



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0127]

RIN 1625-AA00

Safety Zone; Sunken Vessel, North Channel, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a 250 yard temporary safety zone within Sector Boston's Captain of the Port (COTP) Zone for a sunken vessel located in Boston Harbor's North Channel. The safety zone will be in effect while the sunken vessel remains on the sea floor to facilitate safe navigation, survey operations, and salvage operations. This action is necessary to ensure that vessels that transit the area are not endangered by hazards associated with a sunken vessel. Entering into, transiting through, mooring or anchoring within this safety zone is prohibited unless authorized by the COTP or the designated on-scene representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through March 31, 2016. For the purposes of enforcement, actual notice will be used from February 16, 2016 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0127 in the "SEARCH" box and click

"SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, U.S. Coast Guard; telephone 617-223-4000, e-mail Mark.E.Cutter@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
USC	United States Code
USCG	United States Coast Guard

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. There is insufficient time to publish an NPRM and solicit comments from the public before establishing a safety zone to address an existing hazard to navigation. The nature of the navigational hazard requires the immediate establishment of a safety zone

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**.

Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with removing cargo from the vessel and refloating the vessel.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with a sunken vessel in a Federal Navigation Deep Draft Channel will be a safety concern for vessels that may transit the North Channel. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone until the exact location can be determined, and for the safety of vessels and personnel involved in survey and salvage operations. This rule will remain in effect for the time stated herein but will be cancelled if response activities are finished before March 31, 2016. The preliminary estimate for completion of the survey to determine exact location is February 17, 2016. Once the exact location is determined, the COTP will further evaluate if the channel can be opened to vessel traffic. If the sunken vessel is located outside of the North Channel, the safety may still be needed during times of salvage operations. This temporary final rule provides for an extended enforcement period in case of unforeseen circumstances that prevent the contractors from completing the work within their initial estimated timeline.

### **IV. Discussion of the Rule**

The sunken vessel addressed in this rule is the tug Emily Anne. The tug Emily Anne sank at in the early morning hours of February 16, 2016 in approximate position; 42°22.4' N, 70°54.77'W. This rule establishes a safety zone until the exact position of the sunken vessel can be determined and during survey or salvage operations. The safety zone will cover all navigable waters all navigable waters from surface to bottom, within a 250 yard radius of position 42°22.4'

N, 70°54.77'W. This position is located by buoy 2 Boston Harbor's North Channel. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters until the exact position can be determined and during survey and salvage operations. If the sunken vessel is determined to be located outside the North Channel, the COTP will reopen the North Channel to vessel traffic and use the safety zone during times of survey or salvage operations if needed. The owner of the vessel is in the process of arranging salvage arrangements. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. A majority of vessel traffic will be able to transit Boston Harbor's South Channel. The larger deep draft vessels cannot transit the South Channel and they will be affected by this safety zone until an exact location of the sunken vessel can be determined. If the sunken

vessel is located outside the channel, vessels will be able to transit in the channel. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 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 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.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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 section.

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.

#### C. 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).

#### D. Federalism and Indian Tribal Governments

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 have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. 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.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(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 a safety zone possibly lasting more than 31 days that will prohibit entry into the North Channel. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. In accordance with Coast Guard NEPA Implementing Procedures, while environmental impacts were considered, a written environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the Federal Register docket for public view." We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. 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.

#### **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; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0127 to read as follows:

§165.T01-0127 Safety Zone: Sunken Vessel, North Channel, Boston, MA

(a) Location. The following area is a temporary safety zone: All U.S. navigable waters from surface to bottom, within a 250 yard radius of position 42°22.4' N, 70°54.77'W.

(b) Regulations. While this safety zone is being enforced, the following regulations, along with those contained in 33 CFR 165.23, apply:

(1) No person or vessel may enter or remain in this safety zone without the permission of the Captain of the Port (COTP), Sector Boston.

(2) Any person or vessel permitted to enter the safety zone shall comply with the directions and orders of the COTP or the COTP's representatives. Upon being hailed by siren, radio, flashing lights, or other means, the operator of a vessel within the zone shall proceed as directed. Any person or vessel within the security zone shall exit the zone when directed by the COTP or the COTP's representatives.

(3) To obtain permissions required by this regulation, individuals may reach the COTP or a COTP representative via VHF channel 16 or 617-223-5757 (Sector Boston Command Center) to obtain permission.

(4) Penalties. Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

(c) COTP Representative. The COTP's representative may be any Coast Guard commissioned, warrant, or petty officer or any Federal, state, or local law enforcement officer who has been designated by the COTP to act on the COTP's behalf. The COTP's representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, federal, state or local law enforcement or safety vessel, or a location on shore.

(d) Effective and enforcement period. The safety zone described in paragraph (a) of this section will be enforced from February 16, 2016 until March 31, 2016, unless terminated sooner by the COTP.

(e) Notification. The Coast Guard will notify the public of the enforcement of this safety zone by Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

Dated: February 16, 2016

C. C. Gelzer  
Captain, U.S. Coast Guard  
Captain of the Port Boston  
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