



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: Final rule.

SUMMARY: The Coast Guard is establishing 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 rule prohibits 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.

DATES: This rule is effective [INSERT DATE 30 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-2023-0971 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Carlie Gilligan, Sector Columbia River, U.S. Coast Guard; telephone 503-240-9319, email SCRWWM@USCG.MIL.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Columbia River
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 September 26, 2023, an organization notified the Coast Guard that it would 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 would 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) determined that a regulated navigation area would mitigate potential hazards at this site.

In response, on March 24, 2024, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Regulated Navigation Area; NW Natural Gasco Sediment Site Field Pilot Study, Willamette River, Portland, Oregon (89 FR 20579). There we stated why we issued the NPRM and invited comments on our proposed regulatory action. During the comment period that ended April 24, 2024, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Columbia River (COTP) has determined that the potential for damage associated with the disturbance of the cap and testing ports could negatively impact the project. The purpose of this rule is to mitigate the risk of damage to the cap and installed testing ports.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published March 24, 2024. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a Regulated Navigation Area. The Regulated Navigation Area covers a 1,750 square foot area at river mile 6.5 on the Willamette River, Portland, OR. 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 is 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.

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.

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 section 3(f) of 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 and typical utilization of the 1,750 square foot area.

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 received no comments from the Small Business Administration on this rulemaking. 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 regulated navigation area 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 (Pub. L. 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 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.

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

regulated navigation area that will last in perpetuity and would prohibit any vessel or person to disturb (e.g., anchor, drag lines, trawling, motoring) the regulated navigation area, a 1,750 square foot area on the Willamette River. It is categorically excluded from further review under paragraph L60a 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.

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 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 § 165.0971 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, or by phone, 503-240-9319.

Dated: May 20, 2024.

Charles E. Fosse,

Rear Admiral, U.S. Coast Guard,

Commander, Thirteenth Coast Guard District.

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