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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket Number USCG-2020-0447

RIN 1625-AA00

Safety Zone; Beals Island Bridge Demolition, Moosabec Reach, Jonesport, ME

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Moosabec Reach, ME within a 500-yard radius of the Beals Island Bridge between Jonesport, ME and Beals Island, ME. The Safety Zone is needed to protect personnel, vessels, and the marine environment from the potential hazards created by underwater explosives demolition of the Beals Island Bridge. This Safety Zone prohibits persons and vessels from being in the safety zones unless authorized by Sector Northern New England COTP or their Designated Representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 31 October 2020. For the purposes of enforcement, actual notice will be used from 17 August 2020 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-2020-0447 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 on this rule, call or email Chief Marine Science Technician Thomas Watts, Sector Northern New England Waterways Management Division, U.S. Coast Guard; telephone 207-347-5003, e-mail Thomas.F.Watts@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port
RNA	Regulated Navigation Area
TFR	Temporary Final Rule

II. Background Information and Regulatory History

On June 27, 2017, the U. S. Coast Guard District One Bridge Branch issued a permit approving the construction of the Beals Island Bridge across the Moosabec Reach in Jonesport, Maine. On September 11, 2017, the contractor selected for the project submitted their request to the Waterways Management Division of U. S. Coast Guard Sector Northern New England. The COTP Sector Northern New England determined that an RNA would be required to enforce speed, wake, and beam restrictions, as well as provide for intermittent closure of the waterway during the construction of the replacement bridge and subsequent demolition of the original structure. On October 24,

2017, the Coast Guard published a TFR entitled “Regulated Navigation Area; Beals Island Bridge Replacement, Moosabec Reach, Jonesport, ME” in the Federal Register (82 FR 49106) that would allow the Coast Guard to enforce speed and wake restrictions and prohibit vessel traffic through the RNA during bridge replacement operations on the Beals Island Bridge that could pose an imminent hazard to persons and vessels operating in the area. This rule would allow the Coast Guard to enforce additional navigation restrictions and prohibit vessel traffic during drilling, blasting, and dredging operations in support of the bridge replacement project.

In June 2020 the project manager for the Beals Island Bridge notified Coast Guard that the demolition plan had been revised to include underwater explosive demolition of the old Beals Island Bridge. The contractor requested the Coast Guard create a safety zone to prohibit vessels and persons within a 250-foot radius of the old bridge and any vessel movement within 500-yards during each blasting event in accordance with 29 CFR 1926.912. During this approximate 60-minute window, no vessels or persons will be authorized within the safety zone unless authorized by the Sector Northern New England COTP or Designated Representative.

The Coast Guard is issuing this temporary 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 notice of proposed rulemaking (NPRM) with respect to this rule because the

schedule for the demolition of old Beals Island Bridge was only recently finalized and timely action is needed to respond to the potential safety hazards associated with this demolition project. It is impracticable and contrary to the public interest to publish an NPRM in order to establish this safety zone by 17 August 2020 to allow for the timely demolition of old Beals Island Bridge and promote the safety of the public.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that potential hazards associated with underwater explosives demolition will be a safety concern for anyone within a 500-yard radius of the old Beals Island Bridge. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during underwater explosives demolition of the old Beals Island Bridge.

IV. Discussion of the Rule

This rule establishes a safety zone from 08:00 a.m. August 17, 2020 through 11:59 p.m. October 31, 2020. Currently there are six blast events requiring closures lasting approximately one hour each. The zone will only be enforced during the periods of demolition. Notification of enforcement and blasting will be made with as much advanced notice as possible with no less than 48 hours. The safety zone covers all navigable waters of the Moosabec Reach, within approximately 500 yards of any portion of the old Beals Island Bridge approximate position 44°31'28"N, 067°36'53"W (NAD 83). Although we expect the blasting to be completed by October 11, 2020, we are publishing this rulemaking to be effective, and enforceable, through October 31, 2020 in case the project is delayed due to unforeseen circumstances.

The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the old Beals Island Bridge is demolished for eventual removal. No vessel or person will be permitted to enter the safety zone without obtaining permission from the Sector Northern New England COTP or designated representative.

The Coast Guard will notify the public and local mariners of this safety zone through the Local Notice to Mariners and/or Broadcast Notice to Mariners via VHF-FM marine channel 16 in advance of any scheduled enforcement period.

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, this 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 size, location, time of day, and the duration of enforcement of the safety zone. Although vessel traffic will not be able to safely transit around this safety zone when enforced, the zone will only be

enforced during the blasting events. As a result, enforcement of the safety zone will be limited in duration, likely only one hour during each of the six events. Additionally, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

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 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 safety zone 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 (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 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 safety zone lasting approximately 60 minutes during six separate blasting events that will prohibit entry within 500-yards of the old Beals Island Bridge. 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. 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, 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; 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.T01-0447 to read as follows:

§ 165.T01-0447 Safety Zone; Beals Island Bridge Demolition, Moosabec Reach, Jonesport, ME.

(a) *Location.* The following area is a safety zone: All waters from surface to bottom of Moosabec Reach within 500-yards of the old Beals Island Bridge, at approximate position 44°31'28"N, 067°36'53"W (NAD 83).

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative.* A “Designated Representative” is any Coast Guard Commissioned, Warrant or Petty Officer who has been designated by the Captain of the Port, Sector Northern New England (COTP), 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.* Official patrol vessels may consist of any Coast Guard, Coast

Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(c) *Enforcement Periods.* (1) This safety zone is effective from August 17, 2020 to October 31, 2020 but will only be enforced when bridge blasting operations are in progress.

(2) The Coast Guard will utilize marine broadcasts and local notice to mariners to notify the public of the time and duration that the safety zone will be enforced. Violations of this safety zone may be reported to the COTP or the Designated Representative via VHF channel 16 or (207) 741-5465 (Coast Guard Sector Northern New England Command Center).

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No person or vessel is allowed within the safety zones unless authorized by the cognizant Captain of the Port or their Designated Representative.

(3) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or a COTP's designated representative.

(4) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed.

Dated: 13 August 2020

B. J. LeFebvre
Captain, U.S. Coast Guard
Captain of the Port

Sector Northern New England

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