



BILLING CODE 9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2023-0971]**

**RIN 1625-AA11**

**Regulated navigation area; NW Natural Gasco Sediment Site Field Pilot Study,  
Willamette River, Portland, Oregon**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish a Regulated Navigation Area for certain waters of the Willamette River. This action is necessary to preserve the integrity of sampling ports at the NW Natural Gasco Sediments Site Project Area on these navigable waters near Portland, Oregon. This proposed rulemaking would prohibit persons and vessels in the designated area from activities that could disturb or damage the sampling ports unless authorized by the Captain of the Port Sector Columbia River or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments identified by docket number USCG-2023-0971 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 for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LT Carlie Gilligan, Waterways Management Division, U.S. Coast Guard; telephone 503-240-9310, email [SCRWWM@uscg.mil](mailto:SCRWWM@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On September 26, 2023, an organization notified the Coast Guard that it will be requesting a Regulated Navigation Area (RNA) at the NW Natural Gasco Sediments Site Project Area located in the Willamette River in Portland, Oregon. This will preserve the integrity of the In Situ Stabilization and Solidification (ISS) Field Pilot Study (FPS) post-construction sampling ports placed over the site as part of the U.S Environmental Protection Agency (EPA) Superfund cleanup action. The Captain of the Port Sector Columbia River (COTP) has determined that a regulated navigation area would mitigate potential hazards at this site.

The purpose of this rulemaking is to ensure activities do not disturb the sampling ports. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

### **III. Discussion of Proposed Rule**

The COTP is proposing to establish a regulated navigation area at river mile 6.5 on the Willamette River, Portland, OR. The FPS consists of a 1,750 square foot area that will undergo ISS treatment. The duration of the zone is intended last in perpetuity or until the EPA and NW Natural agree to modify the footprint as part of a future final site remedy. No vessel or person would be permitted to disturb (e.g., anchor, drag lines, trawling, motoring) the regulated navigation area without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

### **IV. Regulatory Analyses**

We developed this proposed 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 NPRM has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the RNA being limited in size and is outside the navigable channel.

*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 proposed rule would 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 IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the proposed 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. The Coast Guard will not retaliate against small

entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would 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 proposed rule has implications for federalism or Indian tribes, please call or email 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 proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves a regulated navigation area that prohibits certain maritime activities to protect the sampling ports. Normally such actions are 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 preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*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.

## **V. 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 <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2023-0971 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 you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed 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 webpage. Also, if you click on the Dockets tab and then the proposed rule, you should see a "Subscribe" option for email alerts. The option will notify you when comments are

posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://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 and Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 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 § 165.0971 to read as follows:

**§ 165.0971 Regulated navigation area; NW Natural Gasco Sediments Site Field Pilot Study, Willamette River, Portland, OR.**

(a) *Location.* The following area is a regulated navigation area (RNA): All navigable waters of the Willamette River, from surface to bottom, adjacent to the NW Natural Portland Gas Manufacturing (PGM) site, encompassed by a line connecting the following points beginning at 45°34'45.65" N, 122°45'21.73" W; thence to 45°34'45.32" N, 122°45'22.00" W; thence to 45°34'45.39" N, 122°45'21.09" W; thence to 45°34'45.06" N, 122°45'21.36" W; and back to the beginning point. These coordinates are based on North American Datum 83 (NAD 83). Geographically this location starts on the west bank of the Willamette River at approximately river mile 6.5.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Columbia River (COTP) in the enforcement of the safety zone.

(c) *Regulations.* In addition to the general RNA regulations in § 165.13, the following regulations apply to the RNA described in paragraph (a) of this section.

(1) Sediment disturbance activities including anchoring, drag lines, trawling and motoring are prohibited to ensure the treated sediment surface and sampling ports are not disturbed. The sampling ports must remain intact and undisturbed to avoid impacting the EPA-approved sampling. All vessels and persons are prohibited from anchoring, dredging, laying cable, dragging, seining, bottom fishing, conducting salvage operations, or any other activity which could potentially disturb the riverbed in the designated area. Vessels may otherwise transit or navigate within this area.

(2) The prohibition described in paragraph (b)(1) of this section does not apply

to vessels or persons engaged in activities associated with remediation efforts in the NW Natural Gasco Sediment Site, provided that the Coast Guard Captain of the Port Sector Columbia River (COTP) is given advance notice of those activities by the U.S. Environmental Protection Agency (EPA).

(d) *Contact information.* If you observe violations of the regulations in this section, you may notify the COTP by email, at [SCRWWM@USCG.MIL](mailto:SCRWWM@USCG.MIL), or by phone, 503-240-9319.

Dated: March 19, 2024.

**Charles E. Fosse,**

*Rear Admiral, U.S. Coast Guard,*

*Commander, Thirteenth Coast Guard District.*

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