



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0554]

RIN 1625-AA11

Regulated Navigation Area; Sarah Mildred Long Bridge

Replacement, Portsmouth, NH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The United States Coast Guard is establishing a Regulated Navigation Area (RNA) on the navigable waters of the Piscataqua River under and surrounding the Sarah Mildred Long Bridge between Portsmouth, NH and Kittery, ME. This RNA will allow the United States Coast Guard to enforce speed and wake restrictions and limit vessel traffic through the RNA 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 from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until May 31, 2019. This rule has been

enforced with actual notice since December 31, 2014.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG-2014-0554. To view documents mentioned in this preamble as being available in the docket, 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 Lieutenant Commander Myles Greenway, Waterways Management at First Coast Guard District at 617-223-8385 or email at Myles.J.Greenway@uscg.mil; or call Lieutenant Junior Grade David T. Bourbeau, Waterways Management Division 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, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security

FR Federal Register
MEDOT Maine Department of Transportation
NHDOT New Hampshire Department of Transportation
NOAA National Oceanic and Atmospheric Administration
NPRM Notice of Proposed Rulemaking
NAD 83 North American Datum of 1983

RNA Regulated Navigation Area

A. Regulatory History and Information

The MEDOT applied for a bridge construction permit with the Coast Guard on August 15, 2013. The United States Coast Guard issued Public Notice 1-137 on February 10, 2014, which was published on the United States Coast Guard Navigation Center website and the First Coast Guard District–Bridge Branch website, and solicited comments through March 12, 2014. Three comments were received in response to the public notice: one comment was a statement of no objection and two comments were in favor of the project.

On August 25, 2014, we published a NPRM entitled Regulated Navigation Area; Sarah Mildred Long Bridge Replacement, Portsmouth, NH in the Federal Register (79 FR 50565). We received 2 comments on the proposed rule. Those comments are discussed below.

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. The comment period for the Notice of Proposed Rulemaking ended on September 24,

2014. There was insufficient time to prepare and publish this Final Rule by November 30, 2014, which was thirty days before the start of bridge construction and the need for the rule. Changing the bridge construction schedule to accommodate the regulation is impractical and unnecessary because the impact of this regulation on the waterway will be minimal.

B. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs 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.

MEDOT will replace the existing vertical lift bridge over the Piscataqua River, which carries the U.S. Route 1 Bypass from Portsmouth, NH, to Kittery, ME, with a hybrid vertical lift bridge on an upstream alignment. The project is necessary to replace a structurally and operationally deficient bridge that has exceeded its useful life. In the normal vehicle use mode, the new vertical lift bridge will provide a vertical clearance through the main channel of 56 feet above mean high water (MHW) in the closed position and 135 feet above MHW in the open

position, and a horizontal clearance of 250 feet measured normal to the axis of the channel. When closed to normal vehicle use (i.e. in rail use mode), the new bridge will provide a vertical clearance through the main channel of 16 feet MHW.

The construction of the new Sarah Mildred Long Bridge will involve large machinery and construction vessel operations above and in the navigable waters of the Piscataqua River. These operations, by their nature, are hazardous and pose risks both to recreational and commercial traffic as well as the construction crew. In order to mitigate the inherent risks involved in the construction, it is necessary to control vessel movement through the area.

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 Piscataqua River between Portsmouth, NH and Kittery, ME.

C. Discussion of Comments, Changes and the Final Rule

Two comments were received on Docket No. USCG-2014-0554. The first comment questioned whether the waterway is "navigable". As per 33 CFR 2.36, the Piscataqua River is a U.S. navigable waterway. The second comment questioned the specified latitude and longitude in the NPRM and whether the coordinates are based on North American Datum of 1983 (NAD 83) horizontal

datum. The comment suggested that if the latitude and longitude coordinates are NAD 83 then it should be stated in the final rule. Upon confirming this with NOAA, "(NAD 83)" was added to the regulatory text.

Construction 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 of all vessels operating 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 as well as providing a means to suspend all vessel traffic for emergent situations that pose imminent threat to waterway users in the area. The RNA will also protect vessels desiring to transit the area by ensuring that vessels are only permitted to transit when it is safe to do so.

The Coast Guard has discussed this project at length with the NHDOT and MEDOT to identify if the project can be completed without channel closures and, if possible, what impact that would have on the project timeline. Through these discussions, it became clear that while the majority of construction activities during the span of this project will not require waterway closures, there are certain tasks that can only be

completed in the channel and will require closing the waterway.

The Coast Guard may 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.

Further, the speed limit of five (5) knots will be in effect at all times 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 bare steerage. The Coast Guard will rely on the methods described in 33 CFR 165.7 to notify the public of the time and duration of any closure of the RNA.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and 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 this regulated navigation area requires vessels to reduce speed through 600 yards of the Piscataqua River, causing only a minimal delay to a vessel's transit. In addition, periods when the regulated navigation area is closed to all traffic are expected to be short in duration, and we will provide advance notice of such closures so that the boating public can plan transits accordingly. Such notifications will be made to local mariners through appropriate means, such as Local Notice to Mariners and Broadcast Notice to Mariners.

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 affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the regulated navigation area while it is being enforced. This rule will not have a significant economic impact on a substantial number of small entities for all of the reasons discussed in the REGULATORY PLANNING AND REVIEW section.

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

8. Taking of Private Property

This rule will 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 from Environmental Health Risks

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 will 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 will 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 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 and thus, is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An 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.T01-0554 to read as follows:

§165.T01-0554 Regulated Navigation Area; Sarah Mildred Long Bridge Replacement, Portsmouth, NH.

(a) Location. The following area is a Regulated Navigation Area (RNA): All navigable waters of the Piscataqua River between Portsmouth, NH and Kittery, ME, from surface to bottom, within a 300 yard radius of position 43°05'10"N, 070°45'38"W (NAD 83), center point of the existing Sarah Mildred Long Bridge.

(b) Regulations. (1) The general regulations contained in

§§165.10, 165.11, and 165.13 apply within the RNA.

(2) Any vessel transiting through the RNA must make a direct passage. No vessel may stop, moor, anchor or loiter within the RNA at any time unless they are working on the bridge construction. Movement within the RNA is subject to a "Slow-No Wake" speed limit. All 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 bare steerageway.

(3) There may be times that the First District Commander or the Captain of the Port (COTP) finds it necessary to close the RNA to vessel traffic. All closures will be limited to specific hours of the day. 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 times of limited closure, persons and vessels may request permission to enter the RNA by contacting the COTP or the COTP's on-scene representative on VHF-16 or via phone at 207-767-0303.

(4) Any vessels transiting in the 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.

(5) 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 the RNA and must be strictly followed at all times.

(c) Enforcement period. This regulation is enforceable 24 hours a day from 12:01 a.m. on December 31, 2014 until 11:59 p.m. on May 31, 2019.

(d) Notification. The Coast Guard will rely on the methods described in §165.7 to notify the public of the time and duration of any closure of the RNA. Violations of this RNA may be reported to the COTP at 207-767-0303 or on VHF-Channel 16.

Dated: December 22, 2014.

L. L. Fagan,
Admiral, U.S. Coast Guard,
Commander, First Coast Guard District.

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