

permitted aquaculture activities within MBNMS and GFNMS; and (2) asking the Governor to withdraw his objection to prohibiting the release of introduced species during research activities in the MBNMS. The state's existing review process for aquaculture projects provides NOAA with some level of assurance that NOAA has an opportunity to provide input and can minimize the potential for harm to sanctuary resources from an introduced species aquaculture project. The MBNMS permit process would allow NOAA to issue a permit for an introduced species research project if environmental and legal review found the project to be acceptable. The state would also retain its authority to issue permits for introduced species research projects, or reject such a proposal. By offering to propose regulatory exemptions for introduced species that are cultivated in MBNMS or GFNMS as part of state-permitted aquaculture activities, NOAA satisfied a condition of the governor's objection. As such, the objection does not apply to these terms of designations or the corresponding regulations in GFNMS. However, by the close of the review period that ended on March 9, 2009, the state had not accepted the compromise solution for the MBNMS with regard to introduced species that are released during research activities. Therefore, the Governor's December 23, 2008 letter serves, in effect, to object to the MBNMS terms of designation for introduction of introduced species in the state waters of the MBNMS.

#### Effective Date for GFNMS Regulations

The revised regulations for the GFNMS associated with the November 20, 2008 final rule became effective on March 9, 2009. NOAA will not enforce 15 CFR 922.82(a)(10), the prohibition on introducing introduced species, in state waters of the GFNMS until it has been amended in accordance with the Governor's requirement that it exempt state-permitted aquaculture. NOAA has agreed and committed to immediately initiate a process to modify the introduced species regulation to exempt state-permitted introduced species aquaculture in the GFNMS. As part of this agreement, NOAA has agreed that it will not enforce the prohibition on introducing introduced species in the state waters of GFNMS until a new rulemaking process for these regulations can take place. NOAA will promptly commence a separate regulatory action for public comment to determine the appropriateness of further regulation of introduced species in the state waters of the GFNMS. After consideration of all

comments received for that proposed action, NOAA will publish a new final rule to address the concerns raised in the Governor's December 23, 2008 letter. That regulation will become effective soon thereafter, in accordance with applicable federal law.

#### Effective Date for MBNMS Regulations

The revised regulations for the MBNMS associated with the November 20, 2008 final rule became effective on March 9, 2009 except for 15 CFR 922.132(a)(12), the prohibition on introducing introduced species, which will not take effect in state waters of the MBNMS. Because the Governor objected to the revised term of designation that would have provided specific authority to prohibit the introduction of introduced species in MBNMS, it cannot take effect in the state waters of the MBNMS. The regulation still applies and took effect in the federal waters of the MBNMS on March 9, 2009.

The terms of designation for the MBNMS will also reflect the Governor's objection to limit the application of that specific term of designation to federal waters. As such, paragraph 1 of section 1 of Article IV will read: "1. Introducing or otherwise releasing from within or into the Sanctuary an introduced species. [This provision does not apply in the area of the Sanctuary lying within the seaward boundary of California, because, pursuant to section 304(b) of the Act, the Governor of California filed an objection to this provision pursuant to a December 23, 2008 letter.]

#### Effective Date for CBNMS Regulations

The revised regulations for the CBNMS associated with the November 20, 2008 final rule became effective on March 9, 2009. There are no state waters in the CBNMS, and thus the terms of designation for the sanctuary were not subject to gubernatorial objection.

Dated: March 18, 2009.

**William Corso,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

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**BILLING CODE 3510-NK-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-1026]

RIN 1625-AA00

#### Safety Zone; Saugus River, Lynn, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is adopting the interim safety zone published on December 29, 2008, as a temporary final rule. This rule creates a safety zone for a portion of the Saugus River in Lynn, Massachusetts as requested by the Massachusetts Highway Department (MHD), to allow for vital repair work to commence on the Route 107/Fox Hill Bridge during the winter and spring months. This zone is necessary to protect mariners from the potential hazards associated with the work being conducted by the Commonwealth of Massachusetts in making critical repairs to the bridge while it is closed to transiting vessels and vehicular traffic.

**DATES:** Effective March 23, 2009, the interim rule amending 33 CFR Part 165 which was published at 73 FR 79363 on 29 December, 2008 is adopted without change as a temporary final rule.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2008-1026 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2008-1026 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: The 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and United States Coast Guard Sector Boston, 427 Commercial St, Boston, MA 02109 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Chief Petty Officer Eldridge McFadden, Waterways Management at 617-223-3000. If you have questions on viewing the docket, call Renee V.

Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

On December 29, 2008, we published an interim rule with request for comments entitled “Safety Zone, Saugus River, Lynn, MA” in the **Federal Register** (73 FR 79363). We did not receive any letters commenting on the interim rule. No public meeting was requested, and none was held.

##### **Background and Purpose**

A meeting between the Coast Guard, local lobstermen, local marina operators, lobster purchasing agents, and the bridge owner, MHD, was held on September 10, 2008. The owner of the bridge presented engineering evidence of the poor condition of the bridge and the need to perform major bridge repairs during the winter months. It was concluded that in order to keep the bridge operating safely and reliably until the major repairs can commence, the number of bridge openings must be reduced to save wear and tear on the mechanical components. A temporary deviation from standard bridge operation was deemed necessary in order to insure that the bridge continues to operate in a safe and reliable manner until the major repairs can be made. No objection to the proposed temporary deviation schedule was voiced by interested parties. In a rulemaking supporting that decision, the Coast Guard published a temporary change to the Saugus Drawbridge Operation regulations (USCG–2008–0969) in the **Federal Register** on October 15, 2008 (73 FR 60954) allowing a deviation of the drawbridge operating guidelines. That regulation, effective from October 15, 2008 through December 15, 2008, allowed the bridge to remain closed, opening on signal only on the half hour and hour.

In addition, the long term repairs may only take place by closing the bridge to both vehicular and vessel traffic, and removing portions of the bridge for work. Massachusetts Highway Department must bring in a large crane barge in order to conduct work on the bridge. This barge will be crossing the river, effectively restricting the use of the river. Frequently moving the barge to allow vessel traffic to pass is contrary to the public interest as it would further delay the bridge repairs well into the summer months, which are the primary boating and fishing seasons in Massachusetts. In order to assist the local lobstermen, MHD proposed to install a temporary dock system on the downstream of the existing bridge to

mitigate the impacts of closing the bridge and blocking the channel with a large work barge. During the meeting the lobstermen indicated that the proposed dates for the bridge closure and waterway restriction along with the installation of a temporary dock system would be a good compromise that would satisfy their needs and still allow the rehabilitation bridge repairs to be completed late May 2009.

An additional meeting between the Coast Guard, town officials, harbormaster and MHD took place on December 4, 2008 at which time the MHD agreed to work with affected waterway users to remove the crane barge restricting the waterway on no more than six occasions during the repair process to allow vessels, that are able, to pass beneath the bridge while in a closed position.

On December 10, 2008, Captain of the Port Boston signed an Interim Rule creating a safety zone upriver of the Route 107/Fox Hill Bridge on the Saugus River in Lynn, MA. That rule was subsequently published in the **Federal Register** on 29 December 2008 as (73 FR 79363). We did not receive comments on the interim rule.

##### **Discussion of Rule**

The COTP Boston is adopting the currently effective interim rule, reflected in 33 CFR 165.T01–1026, as a temporary final rule. This rule establishes a safety zone that prohibits vessels from coming within 50 yards of the upriver side of 107/Fox Hill Bridge in the Saugus River in Lynn, Massachusetts. While this safety zone has the practical effect of closing a portion of the waterway, the Captain of the Port anticipates minimal negative impact on vessel traffic because (1) Recreational boating traffic is limited this particular time of year, (2) the MHD has made alternate mooring and docking arrangements for the fishermen which typically dock on the up river side of the bridge, and (3) MHD will remove the crane barge restricting waterway access under the bridge on at least six occasions allowing vessel traffic, which may do so, to pass beneath the closed bridge. Public notifications will be made prior to and during the effective period via Local and Broadcast Notice to Mariners.

##### **Regulatory Analyses**

We are adopting the interim rule as a temporary final 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 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.

The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this rule may prevent traffic from transiting a portion of the Saugus River during the bridge repairs, the effect of this rule will not be significant for several reasons: Alternate arrangements for the offload and mooring of fishing vessels have been made, recreational boaters typically have their boats out of the water at this time of year in order to protect them from winter icing, MHD will remove the crane barge restricting waterway access on at least six occasions as requested by a waterway users (during which times vessel operators may request permission to transit through the safety zone promulgated by this rule), and continued notifications will be made to the local maritime community by broadcast and local notice to mariners.

##### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of fishing and recreational vessels intending to transit or anchor in a portion of the Saugus River from midnight December 14, 2008 through midnight on May 15, 2009. This closure will not have a significant economic impact on a substantial number of small entities for the reasons described under the Regulatory Planning and Review section.

##### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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.

#### Collection of Information

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

#### Taking of Private Property

This rule will 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 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 rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

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.

#### Energy Effects

We have analyzed this 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 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 concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1 paragraph (34)(g) of the Instruction.

No comments relating to environmental issues were received in response to the Interim Rulemaking/Request for Comment, and no additional environmental concerns have been discovered in connection with this action. The final environmental analysis checklist 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

■ For the reasons discussed in the preamble, under authority of 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, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1., the interim rule amending 33 CFR 165.T01–1026 that was published at 73 FR 79363 on 29 December, 2008 is adopted without change as a temporary final rule.

Dated: February 17, 2009.

Gail P. Kulisch,

*Captain, U.S. Coast Guard, Captain of the Port Boston.*

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