



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0815]

RIN 1625-AA00

Safety Zone; Southport Swing Bridge, Southport, ME

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Townsend Gut within a 50-yard radius from the center of the Southport Swing Bridge, in Southport, ME. When enforced, this regulation will prohibit waterside entry of vessels or persons into the safety zone unless authorized by Captain of the Port for Sector Northern New England or a designated representative. The safety zone is necessary to protect personnel, vessels, and marine environment from potential hazards created by construction and remediation of the Southport Swing Bridge.

DATES: This rule is effective from October 23, 2023 through May 17, 2024. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 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 <https://www.regulations.gov>, type USCG-2023-0815 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

You may submit comments identified by docket number USCG-2023-0815 using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the "Public

Participation and Request for Comments” portion of the **SUPPLEMENTARY**

INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MSTC Zachary Wetzel, Sector Northern New England, U.S. Coast Guard; telephone 207-808-9137, email NNEWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Northern New England
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On August 29, 2023, the Coast Guard was made aware by the Cianbro Companies of the Southport Swing Bridge rehabilitation and construction project in Southport, ME, Maine DOT Project WIN 021751.01. Marine construction actions will consist of coating repairs, replacement of the fender and pier system, full machinery and controls system upgrade, deck replacement and a number of structural repairs. During these construction activities work and crane barges are expected to block the channel and the bridge will be unable to open for vessel traffic. The Captain of the Port Sector Northern New England (COTP) has determined that potential hazards associated with the bridge construction would be a safety concern for anyone within a 50-yard radius of the center point of the bridge. If the project is completed prior to May 17, 2024, enforcement of the safety zone will be suspended and notice given via Broadcast Notice to Mariners, Local Notice to Mariners, or both. The Coast Guard anticipates that this safety zone period is the first in a several year multi-phase bridge construction and remediation project. The Coast Guard

will consider comments in issuing a subsequent temporary interim rule or temporary final rule.

The Coast Guard is issuing this temporary interim 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 a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The notice allowing the construction project to proceed and providing updated timelines for the project was only recently finalized and provided to the Coast Guard, which did not give the Coast Guard enough time to publish a NPRM, take public comments, and issue a final rule before the existing regulation expires. Timely action is needed to respond to the potential safety hazards associated with the construction and rehabilitation the Southport Swing Bridge. It would be impracticable and contrary to the public interest to publish a NPRM because we must establish the safety zone as soon as possible to protect the safety of the waterway users, construction crew, and other personnel associated with the bridge project. A delay of the project to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the completion date of the bridge project and subsequent reopening of the Southport Swing Bridge for normal operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For reasons stated in the preceding paragraph, delaying the effective date of this rule would be impracticable and contrary to the public interest because timely action is

needed to respond to the potential safety hazards associated with the project.

We are soliciting comments on this rulemaking. If the Coast Guard determines that changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

III. Legal Authority and Need for Rule

Coast Guard is issuing this temporary interim rule under authority in 46 U.S.C. 70034. The COTP determined that potential hazards associated with this bridge construction and remediation project will be a safety concern for anyone within the work zone through May 17, 2024. The construction and remediation of the bridge will be extremely complex and present many safety hazards including overhead operations, potential falling debris, and barges positioned along the length of the bridge. In order to mitigate the inherent risks involved with the remediation of a bridge, it is necessary to control vessel movement through the area. The purpose of this temporary interim rule is to ensure the safety of the waterway users, the public, and construction workers for the duration of the bridge construction. In order to minimize such unexpected or uncontrolled movement of water no vessel may stop, moor, anchor, or loiter within the safety zone at any time unless receiving permission from the COTP or a designated representative. This temporary interim rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the bridge construction project.

IV. Discussion of the Rule

This temporary interim rule establishes a temporary safety zone from October 23, 2023, through May 17, 2024. This rule will prohibit all persons and vessel traffic from the safety zone unless exceptions are authorized by the COTP or a designated representative.

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

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. This rule has not been designated a “significant regulatory action,” under Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The safety zone is only in effect for navigable water of the Townsend Gut within a 50-yard radius of the center point of the Southport Swing Bridge. This waterway is typically transited by smaller craft on an infrequent basis over the winter months. Vessel traffic is able to safely transit around this safety zone with a slight delay (approximately 30-120 minutes) by transiting around Southport Island to reach any destination on the other side of Townsend Gut. Additionally, the rule allows vessels to seek permission to enter the zone. Moreover, the Coast Guard will notify the public of enforcement of this rule via appropriate means, such as via Local Notice to Mariners and Broadcast Notice to Mariners via marine Channel 16 (VHF-FM).

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 temporary interim 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 (Pub. L. 104-121), we want to assist small entities in understanding this temporary interim rule. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email 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.

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 Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning

COMDTINST 5090.1 (series), 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 safety zone that will prohibit entry within a 50-yard radius from the center of the Southport Swing Bridge during its construction and rehabilitation. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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 the outcome of this rulemaking. 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.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <http://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2023-0815 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it.

Then click on the Comment option. 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.

Viewing material in docket. To view documents mentioned in this rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comment we post to <http://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). **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: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add §165.T01-0815 to read as follows:

§165.T01-0815 Safety Zone; Southport Swing Bridge, Southport, ME.

(a) *Location.* The following area is a safety zone. All navigable waters on Townsend Gut within a 50-yard radius from the center of the Southport Swing Bridge, in Southport, ME, in position 43°50'33.9"N 69°39'14.4"W (NAD 83).

(b) *Definitions.* As used in this section:

Designated representative means any Coast Guard commissioned, warrant, petty officer, or any federal, state, or local law enforcement officer who has been designated by the Captain of the Port Northern New England (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Official patrol vessels mean any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP to enforce this section.

(c) *Effective and Enforcement Period.* The safety zone in paragraph (a) of this section is in effect from October 23, 2023, through May 17, 2024, and is subject to enforcement 24 hours a day.

(d) *Regulations.* When this safety zone is enforced, the following regulations, along with those contained in 33 CFR 165.23 apply:

(1) No person or vessel may enter or remain the safety zone described in paragraph (a) without the permission of the COTP or the COTP's designated representative. However, any vessel that is granted permission to enter or remain in this zone by the COTP or the COTP's designated representative must proceed through the zone with caution and operate at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules.

(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 designated representative. Upon being hailed by a U.S. Coast Guard vessel 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 safety zone shall exit the zone when directed by the COTP or the COTP's designated representative.

(3) To obtain permission required by this regulation, individuals may reach the COTP or the COTP's designated representative via Channel 16 (VHF-FM) or (207)741-5465 (Sector Northern New England Command Center).

(e) *Penalties.* Those who violate this section are subject to the penalties set forth in 46 U.S.C. 70036.

Dated: October 2, 2023.

Amy Florentino,
Captain, U.S. Coast Guard,
Captain of the Port Northern New England.

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