



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2018-0843]**

**RIN 1625-AA00**

**Safety Zone; Barters Island Bridge, Back River, Barters Island, ME**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

---

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the navigable waters within a 50 yard radius from the center point of the Barters Island Bridge, on the Back River, ME, approximately 4.6 miles north of the mouth of the waterway. The safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards which could pose as imminent hazard to persons and vessels operating in the area created by the demolition, subsequent removal, and replacement of the Barters Island Bridge and a temporary bridge. When enforced, persons and vessels are prohibited from being in the safety zone during bridge replacement operations unless authorized by the Captain of the Port Northern New England or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through January 31, 2021. For the purposes of enforcement, actual notice will be used from December 1, 2018 through

[INSERT 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-2018-0843 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rulemaking, call or email LT Matthew Odom, Waterways Management Division, U.S. Coast Guard Sector Northern New England, telephone 207-347-5015, e-mail [Matthew.T.Odom@uscg.mil](mailto:Matthew.T.Odom@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
MEDOT	Maine Department of Transportation

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

On April 27, 2018, the Maine Department of Transportation (MEDOT) applied for a bridge construction permit for Barter’s Island Bridge with the Coast Guard. On June 22, 2018, the Coast Guard issued Public Notice 1-164, published it on the USCG Navigation Center Website, and solicited comments through July 23, 2018. Three comments were received in response to the public notice: One commenter requested the project be stopped if any human remains, archaeological properties or other items of historical importance are unearthed and we report the findings. A second commenter notified us this project will not affect any Penobscot cultural/historic properties or

interests and had no objection. A third commenter stated that Tennessee Gas Pipeline currently does not have facilities within the area. There were no statements of objection.

On August 22, 2018, MEDOT requested by letter that the Coast Guard impose waterway restrictions on the Back River around the Barters Island Bridge between Hodgdon Island and Barters Island in Boothbay Harbor in support of the bridge improvements. The project includes the replacement of the swing span of the bridge and the existing center pier. A temporary fixed bridge will be used to maintain vehicle traffic during construction of the new bridge. The temporary fixed bridge will reduce the vertical clearance of the channel to 6.8 feet mean high water (MHW) from approximately November 1, 2019 through May 31, 2020. On or about June 1, 2020, the new swing bridge is expected to be operating with unlimited clearance in the open position. The anticipated date for removal of the temporary bridge is August 2020. A bridge protection system and bridge lighting will be installed as part of the new bridge. Captain of the Port (COTP) Northern New England has determined that hazards associated with the bridge replacement project will be a safety concern for anyone within a 50-yard radius from the center point of the of the Barters Island bridge. It is anticipated that the Back River will be closed because of this safety zone for a total of 85 non-continuous days.

On October 9, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zones; Barters Island Bridge, Back River, Barters Island, ME” (83 FR 50545). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this safety zone. During the comment period that ended November 8, 2018, we received one comment.

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 effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with demolition, subsequent removal, and replacement of the Barters Island Bridge and a temporary bridge.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP Northern New England has determined that potential hazards associated with the demolition, subsequent removal, and replacement of the Barters Island Bridge and a temporary bridge will be a safety concern for anyone transiting within a 50 yard radius of the center point of the Barters Island Bridge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the bridge demolition, removal, and replacement. During times of enforcement, no vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP Northern New England or a designated representative.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received one comment on our NPRM published October 9, 2018. The comment was not related to this rulemaking nor does it fall within the scope of this rulemaking. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 12:01 a.m. on December 1, 2018 through 11:59 p.m. on January 31, 2021. While the safety zone would be effective throughout this period, it would only be enforced during operations on replacement of the Barters

Island Bridge. The safety zone would include all navigable waters from surface to bottom within a 50 yard radius from the center point of the Barters Island Bridge on the Back River, ME. During times of enforcement, no vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP Northern New England or a designated representative. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after operations on replacement of the Barters Island Bridge. The Coast Guard will notify the public and local mariners of this safety zone through appropriate means, which may include, but are not limited to, publication in the Federal Register, 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, the rule 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) The safety zone only impacts a small designated area of Back River, 2) the safety zone will only be enforced during certain construction activities necessitating a full waterway closure for safety purposes, which is only anticipated to occur on 85 days over a two year period, or if there is an emergency, 3) persons or vessels desiring to enter the safety zone may do so with permission from the COTP Northern New England or a designated representative, 4) the Coast Guard will notify the public of the enforcement of this rule via appropriate means, such as via Local Notice to Mariners and Broadcast Notice to Mariners via marine Channel 16 (VHF-FM).

*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 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 IV.A above, this rule would 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 (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. 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 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 and Commandant Instruction M16475.1D, 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 rule involves a safety zone that would prohibit entry within a 50 yards radius from the center point of the Barters Island Bridge during its removal and replacement over an approximately two year period. It is 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 Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

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.



## **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.T01-0843 to read as follows:

#### **§ 165.T01-0843 Safety Zone; Barters Island Bridge, Back River, Barters Island, ME.**

(a) *Location.* The following area is a safety zone: All navigable waters on Back River, within a 50-yard radius of the center point of the Barters Island Bridge that spans Back River between Barters Island and Hodgdon Island in position 43°52'51'' N, 069°40'19'' W (NAD 83).

(b) *Definitions.* As used in this section:

*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) Northern New England, 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.

*Official patrol vessels* means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Northern New England to enforce this section.

- (c) *Effective and enforcement period.* This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 11:59 p.m. on January 31, 2021. For the purposes of enforcement, actual notice will be used from 12:01 a.m. on December 1, 2018 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This rule will only be enforced during operations on replacement of the Barters Island Bridge or other instances which may cause a hazard to navigation, or when deemed necessary by the Captain of the Port (COTP), Northern New England.
- (d) *Regulations.* The general regulations contained in § 165.23, as well as the following regulations, apply:
- (1) No person or vessel may enter or remain in this safety zone without the permission of the COTP or the COTP's designated representative.
  - (2) To obtain permission required by this regulation, individuals may reach the COTP or the COTP's designated representative via Channel 16 (VHF-FM) or (207)741-5465 (Sector Northern New England Command Center).
  - (3) During periods of enforcement, any person or vessel permitted to enter the safety zone shall comply with the directions and orders of the COTP or the COTP's designated representative.
  - (4) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means, the operator of a vessel within the

zone must proceed as directed. Any person or vessel within the safety zone shall exit the zone when directed by the COTP or the COTP's designated representative.

Dated: November 30, 2018.

B. J. LeFebvre,  
Captain, U.S. Coast Guard,  
Captain of the Port,  
Sector Northern New England.  
[FR Doc. 2018-26578 Filed: 12/6/2018 8:45 am; Publication Date: 12/7/2018]