



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0394]

RIN 1625-AA11

Regulated Navigation Area; Waldo-Hancock Bridge Demolition,
Penobscot River, between Prospect and Verona, ME

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The United States Coast Guard is establishing a regulated navigation area (RNA) on the navigable waters of the Penobscot River between Prospect and Verona, ME, under and surrounding the Waldo-Hancock Bridge in order to facilitate the removal of the trusses, cables, and towers of the Waldo-Hancock Bridge. This temporary final rule (TFR) is necessary to provide for the safety of life on the navigable waters during bridge demolition operations which include hot work and heavy lift operations. This rule implements certain safety measures, including speed restrictions and the temporary suspension of vessel traffic, during demolition operations that could be hazardous to nearby vessels.

DATES: This rule is effective with actual notice on May 10, 2013 through April 30, 2014. This rule is effective in the CFR on

[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through April 30, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0394]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Elizabeth V. Morris, Waterways Management Division, Coast Guard Sector Northern New England, telephone 207-767-0398, e-mail Elizabeth.V.Morris@uscg.mil or BMC Craig D. Lapiejko, First Coast Guard District, telephone 617-223-8351, e-mail Craig.D.Lapiejko@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

RNA Regulated Navigation Area
TFR Temporary Final Rule

A. Regulatory History and Information

On July 16, 2012 the Coast Guard provided the public with prior notice and opportunity to comment when it published a notice of proposed rulemaking (NPRM) entitled Regulated Navigation Area; Original Waldo-Hancock Bridge Removal, Penobscot River, Bucksport, ME, in the Federal Register (77 FR 41717). No comments were received. This TFR is the outgrowth of that NPRM. As compared to the NPRM, Coast Guard seeks only to adjust the dates of the originally proposed RNA so as to account for the delay in demolition efforts as reported by The Maine Department of Transportation. This adjustment does not substantially change the intent of the RNA and does not necessitate a new comment period. In addition, the Coast Guard has determined there is a public safety need to enforce this regulation during the demolition activities, which may begin fewer than 30 days after publication in the Federal Register. For this reason, the Coast Guard finds that good cause exists for making this rule effective fewer than 30 days after publication in the Federal Register under 5 U.S.C. 553(d)(3).

B. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel

traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this proposed rule is to ensure the safe transit of vessels in the area, and to protect all persons, vessels, and the marine environment during demolition operations of the original Waldo-Hancock Bridge.

C. Discussion of the Final Rule

The removal of the Waldo-Hancock Bridge involves large machinery and construction vessel operations above and in the navigable waters of the Penobscot River. The ongoing operations are, by their nature, hazardous and pose risks both to recreational and commercial traffic as well as to the construction crew. In order to mitigate the inherent risks involved with the removal of a bridge, it is necessary to control vessel movement through the area. The purpose of this TFR is to ensure the safety of waterway users, the public, and construction workers for the duration of the Waldo-Hancock Bridge demolition. Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers.

In order to minimize such unexpected or uncontrolled movement of water, the RNA limits vessel speed and wake of all vessels operating in the vicinity of the bridge removal zone. A five knot speed limit and "NO WAKE" zone will be enforced in the vicinity of the Waldo-Hancock Bridge demolition and will allow

for the Captain of the Port (COTP) to suspend all vessel traffic for emergent situations that pose imminent threat to waterway users in the area. The RNA will also protect vessels desiring to transit the area by ensuring that vessels are only permitted to transit when it is safe to do so.

The Coast Guard may close the regulated area described in this rule to all vessel traffic during circumstances that pose an imminent threat to waterway users operating in the area. Complete waterway closures will be made with as much advanced notice as possible. Please note that specific closure dates and times will be posted in the Local Notice to Mariners and disseminated via a Safety Marine Information Broadcast during each closure.

The COTP Sector Northern New England will cause notice of enforcement, suspension of enforcement, or closure of this RNA to be made by appropriate means to ensure the widest distribution among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. In addition, the COTP maintains a telephone line that is staffed 24 hours a day, seven days a week. The public can obtain information concerning enforcement of the regulated navigation area by contacting Coast Guard Sector Northern New England Command Center at 207-767-0303.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This TFR is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule to be minimal because this regulated navigation area only requires vessels to reduce speed through a limited portion of the Penobscot River, therefore causing only a minimal delay to a vessel's transit. In addition, periods when the RNA is closed to all traffic are expected to be of limited number and duration, and we will give advance notice of such closures.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently

owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule will affect the following entities, some of which might be small entities: owners or operators of vessels intending to transit, fish, or anchor in the vicinity of the Waldo-Hancock Bridge.

(2) The rule will not have a significant economic impact on a substantial number of small entities for the following reasons: periods when the RNA is closed to all traffic are expected to be during seasons of low traffic volume, also, vessels will be required to reduce speed through a limited portion of the Penobscot River, and, therefore, will only be caused a minimal delay. Notifications will include, but are not limited to, the Local Notice to Mariners and Broadcast Notice to Mariners to inform the public before, during, and at the conclusion of any RNA enforcement period.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental

jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INTFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the

National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and find that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of an RNA and we have determined that this action will not result in significant environmental impacts. Therefore, it is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and the Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this final rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub.

L. 107-295, 116 Stat. 2064; Department of Homeland Security
Delegation No. 0170.1.

2. Add §165.T01-0394 to read as follows:

§165.T01-0394 Regulated Navigation Area; Waldo-Hancock Bridge
Demolition, Penobscot River, between Prospect and Verona, ME.

(a) Location. The following area is a Regulated Navigation Area (RNA): All navigable waters of Penobscot River between Prospect, ME and Verona, ME, from surface to bottom, within a 300 yard radius of position 44°33'38"N, 068°48'05"W.

(b) Regulations.

(1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply within the RNA.

(2) In accordance with the general regulations, entry into or movement within this zone, during periods of enforcement, is prohibited unless authorized by the Captain of the Port (COTP) Sector Northern New England.

(3) Persons and vessels may request permission to enter the RNA during periods of enforcement by contacting the COTP or the COTP's on-scene representative on VHF-16 or via phone at 207-767-0303.

(4) During periods of enforcement, a speed limit of five knots will be in effect within the regulated area and all vessels must proceed through the area with caution and operate in such a manner as to produce no wake.

(5) During periods of enforcement, vessels must comply with all directions given to them by the COTP or the COTP's on-scene representative. The "on-scene representative" of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard vessel; Maine State Police, Maine Marine Patrol or other designated craft; or may be ashore and communicating with vessels via VHF-FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(6) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(7) All other relevant regulations, including but not limited to the Rules of the Road (33 CFR part 84 - subchapter E, Inland Navigational Rules) remain in effect within the regulated area and must be strictly followed at all times.

(c) Enforcement Period. This regulation is enforceable 24 hours a day with actual notice from May 10, 2013 through April 30, 2014, and enforceable based on constructive notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through April 30, 2014.

(1) Prior to commencing or suspending enforcement of this regulation, the COTP and designated on-scene patrol personnel will notify the public whenever the regulation is being enforced

and whenever enforcement is lifted, to include dates and times. The means of notification will include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners, Marine Safety Information Bulletins, or other appropriate means.

(2) Violations of this RNA may be reported to the COTP at 207-767-0303 or on VHF-Channel 16.

Dated: May 10, 2013

V. B. Gifford,
Captain, U.S. Coast Guard
Acting, First Coast Guard District

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