



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0214]

RIN 1625-AA11

Regulated Navigation Area; South Bristol Gut Bridge Replacement,
South Bristol, ME

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) on the navigable waters of The Gut in South Bristol, ME in support of bridge construction. This regulated navigation area allows the Coast Guard to enforce speed and wake restrictions and prohibit all vessel traffic through the regulated navigation area during bridge replacement operations, both planned and unforeseen, which could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life on the navigable waters during bridge structural repair operations.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until April 30, 2017. For the purposes of enforcement, actual notice will

be used from the date the rule was signed, September 19, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble as being available in the docket, are part of docket [USCG-2014-0214].

To view documents mentioned in this preamble, go to

<http://www.regulations.gov>, type the docket number in the

"SEARCH" box, and click "SEARCH." Click on "OPEN DOCKET FOLDER"

on the line associated with this rulemaking. You may also visit

the Docket Management Facility in Room W12-140 on the ground

floor of the Department of Transportation West Building, 1200

New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and

5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this

rule, call Chief Craig D. Lapiejko, Waterways Management at

Coast Guard First District, at (617) 223-8385 or e-mail at

Craig.D.Lapiejko@uscg.mil; or Lieutenant Junior Grade David B.

Bourbeau, Waterways Management Division Chief at Coast Guard

Sector Northern New England, at (207) 347-5015 or e-mail at

David.T.Bourbeau@uscg.mil. If you have questions on viewing or

submitting material to the docket, call Cheryl Collins, Program

Manager, Docket Operations, at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>

A. Regulatory History and Information

On January 24, 2014, Sector Northern New England received notice of a proposed replacement of The Gut Bridge in South Bristol, ME between Rutherford Island and Bristol Neck. A Bridge Permit was awarded to Maine Department of Transportation (MEDOT) on April 15, 2014 to begin in accordance with Plans dated September 24, 2013.

MEDOT held seven public meetings between June 2009 and August 2013 and mariners have expressed no significant concerns.

On November 8, 2013, Public Notice 1-132 was disseminated by the First Coast Guard District. This notice included the official plans being submitted for approval of a bridge permit and solicited comments from the public. Twenty-five comments were received. All comments were in support of burying the existing overhead electrical cables rather than allowing them to remain in place above the water. There were no comments received in opposition of the proposed construction project or potential closures to the channel.

On July 25, 2014, the Coast Guard published a notice of proposed rulemaking (NPRM) regarding the creation of this

regulated navigation area. No comments were received during the public comment period of the NPRM.

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. Delaying the effectiveness of this rule would be impracticable and contrary to the public interest as immediate action is needed to protect the boating public from the hazards associated with a dangerous construction site. The Coast Guard finds it impractical and unnecessary to move the start of construction to accommodate the 30-day delayed effective date. The public has known about this pending construction through public meetings and publication of an NPRM for more than a year, so delaying an additional thirty days is unnecessary. The regulated area is small in scope and will only be enforced as needed for boating safety in the affected waters. The most significant impact on the boating public will not take place until 2015.

B. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish regulated navigation areas in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6,

and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1.

Starting in September 2014, MEDOT is replacing the existing movable bobtail swing bridge over The Gut, which carries State Route 129 from Bristol Neck to Rutherford Island, with a movable trunnion-style lift bridge on the same alignment. The project is necessary to replace a structurally and operationally deficient bridge that has exceeded its useful life. The new bridge will measure approximately 68 feet in length and will be 41 feet wide out-to-out. All parts of the existing bridge will be removed in their entirety. Before demolition of the existing bridge commences, a temporary fixed detour bridge will be constructed on the east side of the existing bridge to provide for vehicular and pedestrian traffic throughout the project. This temporary bridge will not be movable and will have a fixed vertical clearance of 3 feet 11 inches. The existing bridge has a vertical clearance of 4 feet 2 inches when closed.

The First District Commander has determined that this bridge construction project will pose a risk to vessels transiting the waters in the vicinity of the Route 129 bridge at Bristol Neck and Rutherford Island. The purpose of this rule is to ensure the safe transit of vessels in the area, and to protect all persons, vessels, construction crews, and the marine environment during bridge construction operations on The Gut in

South Bristol, ME, between Rutherford Island and Bristol Neck.

C. Discussion of Final Rule

In order to mitigate the inherent risks involved in construction, it is necessary to control vessel movement through the area. Accordingly, the Coast Guard is establishing a regulated navigation area on the navigable waters of The Gut in the vicinity of South Bristol, ME. Generally, this RNA imposes two requirements on the public. Each is discussed further below.

First, this RNA imposes a speed restriction on vessels within the RNA. Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. In order to minimize such unexpected or uncontrolled movement of water, the RNA will limit vessel speed and wake in the vicinity of the bridge construction zone. This will be achieved by implementing a five (5) knot speed limit and "NO WAKE" zone in the vicinity of the construction within the regulated area. While in the RNA, all vessels must proceed with caution and operate in such a manner as to produce no wake unless a higher minimum speed is necessary to maintain steering.

The second requirement imposed by this rule pertains to waterway closures. When necessary for safety, this RNA will prohibit vessel access to the regulated area. This will ensure

that vessels are only permitted to transit the area when it is safe to do so. The Coast Guard may close the regulated area 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. At present, the Coast Guard is aware of one 213-day closure that will begin on or after September 10, 2015 and will end on or prior to May 22, 2016. Vessels will not be permitted to transit through "The Gut" for the duration of this 213-day closure. In addition, shorter duration channel closures may be enforced between October 15, 2014 and April 30, 2015 and between October 15, 2015 and April 30, 2016 between the hours of 9:00 am and 3:00 pm and between the hours of 10:00 pm and 4:00 am. These shorter closures will occur only as required to safely perform operations in the channel. Marine traffic will be detoured around Rutherford Island during all closure periods. Transit time around Rutherford Island is approximately 20-60 minutes for mariners.

Generally, except in the case of the aforementioned 213-day period which will require closure of the channel 24-hours per day, the Coast Guard intends to enforce the speed restrictions and the waterway closures only during limited hours of the day to minimize impacts on vessel traffic. The public will be

advised of the enforcement dates and times of this RNA via Local Notice to Mariners, Broadcast Notice to Mariners, and other means described in 33 CFR 165.7. Such notices will be provided in advance of closure times.

D. 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 or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this rule to be minimal because mariners are able to make a short transit (approximately 20-60 minutes) around Rutherford Island to reach any destination on the other side of The Gut.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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.

This rule would not affect small entities, because all areas of the waterway are accessible and an alternate route is provided to mariners during the full closure of the bridge.

3. Assistance for Small Entities

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, above.

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.

4. 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.).

5. Federalism

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 determined that this rule does not have implications for federalism.

6. 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.

7. 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and

Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This 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.

12. Energy Effects

This rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (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 rule involves the establishment of an RNA. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

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; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0214 to read as follows:

§165.T01-0214 Regulated Navigation Area; South Bristol Gut Bridge Replacement, South Bristol, ME.

(a) Location. The following area is a Regulated

Navigation Area (RNA): All navigable waters of The Gut in South Bristol, ME, from surface to bottom, within a 300 yard radius of position 43°51'43"N, 069°33'30"W.

(b) Regulations. (1) The general regulations contained in 33 CFR 165.11 and 165.13 apply within the RNA.

(2) In accordance with the general regulations, entry into or movement within this RNA, during periods of enforcement, is prohibited unless authorized by the First District Commander or the Captain of the Port Sector Northern New England (COTP).

(3) Persons and vessels may request permission to enter the RNA during periods of enforcement by contacting the COTP or the COTP's on-scene representative on VHF-16 or via phone at (207) 767-0303.

(4) During periods of enforcement, a speed limit of five knots will be in effect within the RNA and all vessels must proceed through the area with caution and operate in such a manner as to produce no wake unless a higher minimum speed is necessary to maintain steering.

(5) Vessels permitted to enter the RNA during periods of enforcement must comply with all directions given to them by the First District Commander, 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; Maine State Police, Maine Marine Patrol or other designated craft; or may be 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 (33 CFR chapter I, subchapter E) remain in effect within the regulated area and must be strictly followed at all times.

(c) Effective and enforcement period. This regulation is effective and enforceable 24 hours a day from 12:01 a.m. on September 19, 2014, until 11:59 p.m. on April 30, 2017.

(1) Prior to commencing or suspending enforcement of this regulation, the COTP will give notice by appropriate means to inform the affected segments of the public, to include dates and times. Such means of notification will include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, and other means described in 33 CFR 165.7.

(2) Violations of this RNA may be reported to the COTP at
(207) 767-0303 or on VHF-Channel 16.

Dated: September 19, 2014

V. B. Gifford
Captain, U.S. Coast Guard
Acting Commander, First Coast Guard District

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Date: 10/08/2014]