Final Rule.

\* \* \* \* \*

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

1. The authority citation for part 195 would continue to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.2 would be amended by removing the definition of “exposed pipeline”; revising the definitions of “Gulf of Mexico and its inlets”; and “hazard to navigation”; and adding definitions for “exposed underwater pipeline” and “underwater natural bottom” to read as follows:

§ 195.2 Definitions.

\* \* \* \* \*

Exposed underwater pipeline means an underwater pipeline where the top of the pipe protrudes above the bottom.

Gulf of Mexico and its inlets means the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes, and canals) seaward to include the territorial sea and the OCS.

Hazard to navigation means for the purpose of this part, a pipeline where the top of the pipe is less than 24 inches (610 millimeters) below the seabed in water less than 15 feet (4.6 meters) deep, as measured from the mean low water level.

\* \* \* \* \*

Underwater natural bottom means the surface that reflects a 50 kHz fathometer signal.

3. Section 195.413 would be amended by revising paragraph (a) to read as follows:

§ 195.413 Underwater inspection and reburial of pipelines.

(a) Except for gathering lines of 4 1/2-inch (114 mm) nominal outside diameter or smaller, each operator shall prepare and follow a procedure to conduct periodic underwater inspections of its offshore pipeline facilities and those crossing under navigable waterways in waters less than 15 feet deep to ensure that the pipeline is not exposed or a hazard to navigation.

The procedures must be in effect one year from the publication date of the Final Rule.

\* \* \* \* \*

Issued in Washington, DC, on December 4, 2003.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 03-30655 Filed 12-11-03; 8:45 am]

BILLING CODE 4910-60-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 031126296-3296-01; I.D. 111903B]

RIN 0648-AQ84

#### Fisheries of the Northeastern United States; Atlantic Herring Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed 2004 specifications for the Atlantic herring fishery; request for comments.

**SUMMARY:** NOAA Fisheries proposes specifications for the 2004 Atlantic herring fishery. The regulations for the Atlantic herring fishery require NMFS to publish specifications for the upcoming year and to provide an opportunity for public comment. The intent of the specifications is to conserve and manage the Atlantic herring resource and provide for a sustainable fishery.

**DATES:** Comments must be received no later than 5 p.m., Eastern Standard Time, on January 12, 2004.

**ADDRESSES:** Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), Essential Fish Habitat Assessment, and the Stock Assessment and Fishery Evaluation (SAFE) Report for the 2001 Atlantic Herring Fishing Year are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is accessible via the Internet at <http://www.nero.nmfs.gov/ro/doc/nero.html>.

Written comments on the proposed specifications should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 1

Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope: "Comments--2004 Herring Specifications." Comments may also be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Eric Jay Dolin, Fishery Policy Analyst, (978) 281-9259, e-mail at [eric.dolin@noaa.gov](mailto:eric.dolin@noaa.gov), fax at (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) require the New England Fishery Management Council's (Council) Atlantic Herring Plan Development Team (PDT) to meet at least annually, no later than July each year, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for consideration by the Council's Atlantic Herring Oversight Committee: Allowable biological catch (ABC), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPT), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The PDT and PRT also recommend the total allowable catch (TAC) for each management area and subarea identified in the FMP. As the basis for its recommendations, the PDT reviews available data pertaining to: Commercial and recreational catch; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. Recommended specifications are presented to the Council for adoption and recommendation to NMFS.

#### Proposed 2004 Specifications

Taking into account existing scientific data and the ongoing activity to develop Amendment 1 to the Atlantic Herring Fishery Management Plan, the Council recommended at its May 2003 meeting that the 2003 specifications should be maintained for 2004, consistent with the PDT's recommendation. Based on the Council's recommendations, NMFS proposes the specifications and Area TACs contained in the following table.

#### SPECIFICATIONS AND AREA TACs FOR THE 2004 ATLANTIC HERRING FISHERY

Specification	Proposed Allocation (mt)
ABC	300,000
OY	250,000
DAH	250,000
DAP	226,000
JVPT	20,000
JVP	10,000
	(Area 2 and 3 only)
IWP	10,000
USAP	20,000
	(Area 2 and 3 only)
BT	4,000
TALFF	0
Reserve	0
TAC - Area 1A	60,000
	(January 1 May 31, landings cannot exceed 6,000)
TAC - Area 1B	10,000
TAC - Area 2	50,000
	(TAC reserve: 70,000)
TAC - Area 3	60,000

Maintaining the 2003 specifications for the 2004 fishing year is prudent and is unlikely to have significant biological consequences to the herring stock or its subcomponents in the short term. The Transboundary Resource Assessment Committee (TRAC) met in St. Andrew's, New Brunswick, from February 10-14, 2003. Both a U.S. and a Canadian assessment of the herring resource were presented and reviewed at the meeting. The two assessments diverged greatly and no consensus was reached regarding which assessment was more accurate or how the two could be reconciled. Because of this discrepancy, the TRAC information cannot be utilized at this time to support the development of different specifications for the 2004 fishing year. The expectation is that the analysis and evaluation of the TRAC results will continue and that the resulting information will inform the development of Amendment 1.

#### Classification

This proposed rule has been determined to be exempt from review under E.O. 12866.

The Council and NMFS prepared an initial regulatory flexibility analysis (IRFA) as required under section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A summary of the analysis follows:

A description of the reasons why this action is being considered, and the objectives of this proposed rule can be found in the preamble to this proposed rule and are not repeated here. This action does not contain any collection-