

§ 117.123(b)(1). The remote drawbridge operator shall keep all approaching vessels informed of the position of the drawbridge span.

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Dated: May 10, 2010.

James E. Tunstall,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist. Acting.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2008-0747]

RIN 1625-AA11

Regulated Navigation Area; Thea Foss and Wheeler-Osgood Waterways EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking; request for comments.

SUMMARY: The Coast Guard is revising its proposed rule that would establish a permanent regulated navigation area (RNA) on portions of the Thea Foss and Wheeler-Osgood Waterways in Commencement Bay, Tacoma, Washington. The RNA would protect the seabed in portions of those waterways that are subject to the U.S. Environmental Protection Agency's (EPA's) Commencement Bay Nearshore/Tideflats superfund cleanup remediation efforts. To more effectively protect those efforts, the Coast Guard is revising the proposed rule by slightly expanding the boundaries of the proposed RNA.

DATES: Comments and related material must be received by the Coast Guard on or before August 2, 2010. Requests for public meetings must be received by the Coast Guard on or before July 2, 2010.

ADDRESSES: You may submit comments identified by docket number USCG-2008-0747 using any one of the following methods:

(1) *Federal eRulemaking Portal:*
<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call ENS Ashley Wanzer, Waterways Management, Sector Seattle, Coast Guard; telephone 206-217-6175, e-mail SectorSeattleWWM@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-0747), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the

"Document Type" drop down menu select "Proposed Rule" and insert "USCG-2008-0747" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2008-0747" and click "Search." Click the "Open Docket Folder" in the "Actions" column. 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before July 2, 2010 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

The Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area; Thea Foss and Wheeler-Osgood Waterways EPA

Superfund Cleanup Site, Commencement Bay, Tacoma, WA” in the **Federal Register** (73 FR 162, Aug. 20, 2008), docket number USCG–2008–0747. We received one comment on the NPRM.

Background and Purpose

The purpose of the proposed RNA is to preserve the integrity of the clean sediment caps placed over certain areas of the Thea Foss and Wheeler-Osgood Waterways as part of the EPA’s Commencement Bay Nearshore/Tideflats superfund cleanup remediation process in those waters. These caps consist of approximately three feet of sand and gravel, designed to withstand activities common to a working waterfront, covering approximately 30 acres of sediment in the waterway.

Discussion of Comments and Change

During the comment period for the NPRM, the Coast Guard received one comment from the City of Tacoma, which requested to be included in any consultation over the grant of a waiver under the proposed RNA. We have revised the proposed waiver provisions in this supplemental NPRM (SNPRM) to eliminate details of the waiver decision process that are inappropriate for regulatory text and subject to intergovernmental or other agreements. At the same time, we restate our commitment to avoid granting any waiver that could unduly jeopardize the superfund site remediation efforts that underlie the whole concept of the proposed RNA, and we would consult with the City of Tacoma and stakeholders as needed and appropriate to safeguard those efforts.

Discussion of Proposed Rule

The proposed RNA would prohibit activities that could disturb the seabed or the sediment caps, such as anchoring, dragging, trawling, or spudding. It would not affect transit or navigation of the area. In this SNPRM, we have slightly expanded the boundaries initially proposed for the RNA, to include buffer zones around EPA’s sediment caps. We have also simplified the proposed waiver provisions, while restating our intention that any waivers be consistent with the EPA’s remediation efforts in the area.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This expectation is based on the fact that the RNA established by the rule would encompass a small area that should not impact commercial or recreational traffic, and prohibited activities are not routine for the designated areas.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to anchor, dredge, spud, lay cable or disturb the seabed in any fashion when this rule is in effect. The RNA would not have a significant economic impact on small entities due to its minimal restrictive area and ample opportunities for avoiding this region.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

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 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This proposed 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.

Protection of Children

We have analyzed this proposed 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.

Indian Tribal Governments

This proposed 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.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, 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 which do not individually or cumulatively have a significant effect on

the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**.

This proposed rule involves no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. As a proposal to establish a regulated navigation area, this rule meets the criteria outlined in paragraph (34)(g).

Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

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 proposes to amend 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. 1226, 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, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1329 to read as follows:

§ 165.1329 Regulated Navigation Area; Thea Foss and Wheeler-Osgood Waterways EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA.

(a) *Regulated Areas.* The following areas are regulated navigation areas:

(1) All waters of the Thea Foss Waterway bounded by a line connecting the following points:

Point 1: 47°15'43.49" N, 122°26'23.29" W;

Point 2: 47°15'44.59" N, 122°26'19.89" W;

Point 3: 47°15'39.01" N, 122°26'15.99" W;

Point 4: 47°15'37.91" N, 122°26'19.39" W;

[Datum: NAD 1983].

(2) All waters of the Thea Foss Waterway bounded by a line connecting the following points:

Point 1: 47°15'22.74" N, 122°25'57.15" W;

Point 2: 47°15'22.52" N, 122°26'0.18" W;

Point 3: 47°15'18.05" N, 122°25'59.48" W;

Point 4: 47°15'18.26" N, 122°25'56.45" W;

[Datum: NAD 1983].

(3) All waters of the Thea Foss and Wheeler-Osgood Waterways south of a line bounded by connecting the following points:

Point 1: 47°15'13.94" N, 122°26'05.56" W;

Point 2: 47°15'15.01" N, 122°25'55.14" W.

[Datum: NAD 1983].

(b) *Regulations.*

(1) All vessels and persons are prohibited from activities that would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the sediment caps installed in the designated regulated navigation area, pursuant to the remediation efforts of the U.S. Environmental Protection Agency (EPA) and others in the Thea Foss and Wheeler-Osgood Waterways EPA superfund cleanup site. Vessels may otherwise transit or navigate within this area without reservation.

(2) The prohibition described in paragraph (b)(1) of this section does not apply to vessels or persons engaged in activities associated with remediation efforts in the Thea Foss or Wheeler-Osgood Waterways superfund sites, provided that the Captain of the Port, Puget Sound (COTP), is given advance notice of those activities by the EPA.

(c) *Waiver.* Upon written request stating the need and proposed conditions of the waiver, and any proposed precautionary measures, the COTP may authorize a waiver from this section if the COTP determines that the activity for which the waiver is sought can take place without undue risk to the remediation efforts described in paragraph (b)(1) of this section. The COTP will consult with EPA in making this determination when necessary and practicable.

Dated: April 30, 2010.

G.T. Blore,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

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