

the NMB is interested in receiving public comment on the various factors that might be considered in accomplishing this goal. In particular, because of the NMB's statutory responsibility for the appointment and compensation of neutral arbitrators ("referees") to resolve deadlocks within NRAB divisions, the NMB is considering what improvements it may pursue to resolve deadlocks on a more expeditious basis. In addition, the NMB is interested in receiving public input on achieving case resolution in the most cost effective way possible.

## B. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to this ANPRM. All comments must be in writing and must be submitted to the address indicated in the **ADDRESSES** section.

Dated: August 1, 2003.

**Roland Watkins,**

National Railroad Adjustment Board  
Administrator.

## National Mediation Board—Advance Notice of Proposed Rulemaking—Improving the Administration of Case Processing Before the National Railroad Adjustment Board

The Railway Labor Act (RLA), 45 U.S.C. 151 *et seq.* establishes the National Mediation Board (NMB) whose functions, among others, are to administer certain provisions of the RLA with respect to the arbitration of labor disputes in the rail industry, including the administration of the National Railroad Adjustment Board (NRAB) established under 45 U.S.C. 153.45 U.S.C. 154. Third, authorizes the NMB to provide for the administration (including the making of expenditures for necessary expenses) of the NRAB.

Pursuant to its authority under 45 U.S.C. 154, Third, the NMB is considering changes to its administrative rules and procedures to facilitate the timely resolution of various disputes between grievants and carriers in the railroad industry. Because of its statutory role in the administration of the NRAB's program, the NMB is interested in receiving public input on the factors that should be considered in accomplishing this goal. In particular, because of the NMB's responsibility for the appointment and compensation of neutral arbitrators ("referees") to resolve deadlocks within NRAB divisions, the NMB is considering what initiatives it may undertake to further the resolution of deadlocks on a more timely and expeditious basis. In addition, the NMB

is interested in receiving public input on achieving case resolution in the most cost effective way possible.

The NMB has undertaken a review of the administration of the program of the NRAB. The NMB's initial review suggests that given budgetary and staffing constraints, the NMB should place greater emphasis on the NMB's statutory responsibility to ensure the prompt resolution of minor disputes that come before the NRAB. The NMB is particularly interested in speeding the resolution of minor disputes because of the Government's need to provide for the efficient and effective use of taxpayer money. Any proposed action to be taken by the NMB in this area will govern the NMB's administrative processing of cases in which the parties request that the NMB compensate the arbitrator.

**Question One:** If the NMB promulgates procedures for the administrative processing of NRAB cases in which the parties request that the Government compensate the neutral ("referee"), what should be the criteria or guidelines for these procedures?

It has been suggested to the NMB, that a desirable goal is to have minor disputes resolved within one year of the filing of a Notice of Intent to File a Submission. At present, it is not uncommon for cases to remain unresolved for two years.

**Question Two:** If a stated goal of any new procedures to be adopted by the NMB is to have the cases decided by an arbitrator within one year from the date of the filing of the Notice of Intent, what steps do you recommend comprise this procedure? Do you believe that a one year goal is reasonable? If not, why not?

**Question Three:** If the parties do not agree to follow the procedures adopted by the NMB, should there be any adverse consequences? Should the parties have options with respects to these procedures? What would you recommend be the steps that comprise an efficient case resolution procedure?

**Question Four:** What should happen to those cases that are still pending after one year in which the parties have not placed the cases before a Public Law Board, pursuant to 45 U.S.C. 153, Second? If the cases are placed before a Public Law Board, should a time limit be imposed for the resolution of those cases?

At present, the NRAB has approximately 2,000 cases pending before it. Many of these cases arise out of the filing of multiple grievances by different parties for the same underlying set of facts.

**Question Five:** In order to ensure the most efficient use of limited

Government resources, should the NMB, in agreeing to pay for the appointment of an arbitrator ("referee") require the consolidation of similar cases dealing with similar issues? If, in your view, case consolidation is a viable option for improving the resolution of cases, what should be the standards adopted for consolidation? What should the NMB do if the parties refuse to consolidate cases, when in the NMB's view, it would be appropriate to do otherwise?

**Question Six:** As the goal of this initiative is to improve the processing of disputes before the NRAB, are there any other recommendations or suggestions that you would make to the NMB with regard to its statutory responsibilities for the administration of the NRAB?

The NMB will review all submissions made in response to this ANPRM in the development of any possible notice of proposed rulemaking. In addition, the Board intends to hold a public hearing prior to the release of any proposed rule, in order to permit interested parties an opportunity to further elaborate on the points made in their comments in response to this ANPRM. The notice of an open public meeting before the NMB will be the subject of a separate notice appearing in a future issue of the **Federal Register**.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[CGD01-03-036]

RIN 1625-AA00

### Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish permanent safety and security zones in portions of the waters around La Guardia and John F. Kennedy airports in Queens, NY, the New York City Police Department (NYPD) ammunition depot on Rodman Neck in Eastchester Bay, the Port Newark and Port Elizabeth, NJ, commercial shipping facilities in Newark Bay, and between the Global Marine and Military Ocean Terminals in Upper New York Bay. This action is necessary to safeguard critical port infrastructure and coastal facilities from sabotage, subversive acts, or other

threats. The zones will prohibit entry into or movement within these areas without authorization from the Captain of the Port New York.

**DATES:** Comments and related material must reach the Coast Guard on or before September 8, 2003.

**ADDRESSES:** You may mail comments and related material to Waterways Oversight Branch (CGD01-03-036), Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York 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 room 204, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander E. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354-4012.

#### **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 (CGD01-03-036), indicate the specific section of this document to which each comment applies, and give the reason for each comment. 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 that 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.

##### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Oversight Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one 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, three commercial aircraft were hijacked and flown into the World Trade Center in New York City, and the Pentagon, inflicting catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks. See, *Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, 67 FR 58317 (September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism*, 67 FR 59447 (September 20, 2002). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is endangered by disturbances in international relations of United States that have existed since the terrorist attacks on the United States and such disturbances continue to endanger such relations.

*Executive Order 13273 of August 21, 2002, Further Amending Executive Order 10173, as Amended, Prescribing Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States*, 67 FR 56215 (September 3, 2002)

Since the September 11, 2001 terrorist attacks, the Federal Bureau of Investigation has issued several warnings concerning the potential for additional attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the war in Iraq have made it prudent for U.S. ports and properties of national significance to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The Captain of the Port New York recently established six new safety and security zones throughout the New York Marine Inspection Zone and Captain of the Port Zone. (68 FR 2890, January 22, 2003). Subsequently, the Captain of the Port has determined that the safety and security zones proposed by this rule are urgently required to meet critical maritime domain security needs that were not addressed by the earlier rule. On February 19, 2003, we published a Temporary final rule; request for comments entitled "Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone" in the **Federal Register** (68 FR 7926)

temporarily establishing these safety and security zones. We received no letters commenting on the temporary rule. No public hearing was requested, and none was held.

The Coast Guard proposes to establish permanent safety and security zones around La Guardia and John F. Kennedy airports, the New York City Police Department ammunition depot, and the Port Newark/Port Elizabeth commercial shipping facilities.

Additionally, we propose to establish a permanent safety and security zone in all waters of Upper New York Bay between the Global Marine and Military Ocean Terminals, west of the New Jersey Pierhead Channel. This proposed zone was inadvertently not placed in the Temporary final rule establishing the other six safety and security zones. It is currently being enforced by a Vessel Traffic Service Measure as provided for in 33 CFR 161.11.

These safety and security zones are necessary to provide for the safety of the port and to ensure that vessels, facilities, airports, or ammunition depots, are not used as targets of, or platforms for, terrorist attacks. These zones would restrict entry into or movement within portions of the New York Marine Inspection and Captain of the Port Zones.

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

This proposed rule would establish the following safety and security zones:

*La Guardia Airport, Bowery and Flushing Bays, Queens, NY*

The Coast Guard proposes to establish a safety and security zone in all waters of Bowery and Flushing Bays within approximately 200 yards of La Guardia Airport. The zone would start at a point onshore in Steinway, Queens (approximate position 40°46'32.1" N, 073°53'22.4" W (NAD 1983)), proceeding east/northeast, 200 yards off the shoreline to a point 200 yards off the shoreline and 25 yards southeast of the lighted runway approach extending through Rikers Island Channel, continuing to the northwest, maintaining a distance of 25 yards off the lighted runway approach, to a point 25 yards past the end of the lighted runway approach, to the Rikers Island shoreline in approximate position, 40°47'13.0" N, 073°53'16.1" W, thence easterly along the Rikers Island shoreline to approximate position 40°47'12.9" N, 073°52'17.9" W, maintaining a distance of 25 yards around the lighted runway approach extending to the east of Rikers Island, to a point 200 yards off the shoreline of La Guardia Field, continuing 200 yards off

the shoreline to where it intersects the southern boundary of Flushing Bay Channel, continuing along the southern boundary of Flushing Bay Channel to where it intersects the northern boundary of the western Special Anchorage Area, and continuing along the northern boundary of the Special Anchorage Area to approximate position 40°45'48.4" N, 073°51'37.0" W, (NAD 1983) in East Elmhurst, Queens, thence along the shoreline to the point of origin.

Within the boundaries of this zone, the Coast Guard proposes to establish another safety and security zone in all waters of Bowery and Flushing Bays within approximately 100 yards of La Guardia Airport.

When port security conditions permit, the Captain of the Port would allow vessels to operate within that portion of the 200-yard zone that lies outside of the waters described in the 100-yard zone. Authorization to enter the waters that lie between the outer boundaries of the two zones would be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at <http://www.harborops.com>. This regulatory framework provides the Captain of the Port with the tools to safeguard airport property and equipment and the flexibility to accommodate local mariners to the maximum extent permissible under the circumstances then existing.

*John F. Kennedy (JFK) Airport, Jamaica Bay, Queens, NY*

The Coast Guard proposes to establish four safety and security zones in all waters near JFK Airport bound by the following points:

First, all waters of Bergen Basin north of 40°39'26.4" N.

Second, all waters of Thurston Basin north of 40°38'21.2" N.

Third, all waters of Jamaica Bay within approximately 200 yards of John F. Kennedy Airport. The zone would start at a point onshore east of Bergen Basin, Queens in approximate position 40°38'49.0" N, 073°49'09.1" W, thence 200 yards offshore to approximate position 40°38'42.5" N, 073°49'13.2" W, (NAD 1983) proceeding east/southeast, 200 yards off the shoreline to a point 200 yards off the shoreline and 25 yards off the lighted runway approach extending north of East High Meadow, maintaining a distance of 25 yards around the lighted runway approach, to a point 200 yards off the shoreline, continuing 200 yards off the shoreline to Jamaica Bay Grass Hassock Channel LIGHT 23 (LLNR 34485), continuing along the northern boundary of Head of

Bay Channel, maintaining a 200 yard boundary to approximate position thence to 40°38'00.8" N, 073°44'54.9" W, about 690 yards northeast of Head of Bay Buoy 30 (LLNR 34545) thence to the shoreline at 40°38'05.1" N, 073°45'00.3" W, (NAD 1983) thence along the shoreline to the point of origin.

Fourth, within the boundaries of this zone, the Coast Guard proposes to establish another safety and security zone in all waters of Jamaica Bay within approximately 100 yards of John F. Kennedy Airport.

When port security conditions permit, the Captain of the Port would allow vessels to operate within that portion of the 200-yard zone in Jamaica Bay that lies outside of the waters described in the 100-yard zone. Authorization to enter the waters that lie between the outer boundaries of those two zones would be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at <http://www.harborops.com>. This regulatory framework provides the Captain of the Port with both the authority to safeguard airport property and equipment and the flexibility to accommodate local mariners to the maximum extent permissible under the circumstances then existing.

*NYPD Ammunition Depot, Rodman Neck, Eastchester Bay, NY*

The Coast Guard proposes to establish two safety and security zones in all waters of Eastchester Bay near the NYPD Ammunition Depot bound by the following points:

First, all waters of Eastchester Bay within approximately 150 yards of Rodman Neck. The zone would start at a point on the western shore of Rodman Neck in approximate position 40°51'30.4" N, 073°48'14.9" W, thence 150 yards offshore to 40°51'29.9" N, 073°48'20.7" W, (NAD 1983) proceeding around the southern end of Rodman Neck and then north to a point onshore in approximate position 40°51'23.5" N, 073°47'41.9" W, (NAD 1983), south of the City Island Bridge, thence southwesterly along the shoreline to the point of origin.

Second, within the boundaries of this zone, the Coast Guard proposes to establish another safety and security zone in all waters of Eastchester Bay within approximately 100 yards of Rodman Neck.

When port security conditions permit, the Captain of the Port would allow vessels to operate within that portion of the 150-yard zone that lies outside of the waters described in the 100-yard zone. Authorization to enter the waters

that lie between the outer boundaries of the two zones would be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at <http://www.harborops.com>. This regulatory framework provides the Captain of the Port with the tools to safeguard Police Department property and equipment and the flexibility to accommodate local mariners to the maximum extent permissible under the circumstances then existing.

*Port Newark/Port Elizabeth, Newark Bay, NJ*

The Coast Guard proposes to establish a safety and security zone around the Port Newark and Port Elizabeth facilities in Newark Bay. The zone would start at a point onshore at the New Jersey Extension Bridge in approximate position 40°41'49.9" N, 074°07'32.2" W, thence to 40°41'46.5" N, 074°07'20.4" W, (NAD 1983) at the western edge of Newark Bay North Reach, proceeding along the western edge of Newark Bay Channel south through Newark Bay Channel Buoy 21 (LLNR 37515), Newark Bay Channel Buoy 19A (LLNR 37507), Newark Bay Channel Lighted Buoy 17 (LLNR 37485), Newark Bay Channel Buoy 15A (LLNR 37477), Newark Bay Channel Lighted Buoy 7 (LLNR 37405), thence west to the shoreline in approximate position 40°39'21.5" N, 074°09'54.3" W, (NAD 1983) thence northerly along the shoreline to the point of origin.

*Global Marine Terminal, Upper New York Bay*

The Coast Guard proposes to establish a safety and security zone that includes all waters of Upper New York Bay between the Global Marine and Military Ocean Terminals, west of the New Jersey Pierhead Channel.

The proposed zones described above are necessary to protect the La Guardia and John F. Kennedy airports, NYPD ammunition depot, the Port Newark/Port Elizabeth commercial shipping facilities, the Global Marine Terminal, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the airports, ammunition depot, and commercial shipping facilities that could potentially cause serious negative impact to vessels, the port, commercial ground shipments by vehicle or rail, airline traffic, or the environment and result in numerous casualties. The Captain of the Port does not expect this proposed rule to interfere with the transit of any vessels through the waterways adjacent to each facility. Vessels would still be able to transit

around the proposed safety and security zones at all times. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the proposed zones.

Any violation of any proposed safety or security zone herein is punishable by, among others, civil penalties (not to exceed \$27,500 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 proposed rulemaking is established 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, New York. 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.

#### 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 Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the fact that: the zones were established by a previous Temporary final rule with a 60-day comment period and no comments were received by the Coast Guard; the proposed zones implicate relatively small portions of the waterway; vessels would be able to transit around the safety and security zones at all times; commercial vessels visiting Port Newark/Port Elizabeth and Global Marine Terminal are already subject to control of the Vessel Traffic Service and previously established safety and security zones while recreational and fishing vessels are unlikely to operate within those areas; and the Captain of the Port would relax the enforcement of

the 200-yard zones around airport facilities and the 150-yard zone around the NYPD ammunition depot whenever he determines that the security environment existing within the port would allow him to do so.

#### 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 would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the New York Marine Inspection and Captain of the Port Zones in which entry will be prohibited by the proposed safety or security zones.

These proposed safety and security zones would not have a significant economic impact on a substantial number of small entities for the following reasons: the proposed zones implicate relatively small portions of the waterway; vessels would be able to transit around the proposed safety and security zones at all times; commercial vessels visiting Port Newark/Port Elizabeth and the Global Marine Terminal are already subject to control of the Vessel Traffic Service and previously established safety and security zones while recreational and fishing vessels are unlikely to operate within those areas; and the Captain of the Port would relax the enforcement of the 200-yard zones around airport facilities and the 150-yard zone around the NYPD ammunition depot whenever he determines that the security environment existing within the port allows him to do so.

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 temporary rule so that we can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander E. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

#### 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. 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.

## Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation because it establishes safety and security zones. A "Categorical Exclusion Determination" is 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 proposes to amend 33 CFR part 165 as follows:

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

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

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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. In § 165.169, revise paragraphs (a)(7) through (a)(10) and add paragraph (a)(11) to read as follows:

#### § 165.169 Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.

(a) \* \* \*

\* \* \* \* \*

(7) *La Guardia Airport, Bowery and Flushing Bays, Queens, NY.* (i) *Location: 200-Yard Zone.* All waters of Bowery and Flushing Bays within approximately 200 yards of La Guardia Airport bound by the following points: Onshore at Steinway, Queens in approximate position 40°46'32.1" N, 73°53'22.4" W, thence to 40°46'52.8" N, 73°53'09.3" W, thence to 40°46'54.8" N, 73°52'54.2" W, thence to 40°46'59.3" N, 73°52'51.3" W, thence to 40°47'11.8" N, 73°53'17.3" W, thence to 40°47'13.0" N, 73°53'16.1" W on Rikers Island, thence easterly along the Rikers Island shoreline to approximate position 40°47'12.9" N, 73°52'17.9" W, thence to 40°47'16.7" N, 73°52'09.2" W, thence to 40°47'36.1" N, 73°51'52.5" W, thence to 40°47'35.1" N, 73°51'50.5" W, thence to 40°47'15.9" N, 73°52'06.4" W, thence to 40°47'14.5" N, 73°52'03.1" W, thence to 40°47'10.6" N, 73°52'06.7" W, thence to 40°47'01.9" N, 73°52'02.4" W, thence to 40°46'50.4" N, 73°52'08.1" W, thence to 40°46'26.8" N, 73°51'18.5" W, thence to 40°45'57.2" N, 73°51'01.8" W, thence to 40°45'51.2" N, 73°50'59.6" W, thence to 40°45'49.5" N, 73°51'07.2" W, thence to 40°45'58.8" N, 73°51'13.2" W, thence to 40°46'02.3" N, 73°51'20.1" W, thence to 40°45'48.4" N, 73°51'37.0" W, (NAD 1983) thence along the shoreline to the point of origin.

(ii) *Location: 100-Yard Zone.* All waters of Bowery and Flushing Bays within approximately 100 yards of La Guardia Airport bound by the following points: Onshore at Steinway, Queens in approximate position 40°46'32.1" N, 73°53'22.4" W, thence to 40°46'50.6" N, 73°53'07.3" W, thence to 40°46'53.0" N, 73°52'50.9" W, thence to 40°46'57.6" N, 73°52'47.9" W, thence to 40°47'11.8" N, 73°53'17.3" W, thence to 40°47'13.0" N, 73°53'16.1" W on Rikers Island, thence

easterly along the Rikers Island shoreline to approximate position 40°47'12.9" N, 73°52'17.9" W, thence to 40°47'16.7" N, 73°52'09.2" W, thence to 40°47'36.1" N, 73°51'52.5" W, thence to 40°47'35.1" N, 73°51'50.5" W, thence to 40°47'15.9" N, 73°52'06.4" W, thence to 40°47'14.5" N, 73°52'03.1" W, thence to 40°47'07.9" N, 73°52'09.2" W, thence to 40°47'01.4" N, 73°52'06.1" W, thence to 40°46'50.0" N, 73°52'14.6" W, thence to 40°46'22.2" N, 73°51'16.0" W, thence to 40°45'57.2" N, 73°51'01.8" W, thence to 40°45'52.4" N, 73°51'00.2" W, thence to 40°45'50.6" N, 73°51'07.9" W, thence to 40°45'58.8" N, 73°51'13.2" W, thence to 40°46'04.0" N, 73°51'23.3" W, thence to 40°45'51.2" N, 73°51'38.8" W, (NAD 1983) thence along the shoreline to the point of origin.

(iii) *Enforcement period.* The zones described in paragraph (a)(7) of this section will be effective at all times. When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the waters described in paragraph (a)(7)(i) that lies outside of the waters described in paragraph (a)(7)(ii). Authorization to enter the waters that lie between the outer boundaries of the zones described in paragraphs (a)(7)(i) and (a)(7)(ii) will be communicated by the Captain of the Port to the public by marine broadcast, or local notice to mariners, or notice posted at <http://www.harborops.com>.

(8) *John F. Kennedy Airport, Jamaica Bay, Queens, NY.* (i) *Location: Bergen Basin.* All waters of Bergen Basin north of 40°39'26.4" N.

(ii) *Location: Thurston Basin.* All waters of Thurston Basin north of 40°38'21.2" N.

(iii) *Location: 200-Yard Zone.* All waters of Jamaica Bay within approximately 200 yards of John F. Kennedy Airport bound by the following points: Onshore east of Bergen Basin, Queens in approximate position 40°38'49.0" N, 73°49'09.1" W, thence to 40°38'42.5" N, 73°49'13.2" W, thence to 40°38'00.6" N, 73°47'35.1" W, thence to 40°37'52.3" N, 73°47'55.0" W, thence to 40°37'50.3" N, 73°47'53.5" W, thence to 40°37'59.4" N, 73°47'32.6" W, thence to 40°37'46.1" N, 73°47'07.2" W, thence to 40°37'19.5" N, 73°47'30.4" W, thence to 40°37'05.5" N, 73°47'03.0" W, thence to 40°37'34.7" N, 73°46'40.6" W, thence to 40°37'20.5" N, 73°46'23.5" W, thence to 40°37'05.7" N, 73°46'34.9" W, thence to 40°36'54.8" N, 73°46'26.7" W, thence to 40°37'14.1" N, 73°46'10.8" W, thence to 40°37'36.9" N, 73°45'52.8" W, thence to 40°38'00.8" N, 73°44'54.9" W, thence to 40°38'05.1" N, 73°45'00.3" W, (NAD 1983) thence along the shoreline to the point of origin.

(iv) *Location: 100-Yard Zone.* All waters of Jamaica Bay within approximately 100 yards of John F. Kennedy Airport bound by the following points: Onshore east of Bergen Basin, Queens in approximate position 40°38'49.0" N, 073°49'09.1" W, thence to 40°38'45.1" N, 073°49'11.6" W, thence to 40°38'02.0" N, 073°47'31.8" W, thence to 40°37'52.3" N, 073°47'55.0" W, thence to 40°37'50.3" N, 073°47'53.5" W, thence to 40°38'00.8" N, 073°47'29.4" W, thence to 40°37'47.4" N, 073°47'02.4" W, thence to 40°37'19.9" N, 073°47'25.0" W, thence to 40°37'10.0" N, 073°47'03.7" W, thence to 40°37'37.7" N, 073°46'41.2" W, thence to 40°37'22.6" N, 073°46'21.9" W, thence to 40°37'05.7" N, 073°46'34.9" W, thence to 40°36'54.8" N, 073°46'26.7" W, thence to 40°37'14.1" N, 073°46'10.8" W, thence to 40°37'40.0" N, 073°45'55.6" W, thence to 40°38'02.8" N, 073°44'57.5" W, thence to 40°38'05.1" N, 073°45'00.3" W, (NAD 1983) thence along the shoreline to the point of origin.

(v) *Enforcement period.* The zones described in paragraphs (a)(8) of this section will be effective at all times. When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the waters described in paragraph (a)(8)(iii) that lies outside of the waters described in paragraph (a)(8)(iv). Authorization to enter the waters that lie between the outer boundaries of the zones described in paragraphs (a)(8)(iii) and (a)(8)(iv) will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at <http://www.harborops.com>.

(9) *NYPD Ammunition Depot, Rodman Neck, Eastchester Bay, NY.* (i) *Location: 150-Yard Zone.* All waters of Eastchester Bay within approximately 150 yards of Rodman Neck bound by the following points: Onshore in approximate position 40°51'30.4" N, 073°48'14.9" W, thence to 40°51'29.9" N, 073°48'20.7" W, thence to 40°51'16.9" N, 073°48'22.5" W, thence to 40°51'07.5" N, 073°48'18.7" W, thence to 40°50'54.2" N, 073°48'11.1" W, thence to 40°50'48.5" N, 073°48'04.6" W, thence to 40°50'49.2" N, 073°47'56.5" W, thence to 40°51'03.6" N, 073°47'47.3" W, thence to 40°51'15.7" N, 073°47'46.8" W, thence to 40°51'23.5" N, 073°47'41.9" W, (NAD 1983) thence southwesterly along the shoreline to the point of origin.

(ii) *Location: 100-Yard Zone.* All waters of Eastchester Bay within approximately 100 yards of Rodman Neck bound by the following points: Onshore in approximate position 40°51'30.4" N, 073°48'14.9" W, thence to 40°51'30.1" N, 073°48'19.0" W, thence to 40°51'16.8" N, 073°48'20.5" W, thence to

40°51'07.9" N, 073°48'16.8" W, thence to 40°50'54.9" N, 073°48'09.0" W, thence to 40°50'49.7" N, 073°48'03.6" W, thence to 40°50'50.1" N, 073°47'57.9" W, thence to 40°51'04.6" N, 073°47'48.9" W, thence to 40°51'15.9" N, 073°47'48.4" W, thence to 40°51'23.5" N, 073°47'41.9" W, (NAD 1983) thence southwesterly along the shoreline to the point of origin.

(iii) *Enforcement period.* The zones described in paragraph (a)(9) of this section will be effective at all times. When port security conditions permit, the Captain of the Port will allow vessels to operate within that portion of the waters described in paragraph (a)(9)(i) that lies outside of the waters described in paragraph (a)(9)(ii). Authorization to enter the waters that lie between the outer boundaries of the zones described in paragraphs (a)(9)(i) and (a)(9)(ii) will be communicated by the Captain of the Port to the public by marine broadcast, local notice to mariners, or notice posted at <http://www.harborops.com>.

(10) *Port Newark/Port Elizabeth, Newark Bay, NJ.* All waters of Newark Bay bound by the following points: 40°41'49.9" N, 074°07'32.2" W, thence to 40°41'46.5" N, 074°07'20.4" W, thence to 40°41'10.7" N, 074°07'45.9" W, thence to 40°40'54.3" N, 074°07'55.7" W, thence to 40°40'36.2" N, 074°08'03.8" W, thence to 40°40'29.1" N, 074°08'06.3" W, thence to 40°40'21.9" N, 074°08'10.0" W, thence to 40°39'27.9" N, 074°08'43.6" W, thence to 40°39'21.5" N, 074°08'50.1" W, thence to 40°39'21.5" N, 074°09'54.3" W, (NAD 1983) thence northerly along the shoreline to the point of origin.

(11) *Global Marine Terminal, Upper New York Bay.* All waters of Upper New York Bay between the Global Marine and Military Ocean Terminals, west of the New Jersey Pierhead Channel.

\* \* \* \* \*

Dated: July 14, 2003.

C.E. Bone,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 03-20023 Filed 8-6-03; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants: Reconsidered Finding for an Amended Petition To List the Westslope Cutthroat Trout as Threatened Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

**ACTION:** Notice of petition finding.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce our reconsidered 12-month finding for an amended petition to list the westslope cutthroat trout (WCT) (*Oncorhynchus clarki lewisi*) as a threatened species throughout its range in the United States, pursuant to a Court order and the Endangered Species Act (Act) of 1973, as amended. After a thorough review of all available scientific and commercial information, we find that listing the WCT as either threatened or endangered is not warranted at this time. Also pursuant to the Court order, we assert our scientifically-based conclusion about the extent to which it is appropriate to include "hybrid" WCT populations and populations of unknown genetic characteristics in the taxonomic group that we considered for listing.

**DATES:** The finding announced in this document was made on August 1, 2003.

**ADDRESSES:** Data, information, comments, or questions regarding this document should be sent to the Chief, Branch of Native Fishes Management, U.S. Fish and Wildlife Service, Montana Fish and Wildlife Management Assistance Office, 4052 Bridger Canyon Road, Bozeman, Montana 59715. The complete administrative file for this finding is available for inspection, by appointment and during normal business hours, at the above address. The new petition finding, the status update report for WCT, the amended petition and its bibliography, our initial status review document and petition finding, related **Federal Register** notices, the Court Order and Judgement and Memorandum Opinion, and other pertinent information, may be obtained at our Internet Web site: <http://mountain-prairie.fws.gov/endspp/fish/wct/>.

#### FOR FURTHER INFORMATION CONTACT:

Lynn R. Kaeding, by e-mail ([Lynn\\_Kaeding@fws.gov](mailto:Lynn_Kaeding@fws.gov)) or telephone (406-582-0717).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that within 90 days of receipt of the petition, to the maximum extent practicable, we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the requested action may be warranted. The term "species" includes any subspecies of fish or wildlife or plants,