



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0890]

RIN 1625-AA11

**Regulated Navigation Area; Beals Island Bridge Replacement, Moosabec Reach,
Jonesport, ME**

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary Regulated Navigation Area (RNA) for the navigable waters within 150-yards of the Beals Island Bridge between Jonesport, ME, and Beals Island, ME. The RNA is needed to protect personnel, vessels, and the marine environment from the potential hazards created by the demolition, subsequent removal, and replacement of the Beals Island Bridge. This RNA will establish speed and beam restrictions on vessels transiting the regulated area during bridge replacement operations. This rule will also allow the Coast Guard to prohibit vessel traffic through the RNA when necessary.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through January 31, 2021. For the purposes of enforcement, actual notice will be used from October 15, 2017, through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments and related material must be received by the Coast Guard on or before [INSERT DATE 90 DAYS AFTER 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-2017-0890 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. Craig Lapiejko, Waterways Management, First Coast Guard District; telephone (617) 223-8351, email Craig.D.Lapiejko@uscg.mil. You may also call or email Chief Petty Officer Chris Bains, Waterways Management Division, U.S. Coast Guard Sector Northern New England, telephone (207) 347-5003, e-mail Chris.D.Bains@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
RNA	Regulated Navigation Area
MEDOT	Maine Department of Transportation

II. Background Information and Regulatory History

On June 27, 2017, the U. S. Coast Guard District One Bridge Branch issued a permit approving the construction of the Beals Island Bridge across the Moosabec Reach in Jonesport, Maine. On September 11, 2017, the contractor selected for the project

submitted their request to the Waterways Management Division of U. S. Coast Guard Sector Northern New England. The COTP Sector Northern New England has determined that an RNA will be required to enforce speed, wake, and beam restrictions, as well as provide for intermittent closure of the waterway during the construction of the replacement bridge and subsequent demolition of the original structure.

This project will start on October 15, 2017, and be completed by January 31, 2021. During this project, replacement and removal of the original structure will take place. To accomplish these tasks, a temporary structure will be built under the original structure to facilitate construction. This temporary structure will require all vessel traffic to use the main navigational channel, beneath the bridge's center span, to transit through the bridge. The temporary structure will continue to limit vessels transiting through the bridge to a beam of less than 75 feet. The temporary structure will be lit every 50 feet and the foundation will encroach on the new navigational channel. The Coast Guard will issue a Broadcast Notice to Mariners via marine channel 16 (VHF-FM) with as much advanced notice as possible for any period of waterway closure or as soon as practicable in response to an emergency. If the project is completed prior to January 31, 2021, enforcement of the RNA will be suspended and notice given via Broadcast Notice to Mariners.

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. The late finalization of project details did not give the Coast Guard enough time to publish an NPRM, take public comments, and issue a final rule before the construction work is set to begin. It would be impracticable and contrary to the public interest to delay promulgating this rule as it is necessary to respond to the potential safety hazards associated with the bridge replacement project beginning on October 15, 2017.

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**. For reasons stated in the preceding paragraph, delaying the implementation of this rule would be impracticable and contrary to the public interest.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231.

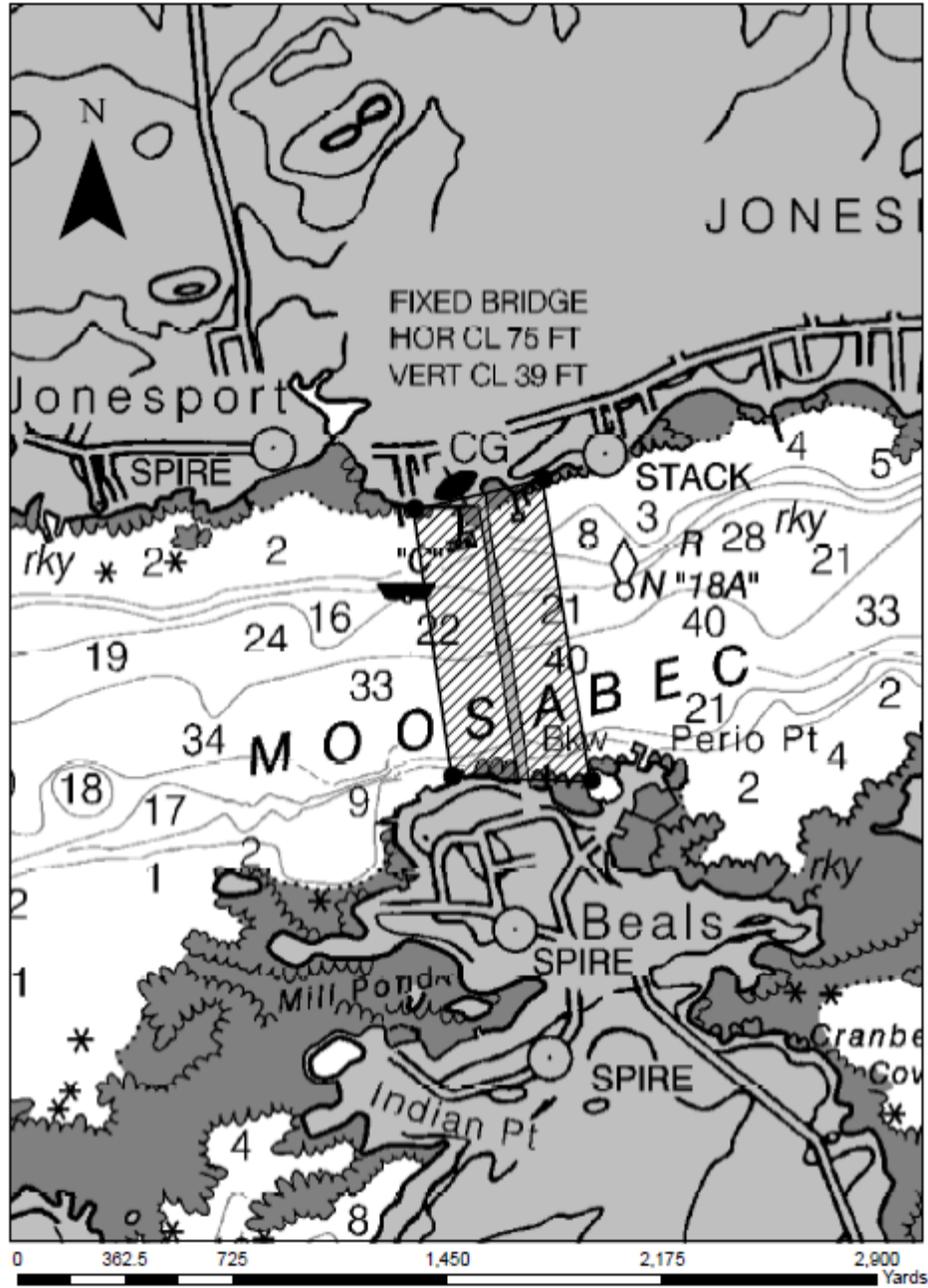
The Coast Guard First District Commander has determined that potential hazards exist associated with the bridge replacement project starting on October 15, 2017, and continuing through January 31, 2021. This rule is needed to control vessel movement, and to protect all persons, vessels, construction crews, and the marine environment during the Beals Island Bridge replacement and demolition project on the Moosabec Reach between Jonesport, ME, and Beals Island, ME.

IV. Discussion of the Rule

This rule establishes a Regulated Navigation Area from October 15, 2017, through January 31, 2021. The RNA will cover all navigable waters from surface to

bottom of the Moosabec Reach within 150 yards of the Beals Island Bridge, ME.

Beals Island Bridge RNA



Additional illustrations showing the location of this RNA are available in the docket.

The vessels operating within the RNA are subject to a “Slow-No Wake” speed limit. More specifically, 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 steerageway. This RNA also establishes a beam restriction on vessels transiting the regulated area and prohibits vessels whose beam exceeds 75 feet from transiting the Beals Island Bridge unless authorized by the First District Commander or the COTP, Sector Northern New England. Vessels will be limited to using only the main navigational channel, under the bridge’s center span, to transit through the bridge. While the majority of construction activities during the span of this project will not require waterway closures, certain tasks can only be completed in the channel and will require closing the waterway. Currently, we only expect two closures lasting less than 8 hours each. The Coast Guard may also need to 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.

The Coast Guard will notify the public and local mariners of this RNA through appropriate means, which may include, but are not limited to, publication in the Local Notice to Mariners and Broadcast Notice to Mariners via marine Channel 16 (VHF-FM) in advance of any closure.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders 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 13771 directs agencies to control regulatory costs through a budgeting process. 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 (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive order 13771.

The Coast Guard has determined that this rulemaking is not a significant regulatory action. The RNA only impacts a small designated area of the Moosabec Reach and permits the majority of typical vessel traffic on the Moosabec Reach to continue to transit the waterway. Additionally, it is currently anticipated the RNA will be closed to all traffic on two brief occasions, each lasting less than 8 hours. Any other periods during which the RNA is closed to all traffic will be infrequent and as short in duration as possible. The Coast Guard will notify the public of the enforcement of this rule via appropriate means, such as via Local Notice to Mariners and Broadcast Notice to Mariners.

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 RNA may be small entities, for the reasons stated in section V.A., 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 temporary RNA for the navigable waters within 150-yards of Beals Island Bridge between Jonesport, ME, and Beals Island, ME. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration for Categorically Excluded Actions is available in the docket where indicated under ADDRESSES.

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.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape this rulemaking. We may change this rule in view of them. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this TFR as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts; you will be notified when comments are posted or if a revised final rule is published.

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.T01-0890 to read as follows:

§ 165.T01-0890 Regulated Navigation Area; Beals Island Bridge Replacement, Moosabec Reach, Jonesport, ME.

(a) *Regulated Navigation Area boundaries.* The following area is a Regulated Navigation Area (RNA): All navigable waters of the Moosabec Reach between

Jonesport, ME, and Beals, ME, from surface to bottom, within 150-yards of the Beals Island Bridge. Encompassed by a line connecting the following points 44°31'19.8"N, 67°36'44.1"W and then west along the shoreline to a point on land at position 44°31'20.1"N, 67°36'57.9"W and then north across the channel to a point on land at position 44°31'39.1"N, 67°37'01.7"W and then east along the shoreline to a point on land at position 44°31'41.3"N, 67°36'48.9"W 3°10'04.944"W and then south across the channel back to the point of origin. These coordinates are based on [NAD 83].

(b) *Regulations.* The general regulations contained in 33 CFR 165.13 apply within the RNA.

(1) Any vessel transiting through the Beals Island Bridge must make a direct passage using the main channel under the center span. No vessel may stop, moor, anchor, or loiter within the RNA at any time unless they are working on the bridge construction or have received prior authorization by the First District Commander or the Captain of the Port (COTP), Sector Northern New England, or his designated representative.

(2) Movement within this RNA is subject to a "Slow-No Wake" speed limit. No vessels may produce a wake nor attain speeds greater than five (5) knots unless a higher minimum speed is necessary to maintain bare steerageway.

(3) No vessel with a beam greater than 75 feet may transit this area unless they receive advance authorization by the First District Commander or the Captain of the Port (COTP), Sector Northern New England.

(4) There may be times that the First District Commander or the COTP finds it necessary to close the RNA to vessel traffic. 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 periods of closure, persons and vessels may request permission to enter and transit the RNA by contacting the COTP or the COTP's on-scene representative on VHF-16 or via phone at 207-767-0303.

(5) Any vessels transiting within this 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 vessels via VHF-FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(6) 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 this RNA and must be strictly followed at all times.

(d) *Penalties.* Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232.

(e) *Enforcement period.* This RNA's speed and beam 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.

(f) *Notification.* Coast Guard Sector Northern New England will give notice through the Local Notice to Mariners and Broadcast Notice to Mariners regarding enforcement of this RNA. Coast Guard Sector Northern New England will also notify the public to the greatest extent possible of any period in which the Coast Guard will suspend enforcement of this RNA.

Dated: October 12, 2017

S. D. Poulin
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

[FR Doc. 2017-23049 Filed: 10/23/2017 8:45 am; Publication Date: 10/24/2017]