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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-02-016]

RIN 2115-AA97

Safety and Security Zones; Boston, Massachusetts Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Coast Guard proposes to establish one temporary and three permanent safety and security zones within the Boston Marine Inspection and Captain of the Port Zone. The safety and security zones will prohibit entry into or movement within a portion of Boston and Salem Harbors and are needed to ensure public safety and prevent sabotage or terrorist acts against vessels and the Port of Boston.

DATES: Comments and related material must reach the Coast Guard on or before March 8, 2002.

ADDRESSES: MSO Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Boston between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

LT Dave Sherry, Maritime Security Operations, MSO Boston, at 617-223-3030.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD01-02-016, indicate the specific section of this document to which each comment applies, and give the reason for each comment.

You have until March 8, 2002 to comment on this proposed rule involving Boston and Salem Harbors. This short comment period will permit

the Coast Guard to publish a final rule before the expiration of the existing temporary RNA (CGD01-01-162; published in the **Federal Register** September 27, 2001, 66 FR 49280), safety and security zones. These proposed measures were implemented as a temporary emergency rulemaking shortly following the terrorist attacks of September 11, 2001. That emergency rulemaking is discussed herein under the **Background and Purpose** section of this preamble.

These measures were implemented to ensure the safety of the vessels whose movement is being regulated, others in the maritime community, surrounding communities and the public from possible terrorist attacks aimed at vessels or committed from vessels. Temporary safety and security zones were also promulgated to ensure the security of vulnerable waterfront areas. This proposed rulemaking would make permanent those temporary emergency regulations. As those regulations expire on March 15, 2002, a shortened comment period is necessary to ensure that there is no gap in these regulations in order to provide continuous security for the waterfront areas protected by the rulemaking.

As the public and maritime community have been operating under these regulations since September 18, 2001, there is a basis for the public providing constructive comments from actual experience with the temporary regulations in a brief period of time. Due to this shortened comment period, in order to provide additional notice to the public, we will do the following: place a notice of our proposed rule in the local notice to mariners, post the published Notice of Proposed Rulemaking on the MSO Boston Web site at <http://www.uscg.mil/d1/units/msobos/>, and advise port users of the published NPRM at local port operator group meetings.

Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In our final rule, we will include a concise general statement of the comments received and identify any changes from the proposed rule based on the comments. If as we expect, we make the final rule effective less than 30 days after publication in the **Federal Register**, we will explain our good cause

for doing so as required by 5 U.S.C. 553(d)(3).

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks are likely. Immediately following the September 11 attacks, a temporary rule published in the **Federal Register** (66 FR 49280, September 27, 2001) established temporary anchorage grounds, Regulated Navigation Areas, and safety and security zones in the Boston, Massachusetts Marine Inspection Zone and Captain of the Port Zone. These measures were taken to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. That rule expires on March 15, 2002.

The Coast Guard proposes to establish permanent safety and security zones in Boston and Salem Harbors as part of a comprehensive, port security regime designed to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. Due to continued heightened security concerns, permanently available safety and security zones in Boston and Salem Harbor are prudent provide for the safety of the port. The Captain of the Port will determine when these zones are enforced based on potential threats and may establish conditions under which vessels are allowed to enter, transit or operate within these zones.

Under the proposed rule, the Coast Guard would establish one temporary and three permanent safety and security zones having identical boundaries, around Coast Guard Integrated Support Command, Boston, the Distrigas Marine Terminal in Everett, MA, the PG & E power Plant in Salem, MA, and in the Reserved Channel, Boston, MA. These zones would restrict entry into or movement within portions of Boston Inner Harbor. The one temporary safety

and security zone will be around the Distringas terminal. It is needed to extend the effective time period of a previous zone created around Distringas under CGD01-01-162 until this zone can be made permanent under a separate regulation more suited to its inclusion. These zones are deemed necessary due to the vulnerable nature of these locations as possible targets of terrorist attack.

The Captain of the Port anticipates some impact on vessel traffic due to this proposed regulation. However, the safety and security zones are deemed necessary for the protection of life and property within the COTP Boston zone.

Discussion of Proposed Rule

Safety and Security Zones.

This proposed rule will establish one temporary and three permanent safety and security zones having identical boundaries. Three of these proposed zones are being established by reference to a radius around an easily identifiable landmark; the other is defined by an area enclosed by a line connecting two easily identifiable landmarks. These four zones are proposed in the following areas: (1) All waters of the Mystic River within a 500-yard radius of the Distringas terminal pier in Everett, MA; (2) All waters of Boston Harbor, including the Reserved Channel, west of a line connecting the southeastern tip of the Black Falcon Pier and the northeastern corner of the Paul W. Conley Marine Terminal pier; (3) All waters of Boston Inner Harbor within a 200-yard radius of Pier 2 at the Coast Guard Integrated Support Command Boston, Boston, MA; and (4) All waters of Salem Harbor within a 500-yard radius of the PG & E U.S. Generating power plant pier in Salem, MA.

The proposed zone surrounding the Reserved Channel is necessary due to the high vulnerability of the Reserved Channel as a target for subversive activity or terrorist attack. The Reserved Channel covers Black Falcon Cruise Terminal, at which numerous cruise ships tie up each year. The proposed zones in the Reserved Channel would protect these cruise ships from subversive activity or terrorist attack for which they are vulnerable targets due to the significant number of casualties that would be incurred by an attack from the water. The proposed zone around the Coast Guard Integrated Support Command is necessary in order to ensure the safety and security of this military facility, and to protect Coast Guard and other vessels moored at this facility from subversive activity or terrorist attack.

The proposed zone around the PG & E facility is needed to protect both vessels moored at this facility and the vital infrastructure the terminal represents from subversive activity or terrorist attack. The one proposed temporary safety and security zone will be around the Distringas terminal and is needed to protect both vessels moored at this facility and the vital infrastructure the terminal represents as well. The temporary safety and security zones around the Distringas facility imposed by the temporary rule published September 27, 2001 are scheduled to expire on March 15, 2002. The safety and security zones proposed in this rulemaking are proposed to provide continuity in the protection of this facility from March 15, 2002, until June 15, 2002, when permanent regulations are to be implemented.

Any violation of any safety or security zone proposed herein, is punishable by, among others, civil penalties (not to exceed \$25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than \$100,000), in rem liability against the offending vessel, and license sanctions. This regulation is proposed under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225, and 1226.

No person or vessel may enter or remain in a prescribed safety or security zone at any time without the permission of the Captain of the Port. Each person or vessel in a safety or security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port.

Regulatory Evaluation

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. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies

and procedures of DOT is unnecessary. This proposed regulation may have some impact on the public, but these potential impacts will be minimized for the following reasons: there is ample room for vessels to navigate around some of the safety and security zones in Boston Harbor and the proposed zone in Salem Harbor; and the local maritime community will be informed of the zones via marine information broadcasts. While recognizing the potential impacts, the Coast Guard still deems that these safety and security zones are need to protect the ports of Boston and Salem and the public.

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 proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Boston and Salem Harbor in which entry would be prohibited by safety or security zones.

This proposed rule would not have a significant impact on a substantial number of small entities because the majority of the zones are limited in size, leaving ample room for vessels to navigate around the zones. The zones will not significantly impact commuter and passenger vessel traffic patterns, and mariners will be notified of the proposed zones via local notice to mariners and marine broadcasts. Also, the Captain of the Port will make broad allowances for individuals to enter the zones during periods when the potential threats to the Port of Boston are deemed to be low.

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 (Public Law 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 proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Dave Sherry, Maritime Security Operations, Marine Safety Office Boston, at 617–223–3030.

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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A “Categorical Exclusion Determination” is available in the docket where indicated under **ADDRESSES**.

List of Subjects 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. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From March 15, 2002 until June 15, 2002, add temporary section § 165.T01–006 to read as follows:

§ 165.T01–006 Safety and Security Zones: Mystic River, Everett, MA.

(a) *Safety and Security Zones.* The following are established as safety and security zones: All waters of the Mystic River within a five hundred (500) yard radius of the Distringas terminal pier in Everett, MA;

3. Add § 165.105 to read as follows:

§ 165.105 Safety and Security Zones: Boston Marine Inspection Zone and Captain of the Port Zone.

(a) *Safety and Security Zones.* The following are established as safety and security zones:

(1) All waters of Boston Harbor, including the Reserved Channel, west of a line connecting the Southeastern tip of the Black Falcon pier and the Northeastern corner of the Paul W. Conley Marine Terminal pier.

(2) All waters of Boston Inner Harbor within a two hundred (200) yard radius of Pier 2 at the Coast Guard Integrated Support Command Boston, Boston, MA.

(3) All waters of Salem Harbor within a five hundred (500) yard radius of the PG & E U.S. generating power plant pier in Salem, MA.

(b) *Effective date.* This section is effective beginning March 15, 2002.

(c) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

(3) No person may enter the waters within the boundaries of the safety and security zones unless previously authorized by the Captain of the Port, Boston or his authorized patrol representative.

Dated: February 15, 2002.

B.M. Salerno,

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

[FR Doc. 02-4842 Filed 2-25-02; 2:50 pm]

BILLING CODE 4910-15-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG-2001-11201]

Port Access Routes Study; Along the Sea Coast and in the Approaches to the Cape Fear River and Beaufort Inlet, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Notice of Study; correction.

SUMMARY: On January 18, 2002 the Coast Guard announced in a **Federal Register** notice of study and request for comments that we were conducting a Port Access Routes Study (PARS) to evaluate the need for vessel routing or other vessel traffic management measures along the sea coast of North Carolina and in the approaches to the Cape Fear River and Beaufort Inlet. In the *Background and Purpose* section of the preamble to the notice, we listed an incorrect expected completion date for the PARS as January 31, 2002. The purpose of this correction is to make clear that the comment period will continue until March 19, 2002, and that the PARS will be completed after a review and analysis of all comments and data collected.

DATES: Comments and related material must reach the Docket Management Facility on or before March 19, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-2001-11201), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this document. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of study, call Tom Flynn, Project Officer, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District, telephone 757-398-6229, e-mail TWflynn@lantd5.uscg.mil; or George Detweiler, Office of Vessel Traffic Management, Coast Guard, telephone 202-267-0574, e-mail Gdetweiler@comdt.uscg.mil. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this study by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this notice of study (USCG-2001-11201), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them 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 them 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.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this study, we will hold one

at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On January 18, 2002, the Coast Guard published a notice in the **Federal Register** entitled "Port Access Routes Study; Along the Sea Coast and in the Approaches to the Cape Fear River and Beaufort Inlet, North Carolina" (67 FR 2616). In the preamble to the notice we indicated that the study would begin immediately and that we expected to complete the study by January 31, 2002. This incorrect study completion date was based on an earlier projected publishing date of the notice announcing the start of the Port Access Routes Study.

Need for Correction

The study will not be completed before the end of the comment period, which is March 19, 2002. We listed an earlier estimated completion date in the January 18, 2002, notice. The removal of this date is needed to accurately reflect that the study has not yet been completed and that the comment period will remain open until March 19, 2002.

Correction of Publication

In rule FR Doc. 02-1371 published on January 18, 2002, make the following correction: On page 2618, in the first column, starting on line 25, remove the phrase "and we anticipate the study will be completed by January 31, 2002".

Dated: February 19, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02-4632 Filed 2-26-02; 8:45 am]

BILLING CODE 4910-15-U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018-AI31

Subsistence Management Regulations for Public Lands in Alaska, Subpart D—Subsistence Taking of Fish, Customary Trade

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.