



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-1063]

RIN 1625-AA11

Regulated Navigation Area; Arthur Kill, NY and NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) on the navigable waters of the Arthur Kill in New York and New Jersey. This RNA will allow the Coast Guard to enforce speed and wake restrictions and limit vessel traffic through the RNA during bridge replacement operations on the Goethals Bridge and during drilling, blasting, and dredging operations in support of the U.S. Army Corps of Engineers channel deepening project, both planned and unforeseen, which could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life on the navigable waters during construction on the Goethals Bridge and the channel deepening project.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until October 31,

2018. For the purposes of enforcement, actual notice will be used from the date the rule was signed, December 2, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-1063. 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 rule, call or e-mail LT Hannah Eko, Waterways Management, U.S. Coast Guard; telephone 718-354-4114, e-mail [hannah.o.eko@uscg.mil](mailto:hannah.o.eko@uscg.mil). If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
RNA	Regulated Navigation Area

## A. Regulatory History and Information

On September 25, 2013 a Bridge Permit was issued approving the location and plans for new construction of the Goethals Bridge, which spans the Arthur Kill.

On April 14, 2014, we published a Notice of Proposed Rulemaking (NPRM) with respect to this rule (79 FR 20851) entitled Regulated Navigation Area; Arthur Kill, NY and NJ in the Federal Register. We received one comment on the proposed rule. The comment was sent on behalf of the American Waterways Operators (AWO), a national trade association for the U.S. tugboat, towboat, and barge industry. AWO made two recommendations concerning the proposed rule.

The Coast Guard also held five navigational safety meetings concerning Arthur Kill 4 (AK-4) dredging and Goethals Bridge construction activities and navigational safety. The last meeting was held July 9, 2014.

No public meeting was requested and none was held.

## 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 hazardous or in which hazardous conditions are determined to exist. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The Goethals Bridge spans the Arthur Kill at mile 11.5. The

current structure of the Goethals Bridge will be replaced with a twin span south of the existing bridge. Work on the bridge commenced in December 2013. New westbound construction has been underway since April 2013 and is expected to continue until December 2017. Substantial completion of both bridges is expected to occur in December 2017. Demolition of the main span of the currently existing bridge is expected to occur within the December 2016 to October 2018 timeframe.

Currently, it is unknown whether explosives will be utilized for demolition purposes or whether the existing span will be lowered in increments into barges moored in the Arthur Kill. Final completion of the bridge project is expected to occur in October 2018.

Dredging activities will resume in a portion of the Arthur Kill from December 2014 until December 2015. These activities may potentially involve drilling and underwater blasting of bedrock in the Arthur Kill navigable channel. Dredging operations may encroach on portions of the navigable channel, require the relocation of lateral aids to navigation, and create a reduction in the width of the navigational channel.

The Coast Guard First District Commander has determined that this construction project poses dangers to the maritime public and this rule is necessary to ensure the safe transit of vessels in the area, and to protect all persons, vessels, and the marine

environment.

### C. Discussion of Comments, Changes and the Final Rule

For the reasons discussed above, The Coast Guard is establishing a RNA on the navigable waters of the Arthur Kill from Port Ivory to the charted Graselli High Wires north of Pralls Island from December 2014 through October 2018.

Construction 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 will limit vessel speed and wake of all vessels operating in the vicinity of the bridge and dredging construction zone. This will be achieved by implementing a five (5) knot speed limit and "NO WAKE" zone in the vicinity of the construction as well as providing a means 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 RNA described in this rule to all vessel traffic during any circumstance that poses an imminent threat to waterway users operating in the area. Complete waterway closures will be made with as much advanced notice as possible.

Further, the speed limit of five (5) knots will be in effect

at all times within the RNA and all vessels must proceed through the area with caution and operate in such a manner as to produce no wake unless a higher minimum speed is necessary to maintain bare steerage. The Coast Guard will rely on the methods described in 33 CFR 165.7 to notify the public of the time and duration of any closure of the RNA.

The Coast Guard received one comment during the 60-day NPRM comment period. The comment was authored by a representative of the American Waterway Operators and contained two recommendations. The first recommendation concerned notifying mariners at least 48 hours in advance of waterway closures on the Arthur Kill and ensuring that waterway closures last only as long as needed to ensure safe navigation. The second recommendation requested that the Coast Guard set up a vessel queue system that would allow vessels moving with the flood tide to access the right-of-way in the restricted portion of the Arthur Kill. AWO recommended that Vessel Traffic Service New York (VTSNY) administer the proposed queue system.

The Coast Guard agrees with early notifications and will make every effort to notify mariners 48 hours or more in advance of waterway closures. We participated in five initial planning meetings with the USACE, NY and NJ Port Authorities, harbor and docking pilots, tug boat operators, and construction and dredge contractors between March and July 2014. The results of the

meetings determined that there may be times when the Coast Guard will be unable to provide 48 hours notice to the public. However, this waterway is within the VTSNY area and, as such, VTSNY will serve to communicate waterway closures and impacts with as much notice as possible. The Coast Guard's decision to close the waterway will be influenced by the dynamic nature of the bridge construction, dredging process, and multitude of construction, drilling, and blasting equipment associated with the project. The associated hazardous conditions necessitate that all mariners comply with this RNA, as the conditions surrounding the construction, drilling, and blasting may change on a daily basis. Moreover, the Coast Guard will continue to meet with the USACE, harbor and docking pilots, tug boat operators, and the contractors to assess the need for a vessel queue system when the dredging and bridge contractors submit work plans to the Coast Guard. All waterway users have 24 hour access to VTSNY for immediate access to the Coast Guard, and there is ample time for the "Harbor Safety, Navigation, and Operations Committee of New York," which is composed of all waterway users, to address waterway closure or traffic management concerns that may arise. If a vessel queue system is needed, it will be administered on a case-by-case basis by the VTSNY. As such, the Coast Guard made no changes to the rule proposed in the NPRM based on comments received.

## 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 rule 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 RNA only enforces a speed and wake restriction through a limited portion of the Arthur Kill, and will have limited traffic restrictions during operations involving bridge construction and dredging, both planned and unforeseen therefore causing only a minimal delay to a vessel's transit.

### 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. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Arthur Kill from December 2014 to October 2018.

The Coast Guard expects no significant economic impact on a substantial number of small entities, as mentioned in the REGULATORY PLANNING AND REVIEW section above, because this rule only requires vessels to reduce their speed through a limited portion of the Arthur channel and will have limited traffic restrictions during operations involving bridge construction, both planned and unforeseen therefore causing only a minimal delay to a vessel's transit.

### 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 INFORMATION 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 have determined 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 on portions of the Arthur Kill. This rule 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 a 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 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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-1063 to read as follows:

§ 165.T01-1063 Regulated Navigation Area; Arthur Kill, NY and NJ.

(a) Location. The following area is a Regulated Navigation Area (RNA): All navigable waters from Port Ivory to Grasselli High Wires north of Pralls Island in the Arthur Kill; bounded in the northeast by a line drawn from position  $40^{\circ} 38' 43.260''\text{N}$ ,  $074^{\circ} 10' 47.208''\text{W}$ ; to a point in position  $40^{\circ} 38' 52.152''\text{N}$ ,  $074^{\circ} 10' 47.748''\text{W}$ ; and bounded in the southwest by a line drawn from position  $40^{\circ} 37' 8.940''\text{N}$ ,  $074^{\circ} 12' 19.116''\text{W}$ ; to a point in position  $40^{\circ} 37' 03.252''\text{N}$ ,  $074^{\circ} 12' 02.052''\text{W}$ . All geographic coordinates are North American Datum of 1983 (NAD 83).

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

(2) Any vessel transiting through the RNA must make a direct passage. No vessel may stop, moor, anchor or loiter within the RNA at any time unless they are working on the bridge construction. Movement within the RNA is subject to a "Slow-No Wake" speed limit. All vessels may not produce a wake and may not attain speeds greater than five (5) knots unless a higher minimum speed is necessary to maintain bare steerage.

(3) There may be times that the First District Commander or the Captain of the Port (COTP) finds it necessary to close the RNA to vessel traffic. During times of limited closure, persons and vessels may request permission to enter the RNA by contacting the COTP or the COTP's on-scene representative on VHF-16 or via phone at 718-354-4353.

(4) Any vessels transiting in the RNA 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; or other designated craft; or on shore and communicating with a VTSNY Watchstander or vessels via VHF-FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(5) All other relevant regulations, including but not limited to the Rules of the Road, as codified in 33 CFR subchapter E, Inland Navigational Rules, remain in effect within the RNA and must be strictly followed at all times.

(6) Vessel Movement Reporting System (VMRS) users are prohibited from meeting or overtaking other vessels when transiting alongside an active work area where dredging and drilling equipment are being operated.

(c) Effective and enforcement period. This regulation is effective and enforceable 24 hours a day from 12:01 a.m. on December 2, 2014 until 11:59 p.m. on October 31, 2018.

(d) Notification. The Coast Guard will rely on the methods described in 33 CFR 165.7 to notify the public of the time and duration of any closure of the RNA. Violations of this RNA may be reported to the COTP at 718-354-4353 or on VHF-Channel 16.

Dated: December 2, 2014.

L.L. Fagan,  
Rear Admiral, U.S. Coast Guard,  
Commander, First Coast Guard District.

[FR Doc. 2014-29856 Filed 01/06/2015 at 8:45 am; Publication  
Date: 01/07/2015]