

**From:** [Valiton, Brian E NAE](#)  
**To:** [Sheeringer, Paul J NAE](#)  
**Subject:** FW: New Bedford Harbor Pilot Cap Data (UNCLASSIFIED)  
**Date:** Monday, May 21, 2012 3:18:36 PM

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Classification: UNCLASSIFIED  
Caveats: NONE

-----Original Message-----

From: Lucas.A.DIhopolsky@uscg.mil [<mailto:Lucas.A.DIhopolsky@uscg.mil>]  
Sent: Tuesday, January 04, 2011 11:18 AM  
To: Mauro, John  
Cc: Slavitt, Isaac LTJG; white.kimberly@epa.gov; Valiton, Brian E NAE; Marino, Rachel  
Subject: RE: New Bedford Harbor Pilot Cap Data (UNCLASSIFIED)

Hi John,

This is a multifaceted action which makes things a bit more "interesting". NEPA does not apply to the underlying action to cap the contaminated sediments since my understanding is that this action was taken by EPA under CERCLA which typically includes processes that are the functional equivalent of NEPA. Furthermore, according to the DOJ, NEPA does not apply to CERCLA actions as a matter of law due to statutory conflicts. However, I do not know if the CERCLA work included any discussion of the Coast Guard follow-on action which is intended to afford some protection from disturbance to the site that could result from various vessel operations.

If the Coast Guard action to modify an existing anchorage and establish a Regulated Navigation Area (RNA) are being taken separate from the CERCLA action (despite being related to it), then NEPA does apply. It is our understanding (so far) that this is the case, and we have already provided the appropriate preliminary NEPA analysis for the NPRM (Under docket # USCG-2010-1119).

The applicability or non-applicability of NEPA to either the underlying CERCLA action or the Coast Guard follow-on action does not necessarily impact the applicability of other regulatory requirements including the Coastal Zone Management Act (CZMA). Taking the Coast Guard regulatory action separate from the EPA CERCLA action, we would determine if there were reasonably foreseeable effects on the resources or uses of the State's Coastal Zone (CZ). Restricting vessel activity within the State CZ has potential for effects that could be more than minimal. However, as noted on the MA CZM web-site, the State "looks to establish environmental review thresholds to gauge when projects may significantly affect the coastal zone". In many cases, projects that are below the thresholds of the Mass. Environmental Policy Act (MEPA) have been determined to have minimal effects on coastal resources. In addition, projects that qualify for ACOE general permits (vs. site specific permits) are usually not subject to additional federal consistency review. The Coast Guard action to modify the existing anchorage and establish the RNA are not actions that typically exceed MEPA thresholds nor do they require any type of permit from the ACOE of which I am aware.

Notwithstanding, in view of the Coast Guard regulatory action being taken in connection with a CERCLA action, we opted to contact the State federal consistency coordinator (Mr. Bob Boeri) by e-mail sent on December 17, 2010 in which we requested his opinion on whether or not a federal consistency review was desired for the CG actions in this case. We have just received a reply today from Mr. Boeri who indicated that a federal consistency determination would be appropriate. Mr. Boeri also stated that he would coordinate with Mr. Janik as necessary during the State's consistency review.

Lastly, the MA Chapter 91 regulations pertain to protection of State wetlands where there is a proposal to work on, or use fill or structures in tidal waters. It would seem likely that this aspect would have been included in the CERCLA process which resulted in applying the stabilization cap over the contaminated sediments. Unless, in this particular case there is some other substantial connection between reduction of the anchorage and the MA DEP wetlands program we don't typically file under

Chapter 91 for such CG regulatory actions.

I realize this is a somewhat complex issue that also involves legal aspects on which I am not qualified to comment. So, if there are any questions or concerns about our approach to the environmental issues related to the CG anchorage and RNA actions at the New Bedford Harbor site, please let me know.

Thanks,

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-----Original Message-----

From: Mauro, John  
Sent: Monday, January 03, 2011 9:17 AM  
To: Brian.E.Valiton@usace.army.mil  
Cc: Slavitt, Isaac LTJG; white.kimberly@epa.gov; Dlhopsky, Lucas  
Subject: RE: New Bedford Harbor Pilot Cap Data (UNCLASSIFIED)

Good morning Brian, as I understand it Kimberly White (EPA) 617-918-1752 white.kimberly@epa.gov plans to contact Mass DEP as she has worked with them on this project. We planned on contacting the Harbormaster to let him know about the changes coming to the anchorage area.

Our Civil Engineering Unit (CEU) in RI handles our NEPA requirements so I will ask if they will be in contact with Dave Janik the Mass. CZM coordinator.

As for the New Bedford Harbor Development Commission folks; feel free to let them know they can contact us or EPA if necessary.  
thanks

-----Original Message-----

From: Brian.E.Valiton@usace.army.mil [<mailto:Brian.E.Valiton@usace.army.mil>]  
Sent: Monday, January 03, 2011 9:09 AM  
To: Mauro, John  
Subject: New Bedford Harbor Pilot Cap Data (UNCLASSIFIED)

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Caveats: NONE

John: Rich forwarded this to me. I deal with Massachusetts. Thanks for letting us know. I will seek Corps comments.

A long but quick question.

Has your office (or maybe someone else has already done so) coordinated this yet with the Chapter 91 folks at Mass. DEP (who ultimately oversee State of Mass. harbormaster permitting of moorings), the New Bedford Harbor Development Commission folks, and Dave Janik the Mass. CZM coordinator for this area? [Note: The Harbormaster grants local mooring permits under State law. The Corps wouldn't necessarily know if and where the locals are permitting moorings.] Or were you wanting us to help do that?

Brian Valiton

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