



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0002]

RIN 1625-AA11

Regulated Navigation Area, Kill Van Kull and Newark Bay; Bayonne, NJ, NY

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 Kill Van Kull and Newark Bay surrounding the Bayonne Bridge. In response to a planned Bayonne Bridge construction project, this rule will establish a speed restriction in the waters surrounding the Bayonne Bridge. This rule will allow the Coast Guard to prohibit vessel traffic through the RNA when necessary to safeguard people and vessels from the hazards associated with bridge construction.

DATES: This rule is effective from [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] until December 31,

2017.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0002]. 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, contact BMC Craig Lapiejko, Coast Guard First District Waterways Management Branch, telephone (617) 223-8381, e-mail craig.d.lapiejko@uscg.mil; or Mr. Jeff Yunker, Coast Guard Sector New York Waterways Management Division, U.S. Coast Guard; telephone 718-354-4195, e-mail jeff.m.yunker@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

NPRM
FR

Notice of Proposed Rulemaking
Federal Register

A. Regulatory History and Information

On January 9, 2015, we published a NPRM entitled Regulated Navigation Area, Kill Van Kull and Newark Bay; Bayonne, NJ, NY in the Federal Register. We received no comments on the proposed rule.

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 Regulated Navigation Areas in defined water areas that are hazardous or in which hazardous conditions are determined to exist. See 33 U.S.C. 1231; 50 U.S.C. 191,; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; and Department of Homeland Security Delegation No. 0170.1.

The purpose of this rulemaking is to ensure the safety of vessels and workers from hazards associated with construction on the Bayonne Bridge. The current Bayonne Bridge was built in 1931 and carries the NY/NJ Route 440. The Port Authority New York/New Jersey (PANYNJ) has contracted Skanska-Koch Inc. and Kiewit Infrastructure for this project.

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 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.

After consulting with PANYNJ, Skanska-Koch Inc., and Kiewit Infrastructure, the Coast Guard has determined that certain aspects of the construction project can only be completed in the channel and will require closing the waterway. For instance, barges are expected to be used at times while portions of the bridge are being raised and the barges' presence might limit maneuverability in the waterway. Also, the Coast Guard anticipates that crane and cutting operations may create the potential for falling debris into the waterway. It is expected that the construction efforts that might require waterway closures will not take place until the summer of 2016.

C. Discussion of Comments, Changes and the Final Rule

No comments were received concerning this rule. Due to schedule delays, the overall timeline of the project has changed. Waterway closures are now expected during the summer of 2016. Completion of the entire project is now slated for 2017.

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. The Coast Guard expects the economic impact of this rule to be minimal as this RNA will not necessarily prohibit vessel traffic in the affected waterways. Rather, this RNA will primarily establish a speed and wake restriction along the waters surrounding the Bayonne Bridge. There may be times that the Coast Guard will prohibit vessel traffic through the RNA, but such closures are expected to take place during off peak hours. Moreover, even when the Coast Guard generally prohibits vessel traffic through the RNA, specific vessels may still obtain permission to transit through the RNA. Additionally, the Coast Guard will provide the public with advanced notification of waterway closures so that mariners may plan accordingly. Such notifications will be made through various means, including, but

not limited to, Local Notice to Mariners and at <http://homeport.uscg.mil/newyork>. For all of these reasons, the Coast Guard has determined that this rule would not be a significant regulatory action.

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 no comments from the Small Business Administration on this rule. For all of the reasons discussed in the REGULATORY PLANNING AND REVIEW section, 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.

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 from Environmental Health Risks

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 restricting vessel movement within a regulated navigation area. 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, and Waterways.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1,

6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-0002 to read as follows:

§ 165.T01-0002 Regulated Navigation Area; Kill Van Kull and Newark Bay; Bayonne, NJ, NY Regulated Area.

(a) *Location.* The following area is a Regulated Navigation Area (RNA): all waters of Bergen Point East and West Reaches in the Kill Van Kull, and all waters of Newark Bay South Reach, bound by the following approximate positions: 40°38'51.93" N, 074°06'47.90" W; thence to 40°38'41.53" N, 074°07'18.54" W; thence to 40°38'38.20" N, 074°07'41.30" W; thence to 40°38'40.47" N, 074°08'01.61" W; thence to 40°38'34.20" N, 074°08'41.71" W; thence to 40°38'39.67" N, 074°08'51.86" W; thence to 40°38'50.20" N, 074°08'55.19" W; thence to 40°39'17.54" N, 074°08'38.20" W; thence to 40°39'19.00" N, 074°08'53.09" W; thence to 40°39'07.94" N, 074°08'59.04" W; thence to 40°38'46.87" N, 074°09'23.03" W; thence to 40°38'33.40" N, 074°09'19.87" W; thence to 40°38'24.86" N, 074°09'02.71" W; thence to 40°38'23.93" N, 074°08'52.56" W; thence to 40°38'31.40" N, 074°08'07.56" W; thence to 40°38'31.80" N, 074°07'55.66" W; thence to 40°38'30.06" N, 074°07'41.13" W; thence to 40°38'33.80" N, 074°07'14.86" W; thence to 40°38'43.93" N, 074°06'45.45" W; thence to the point of origin (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 steerageway.

(3) There may be times that the First District Commander or the Captain of the Port (COTP) New York finds it necessary to close the RNA to vessel traffic. All closures will be limited to specific hours of the day. Mariners will be advised of all closure dates and times via Local Notice to Mariners and Broadcast Notice to Mariners in advance of closure times. During such closures, 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 (Sector New York Command Center).

(4) Vessels in the RNA must comply with directions given to them by the COTP or the COTP's on-scene representative. An "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. An on-scene representative may be on a Coast Guard vessel; or other designated craft; or on shore and communicating with a Vessel Traffic Service New York

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.

(c) *Enforcement period.* This regulation will be enforced from 8:00 a.m. on February 1, 2016, until December 31, 2017. This RNA's speed restrictions are enforceable 24 hours a day as long as this RNA is in place. The Coast Guard will enforce waterway closures only when necessary to protect people and vessels from hazards associated with bridge construction.

(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: August 31, 2015

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

[FR Doc. 2015-23171 Filed: 9/14/2015 08:45 am; Publication Date:

9/15/2015]