



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2016-0026]

RIN 1625-AA00

Safety Zone, Block Island Wind Farm; Rhode Island Sound, RI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a 500-yard safety zone around each of five locations where the Block Island Wind Farm (BIWF) wind turbine generator (WTG) towers, nacelles, blades and subsea cables will be installed in the navigable waters of Rhode Island Sound, RI, from May 15 to October 31, 2016. These safety zones are intended to safeguard mariners from the hazards associated with construction of the BIWF. This regulation prohibits vessels from entering into, transiting through, mooring, or anchoring within these safety zones while construction vessels and associated equipment are working on-site (i.e., within 500 yards of a WTG) at one or more of the BIWF WTG sites, unless authorized by the Captain of the Port (COTP), Southeastern New England or the COTP's designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION] through October 31, 2016. For purposes of enforcement, actual notice will be used from May 15, 2016 until [INSERT DATE OF PUBLICATION].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0026 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or e-mail Mr. Edward G. LeBlanc, Chief of the Waterways Management Division at Coast Guard Sector Southeastern New England, telephone 401-435-2351, e-mail [Edward.G.LeBlanc@uscg.mil](mailto:Edward.G.LeBlanc@uscg.mil).

SUPPLEMENTARY INFORMATION:

**I. Table of Acronyms**

BIWF	Block Island Wind Farm
CFR	Code of Federal Regulations
COTP	Captain of The Port
DHS	Department of Homeland Security
DWW	Deepwater Wind
FR	<i><b>Federal Register</b></i>
NPRM	Notice of proposed rulemaking
NTM	Notice To Mariners
RIDEM	Rhode Island Department of Environmental Management
§	Section
TFR	Temporary Final Rule
U.S.C.	United States Code
WTG	Wind Turbine Generator

**II. Background Information and Regulatory History**

On February 16, 2016, the Coast Guard published an NPRM in the Federal Register titled Safety Zone, Block Island Wind Farm; Rhode Island Sound, RI, 81 FR 7718, proposing to create BIWF safety zones effective April 1, 2016. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to BIWF construction. Two comments were received requesting an extension of the initial comment period that ended on

March 17, 2016. On April 4, 2016, we published a Proposed Rule in the Federal Register, 81 FR 19097, opening a second comment period that closed on April 17, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. The original effective date of the safety zones created by this rule was April 1, 2016. The revised date is six weeks later, May 15, 2016. Construction and cable-laying vessels are already preparing to work in the vicinity of the BIWF. The safety of life and navigation for construction and support vessels, BIWF workers, mariners, and the boating public during construction activities in the vicinity of the BIWF in Rhode Island Sound, RI would be negatively impacted by a delay in the effective date of this TFR.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP Southeastern New England has determined that potential hazards associated with construction of the BIWF from May 15 to October 31, 2016 will be a safety concern for anyone within a 500-yard radius of any of the five WTG sites when and where construction vessels are present. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone during this construction period.

### **IV. Discussion of Comments, Changes, and the Rule**

Twelve comments were received. As noted above, the Coast Guard provided two distinct periods for the public to submit comments. The first comment period, announced in our NPRM published in the Federal Register on February 16, 2016, (81 FR 7718) was from February 16 to March 17, 2016. The second comment period, announced in our Proposed Rule published in the

Federal Register on April 4, 2016, (81 FR 19097) was from April 4-17, 2016. We received nine comments in the initial comment period. Two requested additional time to submit comments.

Three comments supported the safety zones proposed in the NPRM. One comment suggested that the Coast Guard also prohibit anchoring outside the safety zone areas. Another comment suggested extending the effective dates of the TFR to allow for construction delays. A third comment suggested that measures be implemented to prevent vessels near the safety zones from drifting into the safety zones.

Four comments opposed the safety zones, claiming the zones will cause irreparable economic harm to commercial fishing interest that normally fish in the vicinity of the BIWF unless adequately compensated by Deepwater Wind (DWW), the developers of the BIWF.

Three comments were received during the second comment period. One comment supported the safety zones as a necessary safety measure with minimal adverse environmental impacts. Two comments requested clarification of our NPRM. The Rhode Island Department of Environmental Management (RIDEM) asked us to clarify that the safety zones are 500 yards in radius centered on each BIWF WTG, not 500 yards diameter. The safety zones created by this TFR are five individual safety zones, each 500 yards in radius centered on each BIWF WTG. RIDEM and another comment also requested that we confirm that each safety zone will only be enforced (i.e., entry to non-construction vessels will be prohibited) when construction vessels are on-site (within 500 yards of a WTG). DWW intends to have vessels on site at only one or two WTG sites simultaneously, not all five concurrently. As written, this TFR will be enforced at each WTG site only when BIWF construction vessels are on-site at a particular WTG. For example, if BIWF construction vessels are at WTG site 1, vessels must remain at least 500 yards

from WTG 1. But vessels may approach WTGs 2 - 5 as close as desired that is consistent with prudent seamanship and navigation safety. As another example, if BIWF construction vessels are at WTG sites 3 and 4, then waters at sites 1, 2, and 5 are completely accessible to mariners, and so on.

Additionally, RIDEM requested that the Coast Guard consult with DWW to reduce the effective period of the safety zones created by this TFR to “minimize economic hardship on members of the RI fishing industry.” The Coast Guard consulted DWW on April 19, 2016 to discuss the length of the effective period. This TFR shortens the effective period by six weeks and clarifies that the safety zones will only be enforced at those individual WTG sites where construction vessels are on-scene, not all five sites simultaneously, which minimizes the times and areas that may impact the RI fishing industry.

RIDEM also requested that five days public notice be provided to inform the public of the specific WTG(s) at which construction activities would be taking place. DWW publishes a daily mariner notification at <http://dwwind.com/biwf-construction/>, which will include a 5-day forecast of locations of construction vessels and activities. Additionally, RIDEM has a fishery liaison officer whose duties included keeping the RI fishing community advised of BIWF construction activities.

The Coast Guard considered all these comments and provided the clarification above, but otherwise made no changes to the regulatory text of this rule from the proposed rule in the NPRM, other than to change the commencement date of the effective period of the TFR from April 1 to May 15, 2016.

This rule establishes a 500-yard safety zone around each of five locations where the

BIWF WTG towers, nacelles, blades, and subsea cables will be installed in the navigable waters of the Rhode Island Sound, RI, from May 15 to October 31, 2016.

These safety zones are intended to safeguard mariners from the hazards associated with construction of the BIWF. These safety zones are also of similar dimensions and duration as safety zones established in 2015 for the same purpose, during the first phase of construction of the BIWF. Vessels will be prohibited from entering into, transiting through, mooring, or anchoring within these safety zones at only those WTG sites where construction vessels and associated equipment are present unless authorized by the COTP, Southeastern New England or the COTP's designated representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and the time-

of-day of the safety zones. The safety zones are 500 yards in radius, centered on each of five WTG locations, and enforced at those WTG sites where construction vessels or construction activities are taking place. Also, construction of the five WTG sites is sequential, not concurrent, so that construction vessels and activities (and hence, safety zones) are present at only one or two sites at any given time. Vessels will be able to safely transit around these safety zones. The Coast Guard will publicize these safety zones in advance via the Local Notice to Mariners. Deepwater Wind will update its website daily to keep mariners informed of what safety zones, if any, may be enforced. Lastly, safety zones of the same size and duration were implemented for the first phase of the BIWF construction in 2015 with no significant impact to mariners or small entities.

#### **B. Impact on Small Entities**

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 received no comments from the Small Business Administration on this rulemaking. 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.

While some owners or operators of vessels intending to transit these safety zones may be small entities, for the reasons stated in section V.A above this rule would not have a significant economic impact on any vessel owner or operator.

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 rule. 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 the person listed in the FOR FURTHER INFORMATION CONTACT section.

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.

#### C. Collection of Information

This rule will not call for new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in

Executive order 13132.

Also, this 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves safety zones that would prohibit entry within 500 yards of each WTG site of the BIWF

while construction vessels and associated equipment are present at that particular WTG. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### **List of Subjects**

##### 33 CFR Part 165

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

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

#### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for Part 165 reads as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T0026 to read as follows:

**§165.T0026 Safety Zone, Block Island Wind Farm; Rhode Island Sound, RI**

(a) Location. Areas within a 500-yard radius of the following five positions are safety zones:

<u>Platform</u>	<u>Latitude</u>	<u>Longitude</u>
WTG 1	41°7'32.74"N	71°30'27.04"W
WTG 2	41°7'11.57"N	71°30'50.22"W
WTG 3	41°6'52.96"N	71°31'16.18"W
WTG 4	41°6'36.54"N	71°31'44.62"W
WTG 5	41°6'22.79"N	71°32'15.50"W

(b) Enforcement period. From May 15 to October 31, 2016, vessels will be prohibited from entering into these safety zones, when enforced, during construction activity of the five Block Island Wind Farm (BIWF) wind turbine generators (WTG) located in the positions listed in 2(a) above.

(c) Definitions. The following definitions apply to this section:

Designated Representative. A “designated representative” is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector Southeastern New England (COTP), to act on his or her behalf.

(d) Regulations. (1) The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the safety zones established in conjunction with the construction of the BIWF; Rhode Island Sound, RI. These regulations may be enforced for the duration of construction.

(2) Vessels must not enter into, transit through, moor, or anchor in these safety zones during periods of enforcement unless authorized by the COTP, Southeastern New England or the COTP's designated representative. Vessels permitted to transit must operate at a no-wake speed, in a manner which will not endanger construction vessels or associated equipment.

(3) Failure to comply with a lawful direction from the COTP, Southeastern New England or the COTP's designated representative may result in expulsion from the area, citation for failure to comply, or both.

Dated: April 21, 2016

J. T. KONDRATOWICZ.  
Captain, U.S. Coast Guard  
Captain of the Port Southeastern New England  
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