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Rule # 9

**Navigation advisory group asks Coast Guard
to say where narrow-channels rule applies**

The Navigation Safety Advisory Council (NAVSAC) unanimously recommended on June 23, 2010, that the U.S. Coast Guard take action to help mariners determine when to apply the narrow channel rule.

Specifically, the council recommended that the Coast Guard determine which inland waterways in the United States will be considered narrow channels or fairways, according to the resolution adopted by NAVSAC.

Rule 9 of the International Regulations for Preventing Collisions at Sea (ColRegs) and the U.S. Navigation Rules essentially state that smaller vessels should not get in the way of larger vessels that can only navigate in the narrow channel. But Rule 9 does not define what a "narrow channel" is.

Absent a precise definition, confusion and casualties can ensue. In 2009 the Coast Guard asked that NAVSAC look into this issue and determine whether there is a need to designate narrow channels. At its June 23 meeting, the council also recommended that the Coast Guard develop a process and criteria for these designations that include participation by Coast Guard district and sector commanders, local stakeholders and other agencies. It

should be made clear that any list is not all-inclusive, since these designations would be part of an ongoing process, the council stated.

In December 1981, the towboat *Bruce Brown*, pushing four barges, and the towboat *Fort Dearborn*, pushing two barges, collided on the Ohio River at Wolf Creek Bend resulting in a fire and damages of \$1.7 million. The operator of *Fort Dearborn* considered the bend to be a narrow channel, while the operator of *Bruce Brown* did not. As a result of the case, the National Transportation Safety Board stated in a June 1982 safety recommendation that the Coast Guard should come up with rules to allow towboat operators to determine what a narrow channel is.

Since then, the issue of regulations defining a narrow channel has been dormant.

The matter came to NAVSAC after Coast Guard commanders made waterway designations on their own, according to an article written by Craig Allen, the director of the Law and Marine Affairs Program at the University of Washington School of Law, and a NAVSAC member.

In 1995, the entire San Francisco Bay region was declared a regulated navigation area. Rule 9 was one of the regulations

included for this region, according to records of the NAVSAC meeting. In addition, commanders of the ports of Los Angeles/Long Beach and at San Diego determined that Rule 9

applies in these jurisdictions, according to Allen.

Jim Austin, who writes a newsletter for *Professional Mariner* about safe navigation and the ColRegs, said that this

lack of clarity in the rule has made it difficult for mariners. "How do you apply the rule when you don't know where it is supposed to apply?" he said. Austin holds a U.S. Coast Guard master's license and writes frequently on ship collisions as seen through the twin lenses of the navigation rules and maritime law.

He is pleased by the NAVSAC recommendation. "To me, this is the only sensible way to do it — to look at the places themselves and say, this is a narrow channel, period."

Daniel J. Fitzgerald, also a NAVSAC member, said it was important that the NAVSAC narrow channel recommendation not be too broad. "We don't want someone at the national level dictating to local stakeholders what is a narrow channel when they weren't involved in the process," he said.

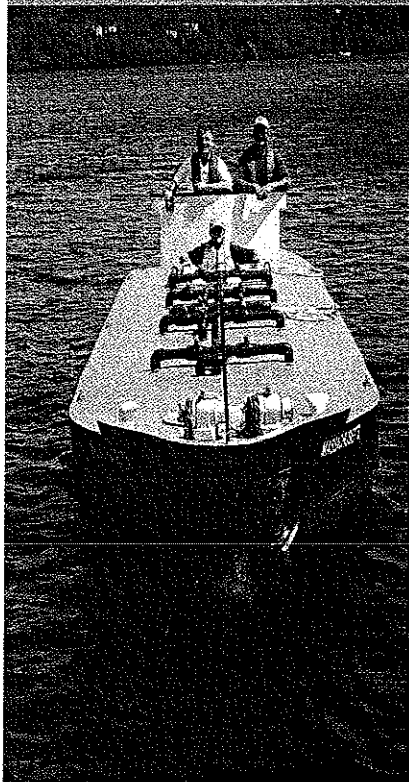
Fitzgerald is an associate at the maritime law firm Freehill Hogan & Mahar of New York City.

Fitzgerald said that educating recreational boaters would also have to be part of the process of designating certain waterways as narrow channels. In particular, operators of sailboats, often believe they have the right of way but "in a narrow channel, they don't appreciate they no longer have the right of way," he said. This problem also occurs with commercial fishermen.

David Tyler

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