

Subpart A—Procedures for Federal-Aid Highways

§ 668.101 [Amended]

2. In § 668.101, the second sentence is amended by removing the words "Federal roads not on the Federal-aid system" and adding in their stead the words "roads on Federal lands".

§ 668.103 [Amended]

3. Section 668.103 is amended by removing the paragraph designations (a) through (i) from the definitions; in the definition for "Applicant" by removing the words "Federal-aid highway system" and adding in their place the words "Federal-aid highways".

§ 668.105 [Amended]

4. In § 668.105, the last sentence of paragraph (e) is amended by adding the words "or by a toll authority for repair of the highway facility" after the words "political subdivision".

§ 668.107 [Amended]

5. Section 668.107, is amended in paragraph (a) by removing the words "within 90 days" and adding in their place the words "within 180 days" and in paragraph (b) by removing the figure "\$5 million" and adding in its place the figure "\$20 million".

6. Section 668.109, is amended in paragraph (b)(3) by revising the misspelled word "Actual" to read "Actual"; in paragraph (b)(5) by removing the word "and" after the semicolon; by removing the period at the end of paragraph (b)(6) and adding a semicolon in its place; by adding paragraphs (b)(7), (b)(8), (b)(9), and (b)(10); by republishing the introductory text of paragraph (c); by revising paragraphs (c)(1), (c)(2), (c)(6), and (c)(7); by removing the period at the end of paragraph (c)(8) and adding "; and" in its place; and by adding paragraph (c)(9) to read as follows:

§ 668.109 Eligibility.

* * * * *

(b) * * *

(7) Repair of traffic damage to roadway surfaces, including those on designated detours, caused by the movement of traffic during or following the incident period attributable to emergency relief work; and repair of damage to surface of Federal-aid highways caused by traffic making necessary repairs to Federal-aid highways as well as traffic making repairs to other transportation facilities, i.e., railroads, airports, ports, etc.;

(8) Temporary work to maintain essential traffic, such as, raising a roadway grade during a period of

flooding by placing fill and temporary surface material;

(9) Raising the grades of critical Federal-aid highways faced with long-term loss of use due to basin flooding as defined by an unprecedented rise in basin water level both in magnitude and time frame; and

(10) Repair of toll facilities when the provisions of 23 U.S.C. 129 are met. If a toll facility does not have an executed toll agreement with the FHWA at the time of the disaster, a toll agreement may be executed after the disaster to qualify for that disaster.

(c) ER funds may not participate in:

(1) Heavy maintenance such as repair of minor damages consisting primarily of eroded shoulders, filled ditches and culverts, pavement settlement, mud and debris deposits, slope sloughing, slides, and slip-outs in cut or fill slopes. In order to simplify the inspection and estimating process, heavy maintenance may be defined using dollar guidelines developed by the States and Divisions with Regional concurrence;

(2) Repair of surface damage caused by traffic whether or not the damage was aggravated by saturated subgrade or inundation, except for traffic damage repair as noted in paragraph (b)(7) of this section;

* * * * *

(6) Repair or reconstruction of facilities affected by long-term, pre-existing conditions or predictable developing situations, such as, gradual, longterm rises in water levels in basins or slow moving slides;

(7) Permanent repair or replacement of deficient bridges scheduled for replacement with other funds. A project is considered scheduled if the construction phase is included in the FHWA approved Statewide Transportation Improvement Program (STIP);

* * * * *

(9) Reimbursing loss of toll revenue.

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§ 668.111 [Amended]

7. In § 668.111, paragraph (b)(2) is amended by removing the words "receipt of".

8. In § 668.113, paragraph (a) is amended by revising the first and second sentences, and paragraph (b)(1) is revised to read as follows:

§ 668.113 Program and project procedures.

(a) Immediately after approval of an application, the FHWA Division Administrator will notify the applicant to proceed with preparation of a program which defines the work needed to restore or replace the damaged

facilities. It should be submitted to the FHWA Division Administrator within 3 months of receipt of this notification.

* * *

(b) *Project procedures.* (1) Projects for permanent repairs shall be processed in accordance with regular Federal-aid procedures, except in those cases where a regular Federal-aid project (in a State) similar to the ER project would be handled under the certification acceptance procedures found in 23 U.S.C. 117 or the project oversight exceptions found in 23 U.S.C. 106, the ER project can be handled under these alternate procedures subject to the following two conditions:

(i) Any betterment to be incorporated into the project and for which ER funding is requested must receive prior FHWA approval; and

(ii) The FHWA reserves the right to conduct final inspections on ER projects as deemed appropriate.

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Coast Guard

33 CFR Part 110

[CGD08-95-019]

RIN 2115-AA98

Anchorage Grounds, Mississippi River Below Baton Rouge, LA., Including South and Southwest Passes

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to revise the anchorage regulations for the Mississippi River below Baton Rouge, La., including South and Southwest Passes in order to expand seven anchorages and establish four new anchorages in response to revetment work along the banks of the Mississippi River by the Army Corps of Engineers which has reduced the available space within existing anchorages.

DATES: Comments must be received by January 12, 1996.

ADDRESSES: Comments should be mailed to: Commander (oan), Eighth Coast Guard District, 501 Magazine Street, New Orleans, LA 70130-3396. The comments and other material related to this notice will be available for inspection and copying in Room 1211 at the above address. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. M. M. Ledet, Project Officer, Commander (oan), Eighth Coast Guard District, 501 Magazine Street, New Orleans, LA 70130-3396. Telephone (504) 589-4686.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice, [CGD08-95-019], the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before the final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information. The drafters of this regulation are Mr. M. M. Ledet, Project Officer, Eighth Coast Guard District Aids to Navigation Branch, and LCDR C.D. Michel, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The Army Corps of Engineers conducts revetment work along the banks of the Mississippi River to protect against erosion and caving. The work is essential to preserve the levee system. Current articulated concrete mattress revetment is used in a number of designated anchorages serving the Lower Mississippi River below Baton Rouge, LA. Federal regulations prohibit vessels from anchoring over this revetment. Because usable space in these designated anchorages was reduced due to the placement of this revetment, members of the maritime community have expressed concerns regarding the devastating impact on the amount of available space within the designated anchorages. To alleviate these concerns, and provide for safe and efficient use of the waterway, the Coast Guard is proposing the expansion of certain anchorages where practical and the establishment of new anchorage ground where available.

The lower limit of Ostrica Anchorage will be moved down to mile 23.0 providing an additional 0.5 mile of anchorage ground. The Davant Anchorage lower limit will be moved down to mile 52.8 providing an

additional 0.7 mile of anchorage ground. The lower limit of New Orleans General Anchorage will be moved to mile 90.1 to accommodate the establishment of the New Orleans Emergency Anchorage. The lower limit of Lower Kenner Bend Anchorage will be moved down to mile 113.3 adding an additional 0.5 mile to this anchorage. The upper limit of lower Grandview Reach Anchorage will be moved to mile 147.2 adding 0.1 mile to this anchorage. The lower limit of Upper Grandview Reach Anchorage will be moved down to mile 147.5 adding 0.2 of a mile to this anchorage. The Lower Sunshine and Upper Sunshine Anchorage will be combined to form one anchorage with limits of mile 165.0 to mile 167.0. The pipeline at mile 166.1 has been removed allowing for the addition of 0.3 of a mile.

Four new anchorages will be established, the Point Celeste Anchorage will extend from mile 49.8 to mile 52.0 with a width of 800 feet along the right descending bank, New Orleans Emergency anchorage will be established from mile 89.6 to mile 90.1 extending 800 feet along the right descending bank, the Geismar Anchorage from mile 184.0 to mile 185.0 with a width of 700 feet along the right descending bank and the White Castle Anchorage from mile 190.6 to mile 191.3 with a width of 700 feet along the right descending bank. The establishment of these four anchorages will provide an additional 4.4 mile of safe anchorage for deep draft vessels on the Lower Mississippi river.

Regulatory Evaluation

This rule is not significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget 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). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The regulation will in fact have a positive impact on steamship companies and shipping support activities. The regulation will also enhance safe navigation on the Lower Mississippi River by providing additional safe anchorage space outside the navigation channel for large vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons specified in the Regulatory Evaluation section of this rule, the Coast Guard has determined that this rule will have minimal, if not a positive, impact on non-participating small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This action contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed rule does not raise sufficient federalism concerns to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This proposed rule has been thoroughly reviewed by the Coast Guard. It has been determined not to have a significant effect on the human environment or environmental conditions and to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c. of Commandant Instruction M16475.1B. The Coast Guard welcomes comments on potential environmental impacts of this proposal.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulations

For the reasons set forth in the preamble, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g).

Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.195 is revised to read as follows:

§ 110.195 Mississippi River Below Baton Rouge, LA., including South and Southwest Passes.

(a) *The anchorage grounds.* Unless otherwise specified, all anchorage widths are measured from the average low water plane (ALWP).

(1) *Pilotown Anchorage.* An area 5.2 miles in length along the right descending bank of the river from mile 1.5 to mile 6.7 above Head of Passes, extending in width to 1,600 feet from the left descending bank of the river.

Caution: A wreck is located within the boundaries of this anchorage. Mariners are urged to use caution in this anchorage.

(2) *Lower Venice Anchorage.* An area 1.6 miles in length along the left descending bank of the river from mile 8.0 to mile 9.6 above Head of Passes with the west limit 1,200 feet from the ALWP of the right descending bank.

Caution: A pipeline crossing exists at mile 9.8 above Head of Passes. Mariners are urged to use caution between mile 9.6 and mile 10.0 above Head of Passes.

(3) *Upper Venice Anchorage.* An area 1.2 miles in length along the left descending bank of the river from mile 10.0 to mile 11.2 above Head of Passes with the west limit 1,200 feet from the ALWP of the right descending bank.

(4) *Boothville Anchorage.* An area 6.3 miles in length along the right descending bank of the river, 1,000 feet wide, extending from mile 12.2 to mile 18.5 above Head of Passes. A 250 foot wide revetment as measured from the Low Water Reference Plane (LWRP) extends from mile 12.2 to mile 17.9 above Head of Passes within this anchorage.

(5) *Ostrica Anchorage.* An area 1.4 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 23.0 to mile 24.4 above Head of Passes.

(6) *Port Sulphur Anchorage.* An area 2.2 miles in length along the left descending bank of the river, 800 feet wide, extending from mile 37.5 to mile 39.7 above Head of Passes.

(7) *Magnolia Anchorage.* An area 2.1 miles in length along the right descending bank of the river, 1,100 feet wide, extending from mile 45.5 to mile 47.6 above Head of Passes. A 300 foot wide revetment as measured from the LWRP extends from mile 45.5 to mile 45.7 above Head of Passes within this anchorage. Additional revetment, 400 feet wide as measured from the LWRP,

extends from mile 47.1 to mile 47.6 above Head of Passes within this anchorage area.

(8) *Point Celeste Anchorage.* An area 2.2 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 49.8 to mile 52.0 above Head of Passes. A 400 foot wide revetment as measured from the LWRP extends from mile 51.6 to mile 52.0 above Head of Passes within this anchorage.

(9) *Davant Anchorage.* An area 1.1 miles in length along the left descending bank of the river, 800 feet wide, extending from mile 52.8 to mile 53.9 above Head of Passes.

(10) *Alliance Anchorage.* An area 2.0 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 63.8 to mile 65.8 above Head of Passes. A 400 foot wide revetment as measured from the LWRP extends from mile 65.1 to mile 65.8 above Head of Passes within this anchorage.

(11) *Wills Point Anchorage.* An area 1.1 miles in length along the left descending bank of the river, 800 feet wide, extending from mile 66.5 to mile 67.6 above Head of Passes. A 200 foot wide revetment as measured from the LWRP extends from mile 66.5 to mile 66.9 above Head of Passes within this anchorage.

(12) *Cedar Grove Anchorage.* An area 1.2 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 69.9 to mile 71.1 above Head of Passes. A 200 foot wide revetment as measured from the LWRP extends from mile 69.9 to mile 70.4 above Head of Passes within this anchorage.

(13) *Belle Chasse Anchorage.* An area 2.1 miles in length along the right descending bank of the river, 1,000 feet wide, extending from mile 73.1 to mile 75.2 above Head of Passes. A 250 foot wide revetment as measured from the LWRP extends from mile 73.1 to mile 74.4 above Head of Passes within this anchorage. Additional revetment, 425 feet wide as measured from the LWRP, extends from mile 74.9 to mile 75.2 above Head of Passes within this anchorage.

(14) *Lower 12 Mile Point Anchorage.* An area 2.2 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 78.6 to mile 80.8 above Head of Passes. A 300 foot wide revetment as measured from the LWRP extends from mile 78.6 to mile 79.0 above Head of Passes within this anchorage.

(15) *Lower 9 Mile Point Anchorage.* An area 2.3 miles in length along the right descending bank of the river, 800

feet wide, extending from mile 82.7 to mile 85.0 above Head of Passes. A 300 foot wide revetment as measured from the LWRP extends from mile 82.7 to mile 84.4 above Head of Passes within this anchorage.

Caution: A wreck is located within the boundaries of this anchorage. Mariners are urged to use caution in this anchorage.

(16) *New Orleans Emergency Anchorage.* An area 0.5 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 89.6 to mile 90.1 above Head of Passes. A 250 foot wide revetment as measured from the LWRP extends from mile 89.6 to mile 90.1 above Head of Passes within this anchorage.

Note: No vessel shall occupy this anchorage unless expressly authorized by the Captain of the Port. No vessel may anchor in this anchorage exceeding 24 hours without the authorization of the Captain of the Port.

(17) *New Orleans General Anchorage.* An area 0.8 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 90.1 to mile 90.9 above Head of Passes. A 250 foot wide revetment as measured from the LWRP extends from mile 90.1 to mile 90.3 above Head of Passes within this anchorage.

(18) *Quarantine Anchorage.* An area 0.7 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 90.9 to mile 91.6 above Head of Passes.

Caution: A wreck is located within the boundaries of this anchorage. Mariners are urged to use caution in this anchorage.

Note: a. Vessels carrying cargoes of particular hazard as defined in 33 CFR 126.10 or cargoes of petroleum products in bulk may not be anchored in the New Orleans General Anchorage or the Quarantine Anchorage without permission from the Captain of the Port.

b. Except when required by the United States Public Health Service for quarantine inspection, the Quarantine Anchorage may be used as a general anchorage.

(19) *Lower Kenner Bend Anchorage.* An area 1.0 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 113.3 to mile 114.3 above Head of Passes. A 350 foot wide revetment as measured from the LWRP extends from mile 113.3 to mile 114.3 above Head of Passes within this anchorage.

(20) *Kenner Bend Anchorage.* An area 0.9 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 114.7 to mile 115.6 above Head of Passes.

(21) *Ama Anchorage.* An area 1.8 miles in length along the left descending bank of the river, 700 feet wide,

extending from mile 115.5 to mile 117.3 above Head of Passes. A 300 foot wide revetment as measured from the LWRP extends from mile 115.5 to mile 116.8 above Head of Passes within this anchorage.

Caution: A wreck is located at mile 115.4 left descending bank above Head of Passes marked by Mississippi River Wreck Lighted Buoy WR4. Mariners are urged to use caution when anchoring in the lower end of this anchorage.

(22) *Bonnet Carre Anchorage*. An area 1.5 miles in length along the left descending bank of the river, 600 feet wide, extending from mile 127.3 to mile 128.8 above Head of Passes. This area is located adjacent to the river end of the Bonnet Carre Spillway.

Note: When the Bonnet Carre Spillway is open, no vessel may be anchored in the Bonnet Carre Anchorage.

(23) *La Place Anchorage*. An area 0.7 miles in length along the left descending bank of the river, 600 feet wide, extending from mile 134.7 to mile 135.4 above Head of Passes.

(24) *Reserve Anchorage*. An area 0.5 miles in length along the right descending bank of the river, 800 feet wide, extending from mile 137.0 to mile 137.5 above Head of Passes. A 300 foot wide revetment as measured from the LWRP extends from mile 137.0 to mile 137.3 above Head of Passes within this anchorage.

(25) *Lower Grandview Reach Anchorage*. An area 0.7 miles in length along the left descending bank of the river, 700 feet wide, extending from mile 146.4 to mile 147.2 above Head of Passes. A 200 foot wide revetment as measured from the LWRP extends from mile 146.4 to mile 147.2 above Head of Passes within this anchorage.

(26) *Upper Grandview Reach Anchorage*. An area 1.3 miles in length along the left descending bank of the river, 700 feet wide, extending from mile 147.5 to mile 148.8 above Head of Passes. A 200 foot wide revetment as measured from the LWRP extends from mile 147.5 to mile 148.1 above Head of Passes within this anchorage.

(27) *Sunshine Anchorage*. An area 2.0 miles in length along the left descending bank of the river, 800 feet wide, extending from mile 165.0 to mile 167.0 above Head of Passes. A 350 foot wide revetment as measured from the LWRP extends from mile 166.1 to mile 167.0 above Head of Passes within this anchorage.

(28) *Geismar Anchorage*. An area 1.0 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 184.0 to mile 185.0 above Head of Passes.

(29) *White Castle Anchorage*. An area 0.7 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 190.4 to mile 191.1 above Head of Passes. A 400 foot wide revetment as measured from the LWRP extends from mile 190.4 to mile 191.1 above Head of Passes within this anchorage.

(30) *Baton Rouge General Anchorage*. An area 1.5 miles in length along the right descending bank of the river, 1,400 feet wide, extending from mile 225.8 to mile 227.3 above Head of Passes.

Caution: Two wrecks are located within the boundaries of this anchorage. Mariners are urged to use caution in this anchorage.

(31) *Lower Baton Rouge Anchorage*. An area 0.5 miles in length near mid-channel between mile 228.5 and mile 229.0 above Head of Passes with the west limit 1,100 feet off the right descending bank and having the width of 700 feet at both the upper and lower limits.

(32) *Middle Baton Rouge Anchorage*. An area 0.2 miles in length near mid-channel between mile 229.6 and mile 229.8 above Head of Passes with the west limit 1,100 feet off the right descending bank and having a width of 700 feet at both the upper and lower limits.

(33) *Upper Baton Rouge Anchorage*. An area 0.4 miles in length near mid-channel between mile 230.6 and mile 231.0 above Head of Passes with the west limit 1,100 feet off the right descending bank and having a width of 1,075 feet at the upper limit and 1,200 feet at the lower limit.

(b) *Temporary anchorages*. (1) Temporary anchorages are non-permanent anchorages established by the Commander, Eight Coast Guard District to provide additional anchorage space. Establishment of temporary anchorages is based on recommendations by the Captain of the Port.

(2) Each vessel using temporary anchorages shall anchor as prescribed by the Captain of the Port.

(3) Establishment of each temporary anchorage and any requirement for the temporary anchorage will be published in the Local Notice to Mariners.

(4) Each person who has notice of any requirement prescribed for a temporary anchorage shall comply with that requirement.

(c) *The regulations*. (1) Anchoring in the Mississippi River below Baton Rouge, LA., including South and Southwest Passes is prohibited outside of established anchorages except in cases of emergency. In an emergency, if it becomes necessary to anchor a vessel

outside an established anchorage, the vessel shall be anchored so that it does not interfere with or endanger any facility or other vessel. The master of person in charge of the vessel shall notify the Captain of the Port of the location of the emergency anchoring by the most expeditious means and shall move the vessel as soon as the emergency is over.

(2) In an emergency, if it becomes necessary to anchor a vessel in South Pass or Southwest Pass, the vessel shall be positioned as close to the left descending bank as possible.

(3) No vessel may be anchored unless it maintains a bridge watch, guards and answers Channel 16 FM (or the appropriate VTS New Orleans sector frequency), maintains an accurate position plot and can take appropriate action ensure the safety of the vessel, structure, and other vessels.

(4) When anchoring individually, or in fleets, vessels shall be anchored with sufficient anchors, or secured with sufficient lines, to ensure their remaining in place and withstanding the actions of winds, currents and the suction of passing vessels.

(5) No vessel may be anchored over revetted banks of the river or within any cable or pipeline area. The locations of revetted areas and cable and pipeline areas may be obtained from the District Engineer, Corps of Engineers, New Orleans, LA.

(6) The intention to transfer any cargo while in an anchorage shall be reported to the Captain of the Port, giving particulars as to name of ships involved, quantity and type of cargo, and expected duration of the operation the Captain of the Port shall be notified upon completion of operations. Cargo transfer operations are not permitted in the New Orleans General or Quarantine Anchorages. Bunkering and similar operations related to ship's stores are exempt from reporting requirements.

Note: Activities conducted within a designated anchorage (e.g. cargo transfer, tank cleaning, stack blowing, etc.) may be restricted by other Federal, State or local regulations. Owners, or persons in charge of any vessel should consider all safety and/or environmental regulations prior to engaging in any activity within designated anchorages.

(7) Nothing in this section relieves the owner or person in charge of any vessel from the penalties for obstructing or interfering with navigational aids or for failing to comply with the navigation laws for lights, day shapes, or fog signals and any other applicable laws and regulations.

Dated: October 24, 1995.

R.C. North,

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

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33 CFR Part 165

[CGD01-95-141]

RIN 2115-AA97

Safety Zone: Sunken Vessel M/V EMPIRE KNIGHT, Boon Island, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone encompassing those waters of the Atlantic Ocean within 1,000 yards of the approximate position 43°06'19" N, 70°27'09" W (datum NAD 83) and from the water's surface to the seabed floor. This rulemaking is being undertaken to ensure that the stern portion of the sunken vessel M/V EMPIRE KNIGHT, and its cargo of mercury, is not disturbed by dredging, diving, salvage, anchoring, fishing, or other activity. This proposed rule is necessary to protect the environment, and the commercial fishery, and the general public from any adverse effects of contamination from mercury which could result from the disturbance of the stern section of the wreck.

DATES: Comments must be received on or before January 12, 1996.

ADDRESSES: Comments may be mailed to Chief, Response & Planning Department, U.S. Coast Guard Marine Safety Office, P.O. Box 108, Portland, ME 04112-0108. Comments may also be hand delivered to the Response & Planning Office at 312 Fore Street, Portland, Maine between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (207) 780-3251, extension 153.

FOR FURTHER INFORMATION CONTACT: Lieutenant Al Echols, Response & Planning Department, U.S. Coast Guard Marine Safety Office, Portland, Maine at (207) 780-3251, extension 153.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD01-95-141) and the specific section of this proposal to which each

comment applies, and give a reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½" × 11" unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES**. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information. The principal persons involved in drafting this document are Lieutenant Al Echols, Project Manager, Marine Safety Office Portland, Maine, and Lieutenant Commander Sam Watkins, Project counsel, First Coast Guard District Legal Office, Boston, MA.

Background and Purpose

In February of 1944, the M/V EMPIRE KNIGHT, a 428 foot British freight ship ran aground on Boon Island Ledge, Maine, and later broke into two sections. The stern section, which includes the ship's cargo holds, sank in approximately 260 feet of water, one and one half miles from Boon Island Ledge. In August of 1990, the Coast Guard Captain of the Port, Portland, Maine (COTP) became aware of the existence of a "Proposed" Plan of Stowage for the wreck of the M/V EMPIRE KNIGHT which indicated that 221 flasks containing mercury may have been loaded into cargo hold number 5. The COTP issued a Captain of the Port Order to a company then conducting salvage operations, requiring them to refrain from further salvage activity until the situation could be more thoroughly assessed.

Over the next year, the COTP convened an Incident Specific Regional Response Team (RRT) consisting of representatives from the Maine Department of Environmental Protection, the New Hampshire Department of Environmental Services, the Maine Department of Marine Resources, the New Hampshire Department of Fish and Game, the U.S. Environmental Protection Agency, the U.S. National Oceanic and Atmospheric Administration, and the U.S. Coast

Guard to gather information about the M/V EMPIRE KNIGHT and its cargo, and to identify the possible courses of action.

During the summer of 1992, the Maine Department of Marine Resources collected samples of bottom sediment around the stern portion of the EMPIRE KNIGHT to determine if mercury was present and, if so, to what extent. Laboratory analyses of the samples revealed levels of mercury consistent with the background levels with some exceptions, rendering them inconclusive on whether mercury had been on board the M/V EMPIRE KNIGHT at the time of its sinking.

In the spring of 1993, the COTP, in consultation with the RRT, determined that the possible presence of mercury on board the M/V EMPIRE KNIGHT constituted an imminent and substantial threat to the environment. The RRT agreed that an on site assessment of the stern section of the M/V EMPIRE KNIGHT was necessary to determine the presence of the mercury, and to assess whether it would be necessary, feasible, and safe to remove it if on board.

In August, 1993, the COTP, as the Federal On Scene Coordinator, initiated a \$6.8 million emergency site assessment and removal operation. The presence of mercury on board was quickly confirmed. All 221 manifested mercury flasks were located in cargo hold number 5 and were recovered, but were found in badly deteriorated condition and were nearly empty. Loose mercury was discovered throughout cargo hold number 5, and approximately 1,230 pounds were recovered. Nearly 2,200 pounds of mercury-contaminated debris and cargo residue were also recovered.

Extensive sampling and analysis was conducted throughout the operation. Samples included bottom sediments in the vicinity of the stern section of the wreck and various species of fish and shellfish from the area around the vessel. From within cargo hold number 5, samples of the sediment, scrapings off the cargo, and fish and shellfish were taken.

In October, 1993, the operation was suspended due to deteriorating weather conditions. At that time, an estimated 16,000 pounds of mercury remained unaccounted for and is believed to be spread throughout the cargo residue of cargo hold number 5.

In February, 1994, the RRT was reconvened by the COTP to consider the results of the sample analyses and to determine the best course of action. The sample analysis results showed that concentrations of mercury were elevated inside cargo hold number 5, but