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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0575]

RIN 1625-AA00

Safety Zone; Boston Harbor's Improvement Dredging Project, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing two temporary safety zones on the navigable waters of Boston Harbor. The first safety zone will be around any vessel, barge, or dredging equipment actively engaged in dredging operations, drilling, or blasting. The second safety zone will be around any blasting worksites. These safety zones are needed to protect personnel, vessels, and the marine environment from the potential hazards created by the dredging, drilling, and blasting operations in support of the U.S. Army Corps of Engineers Boston Harbor's Improvement Dredging Project. When enforced, this regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Boston or a designated representative.

DATES: This rule is effective from [INSERT DATE OF PUBLICATION IN REGISTER] through August 31, 2023.

Comments and related material must be received by the Coast Guard during the effective period on or before [INSERT DATE 90 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 <http://www.regulations.gov>, type USCG-2018-0575 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule. You may submit comments identified by docket number USCG-2018-0575 using the Federal eRulemaking Portal at <http://www.regulations.gov>. [See the “Public Participation and Request for Comments” portion for further instructions on submitting comments.](#)

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mark Cutter, Waterways Management Division, U.S. Coast Guard Sector Boston, telephone 617-223-4000, e-mail Mark.E.Cutter@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
TIR	Temporary Interim Rule
NPRM	Notice of Proposed Rule Making
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On June 1, 2018, U.S. Army Corps of Engineers issued a notice allowing the Joint Venture of Cashman Dredging Inc. and Dutra Group to proceed with the improvement-dredging project of Broad Sound North Channel, Boston’s Inner Harbor Main Ship Channel, Conley Terminal including the turning basin or “MSC Notch,” and President Roads Anchorage. The project consists of deepening Broad Sound North Channel to 51 feet below the surface, and Boston’s Inner Harbor Main Ship Channel, Conley Terminal

including the turning basin or “MSC Notch,” and President Roads Anchorage each to 47 feet below the surface.

The project includes dredging approximately 11.7 million cubic yards of silt, blue clay, till and weathered rock from the Broad South North Channel, Boston’s Inner Harbor Main Ship Channel, Conley Terminal, and President Roads Anchorage. Most of the material dredged will be placed at the Massachusetts Bay Disposal Site (MBDS) approximately 20 miles offshore of Boston Harbor. A small fraction of the material dredged will be placed as a cap to the Main Ship Channel Confined Aquatic Disposal Cell, just downstream of the inner confluence of the Chelsea and Mystic Rivers. The initial phase of the dredge operation involves using mechanical dredges and does not involve any type of blasting or drilling operation. At some point, once the silt, blue clay, till and weathered rock have been removed, blasting or drilling may be needed to remove the hard rock. Whether blasting or drilling will be required, it will not be known until the top material has been removed and the contractor can locate the hard rock spots. The dredge operation has begun and will continue for 24 hours a day, seven days a week for approximately four years. The Coast Guard is publishing this rule to be effective, and enforceable, through August 31, 2023, in case the project is delayed due to unforeseen circumstances. If the project is completed prior to August 31, 2023, enforcement of the safety zones will be suspended and notice given via Broadcast Notice to Mariners, Local Notice to Mariners, or both.

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 NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. The notice allowing the dredging project to proceed and providing dates for the project was only recently finalized and provided to the Coast Guard, and timely action is needed to respond to the potential safety hazards associated with this dredging project. The late finalization of project details did not give the Coast Guard enough time to publish a NPRM, take public comments, and issue a final rule before dredging operations begin. It would be impracticable and contrary to the public interest to publish a NPRM because a safety zone must be established as soon as possible to protect the safety of the waterway users, construction crew, and other personnel associated with the dredging project. A delay of the dredging project to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the date when the dredging project is expected to be completed and reopen Boston Harbor for normal operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it 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 dredging project.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231.

The COTP Boston has determined that potential hazards exist associated with a dredging project that has already commenced, and will continue through August 31, 2023. This rule is needed to protect personnel, vessels, and the marine environment on the navigable waters of Broad Sound North Channel, Boston's Inner Harbor Main Ship Channel, Conley Terminal including the turning basin or "MSC Notch," and President Roads Anchorage during the dredging project.

IV. Discussion of Comments, Changes, and the Rule

This rule establishes two safety zones that will continue through August 31, 2023.

The first safety zone will have a 100-yard radius centered on any vessel, barge, or dredging equipment while actively engaged in dredging operations, drilling, or blasting. If blasting is needed for hard rock, the second safety zone will have a 500-yard radius centered on the worksite on each day of blasting, to be established once explosives are laid and ready for detonation, and subsequently suspended once a successful detonation has been confirmed. The Coast Guard will notify the public and local mariners of this 500-yard safety zone through appropriate means, which may include, but are not limited to, publication in 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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive order 13771.

This regulatory action determination is based on the following reasons: 1) these safety zones will only impact a small designated area of the waterway at any given time; 2) vessels wishing to transit the waterway will have sufficient room to transit around the the safety zones; 3) dredging vessel(s) conducting operations will move out of the channel for deep draft vessels that need to pass through that area and deep draft vessel traffic will be well coordinated though daily communications with U.S. Army Corps of Engineers, Contractor, Ship Pilots, and the U.S. Coast Guard; 4) local lobstermen can still set pots in some areas of Boston harbor; 5) the 500-yd safety zone around blasting operations will only be enforced when blasting is in progress for short durations and with substantial public notice days in advance of enforcement through a Broadcast Notice to Mariners (BNM) via marine channel 16 (VHF-FM) of the exact location. The Coast Guard will place a notice in the Local Notice to Mariner (LNM); issue Broadcast Notice to Mariners (BNM) via marine channel 16 (VHF-FM), Safety Marine Information Port Bulletin, discuss updates at the monthly Boston Port Operators Group (POG) meeting, and at the Massachusetts Bay Harbor Safety Committee meetings.

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 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 safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant impact on any vessel owner or operator.

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** 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 temporary interim 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 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 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 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 would 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, which guides 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 rule involves the establishment of two safety zones on the navigable waters of Broad Sound North Channel, Boston's Inner Harbor Main Ship Channel, Conley Terminal including the turning basin or "MSC Notch," and President Roads Anchorage: 1) a 100-yard radius centered on any vessel, barge, or dredging equipment while actively engaged in dredging operations, drilling, or blasting. 2) If blasting is needed for hard rock, the second safety zone will have a 500-yard radius centered on the worksite on each day of blasting, to be established once explosives are laid and ready for detonation, and subsequently suspended once a successful detonation has been confirmed. 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. 01. A preliminary Record of Environmental Consideration for Categorically Excluded Actions is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this temporary interim rule.

G. 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.

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.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. 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.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this TIR as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0575 to read as follows:

§165.T01-0575 Safety Zone; Boston Harbor's Improvement Dredging Project, Boston, MA.

(a) Location. The following areas are safety zones: All navigable waters from surface to bottom, within a 100-yard radius centered on any vessel, barge or dredging equipment while actively engaged in dredging operations, drilling, or blasting. All navigable waters from surface to bottom, within a 500-yard radius centered on the blasting worksite while setting up for blasting, during blasting, and in the immediate aftermath.

(b) Definitions. As used in this section:

(1) *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 (COTP) Boston, 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.

(2) *Official patrol vessels* means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Boston to enforce this section.

(c) *Enforcement periods.* This section is enforceable 24 hours a day through August 31, 2023. When enforced as deemed necessary by the COTP Boston, vessels will be prohibited from entering this safety zone unless granted permission from the COTP Boston or the COTP's designated representative.

(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 in this safety zone without the permission of the COTP Boston or the COTP's designated representatives. However, any person or vessel permitted to enter the safety zone must comply with the directions and orders of the COTP Boston or the COTP's designated representatives.

(2) To obtain permission required by this regulation, individuals may reach the COTP Boston or a COTP designated representative via Channel 16 (VHF-FM) or 617-223-5757 (Sector Boston Command Center).

(3) Upon being hailed by a U.S. Coast Guard vessel by radio, siren, flashing lights, or other means, the operator of a vessel must proceed as directed.

(e) *Penalties.* Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232.

Dated: September 5, 2018

Eric. J. Doucette
Captain, U.S. Coast Guard
Captain of the Port Boston

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