

Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zones must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

Dated: June 7, 2010.

**L. Barndt,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0519]

RIN 1625-AA00

#### Safety Zone; Ship Repair in Penobscot Bay, ME

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Stena Drilling and Cianbro companies will replace three bow thrusters on the vessel STENA FORTH, a 748-foot drill ship, while at anchor in Penobscot Bay, Maine. The nature of the repairs require water depths of at least 120 feet in a sheltered environment, precluding the use of anchorages and limiting alternative locations along the East Coast where the repairs could be made. This temporary safety zone is necessary to ensure the safety of the ship's crew and the maritime public by prohibiting all unauthorized vessels and waterway users from entering within a 100 yard radius around the STENA FORTH while it is at anchor for repairs.

**DATES:** This rule is effective in the CFR on June 22, 2010 until 11:59 p.m. on July 5, 2010. This rule is effective with actual notice for purposes of enforcement from 12:01 a.m. on June 15, 2010 until 11:59 p.m. on July 5, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0519 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0519 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Lieutenant Junior Grade Laura van der Pol, Waterways Management Division at Coast Guard Sector Northern New England, telephone 207-741-5421, e-mail [Laura.K.vanderPol1@uscg.mil](mailto:Laura.K.vanderPol1@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM is impractical and contrary to public interest. The Coast Guard was only recently made aware of the details of this repair, including the proposed anchorage location and anticipated ship arrival date, which were finalized just two weeks in advance. Thus, the Coast Guard did not have sufficient time to issue an NPRM and hold a comment period for this rulemaking. The expeditious implementation of this rule is in the public interest because it will help to ensure the safety of those involved in replacing three of the ship's thrusters. Additionally, the safety zone will define the area impacted by the repair operations for other waterway users who wish to operate in all other areas of the bay. Finally, delaying the effective date by first publishing a NPRM and holding a comment period would be contrary to the rule's objectives of ensuring safety of life on the navigable waters while these repairs are taking place, as immediate action is needed to protect persons and vessels from the hazards associated with repair operations conducted on an anchored vessel.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal**

**Register.** In addition to the reasons stated above, any delay in the effective date of this regulation would be contrary to the public interest as immediate action is necessary to protect the maritime community from the hazards associated with the repair operation. A delay or cancellation of the ship's repairs to accommodate a 30-day waiting period would be contrary to public interest as it would put lives of maritime community members at risk.

##### Basis and Purpose

Ship repairs are usually performed in a drydock, pier-side, or in an established general anchorage, barring the need for public notice or regulation as ships are typically well-removed from high-density traffic areas. For this project however, the technical parameters for replacing three bow thrusters on the 748-foot drill ship STENA FORTH necessitate water depths in excess of 120 feet, depths which are not available pier-side or in established anchorages along the East Coast. This regulation will establish a temporary safety zone in a 100-yard radius around the STENA FORTH while it is at anchor in Penobscot Bay to make repairs.

For the duration of the repairs, the following vessels will be in use within the safety zone surrounding the STENA FORTH: A crane barge, a barge to offload wastewater, two tug boats, one harbor skiff, and a safety dive-boat. Due to the location, heavy machinery involved, frequent dive operations, and nature of the work, the Coast Guard has determined that the ship repairs could pose a risk to waterway users and the repair crews if waterway use around the STENA FORTH is not restricted. Possible hazards include the risk of diver injury or death from near or actual contact with vessels traversing through the safety zone; the risk of injury to waterway users and repair crewmembers resulting from interference with the sensitive, heavy equipment operations; and damage or loss of fishing gear anchored within the safety zone. In order to protect the safety of all waterway users, including repair crews, this temporary rule establishes a safety zone for the duration of the repair work in the area immediately around the STENA FORTH as described in the *List of Subjects*.

This rule prevents vessels and persons from entering, transiting, mooring or anchoring within the area specifically designated as a safety zone during the period of enforcement unless authorized by the Captain of the Port, his designated representative, or on-scene patrol personnel. On-scene patrol

personnel may be comprised of local, state or federal officials authorized to act in support of the Coast Guard. In addition, members of the Coast Guard Auxiliary or Cianbro repair crew may be present to inform vessel operators of this regulation.

#### Discussion of Rule

This temporary rule creates a safety zone for all navigable waters in a 100-yard radius around the drill ship STENA FORTH while at anchor in approximate location 44°06'54" N., 069°02'54" W., one mile northeast of Rockland Harbor Breakwater Light (LLNR 4130), and approximately one and a half miles north of Owl's Head, Maine. The technical constraints inherent in replacing the STENA FORTH's three bow thrusters severely limit the number of suitable locations where the repairs could be safely conducted. Of the six possible bays on the East Coast, Penobscot Bay, Maine was the most desirable due to the proximity to shore, relatively sheltered environment, and typical June weather conditions. The anchorage position was chosen based on the conditions needed to make the repairs (water depth, currents) as well as with consideration to the typical use of the navigable waters east of Rockland Harbor in terms of deep draft, fishing, and recreational vessel traffic. While every effort has been made to minimize the impact to waterway users, the safety zone is needed to protect the repair crews and maritime community from the dangers inherent in the repair operations.

During the enforcement period of the safety zone, persons and vessels will be prohibited from entering, transiting, anchoring, mooring, or remaining within the zone unless specifically authorized by the Captain of the Port or his designated representatives. The Coast Guard may be assisted by other federal, state, and local agencies in the enforcement of this safety zone. In addition, members of the Coast Guard Auxiliary and Cianbro repair crew may be present to inform vessel operators of this regulation.

The Coast Guard determined that this safety zone will not have a significant impact on the maritime public due to the temporary nature and limited size of the safety zone as vessels may transit all navigable waters outside the safety zone. Advanced public notifications will be made to the local maritime community through Local Notice to Mariners and Broadcast Notice to Mariners.

#### Regulatory Analyses

We developed this 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 has determined that this rule is not a significant regulatory action for the following reasons: The safety zone will be of limited duration, it covers only a small portion of the navigable waterways, and the STENA FORTH's anchored position is designed to avoid, to the extent possible, deep draft, fishing, and recreational boating traffic routes.

#### 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 vessels intending to transit, fish, or anchor in the designated safety zone during the enforcement period stated in the *List of Subjects*.

The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will be of limited size; vessels that can safely do so may navigate in all other portions of the waterway except for the area designated as a safety zone; and vessels wishing to transit through the safety zone may do so with the permission of the Captain of the Port or his designated representative. Additionally, before the effective period, the Coast Guard will issue notice of the time and location of the

safety zone through a Local Notice to Mariners and Broadcast Notice to Mariners. The Coast Guard has also conducted outreach with state and local agencies, including the Maine Department of Marine Resources and fishing associations in Penobscot Bay, to enable fishermen and vessel operators to adjust their plans as needed in anticipation of the STENA FORTH's arrival to anchorage.

#### 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 can 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 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure,

we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not cause 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 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 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. This rule involves establishing a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under

### ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01-0519 to read as follows:

#### § 165.T01-0519 Safety zone; Ship repair in Penobscot Bay, ME.

(a) *Location.* The following area is a safety zone: All waters within a 100 yard radius of the drill ship STENA FORTH while at anchor in Penobscot Bay, Maine, in approximate position: 44°06'54" N., 069°02'54" W., one mile northeast of Rockland Harbor

Breakwater Light (LLNR 4130), and approximately one and a half miles north of Owl's Head, Maine.

(b) *Notification.* Coast Guard Sector Northern New England will cause notice of the enforcement of this temporary safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including publication in the Local Notice to Mariners and Broadcast Notice to Mariners.

(c) *Effective Period.* This safety zone is effective from 12:01 a.m. on June 15, 2010, until 11:59 p.m. on July 5, 2010.

(d) *Enforcement Period.* The safety zone in this section will be enforced while the drill ship STENA FORTH is at anchor in Penobscot Bay, Maine.

(e) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entry into, transiting, mooring, anchoring or remaining within this safety zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) This temporary safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port or his designated representative. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his designated representatives.

(3) The "designated representative" is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, or onboard a local or state agency vessel that is authorized to act in support of the Coast Guard. In addition, members of the Coast Guard Auxiliary or Cianbro repair crew may be present to inform vessel operators of this regulation.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port or his designated representative by telephone at 207-767-0303 or via VHF radio channel 16 to obtain permission to do so.

Dated: June 9, 2010.

### B.S. Gilda,

*Commander, U.S. Coast Guard, Acting, Captain of the Port Sector Northern New England.*

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**BILLING CODE 9110-04-P**