



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG-2015-1118]

RIN 1625-AA01

Anchorage Grounds; Lower Chesapeake Bay, Cape Charles, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; notice of public meetings.

SUMMARY: The Coast Guard proposes to amend the regulations for Hampton Roads, Virginia and adjacent water anchorage grounds by establishing a new, deep-water anchorage ground and relocating an existing anchorage ground near Cape Charles, VA on the Lower Chesapeake Bay. Maritime infrastructure improvements and growth in both size and volume of vessel traffic entering the port, including large and deep-draft vessels have prompted this proposed rulemaking to ensure that the Hampton Roads Anchorage Grounds continue to safely and effectively support current and future deep-draft vessel anchorage demands. We moved the proposed locations of the anchorage grounds in this notice of proposed rulemaking (NPRM) further offshore than the potential locations we identified in an advance notice of proposed rulemaking (ANPRM) we published in 2016. We did so based on our review and analysis of public comments on the ANPRM and the results of an environmental study referenced in our preliminary Record of Environmental Consideration for this NPRM. We propose to establish an Anchorage R that is further

offshore of Cape Charles, VA, and to relocate the existing Anchorage Q (Quarantine Anchorage) south of its current location to a more secluded location on the southern Chesapeake Bay. The intended effect of this proposed rulemaking is to protect the environment, facilitate the safe navigation of maritime commerce and national defense assets, and more safely and effectively support commercial vessel anchoring requirements on the Lower Chesapeake Bay. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before July 17, 2018. Additionally, the Coast Guard will hold several public meetings to allow the public the opportunity to provide comment. The first public meeting will be held on Monday, June 25, 2018, from 5 p.m. to 7 p.m. at Slover Public Library Meeting Room, 235 E. Plume Street, Norfolk, VA 23510. Two public meetings will be held on Tuesday, July 10, 2018, at Cape Charles Civic Center, 500 Tazwell Avenue, Cape Charles, VA; the first meeting will be held from 1 p.m. to 3 p.m. and the second meeting will be held from 6 p.m. to 8 p.m.

ADDRESSES: You may submit comments identified by docket number USCG-2015-1118 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email CDR Ken KostECKi, Sector Hampton Roads Prevention Chief, 757-668-5536, email HamptonRoadsWaterway@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AIS	Automated Information System
ANPRM	Advance notice of proposed rulemaking
COTP	Captain of the Port
CFR	Code of Federal Regulations
DOD	Department of Defense
DHS	Department of Homeland Security
FR	Federal Register
MD	Maryland
NM	Nautical Miles
§	Section
NPRM	Notice of proposed rule-making
PWSA	Port and Waterways Safety Act
U.S.C.	United States Code
VA	Virginia

II. Background, Purpose, and Legal Basis

On April 19, 2016, the Coast Guard published an advance notice of proposed rule-making (ANPRM) in the **Federal Register** (81 FR 22939) to solicit public comments on amending certain anchorage regulations in Hampton Roads for the possible creation of a new anchorage in the lower Chesapeake Bay near Cape Charles, VA. We received 35 comment letters in response to the ANPRM. On June 27, 2016, we published a 45-day extension and announced two public meetings (81 FR 41487). On August 16, 2016, we announced one additional meeting and reopened the comment period (81 FR 54531). We scheduled the meetings to receive comments on the ANRPM to allow for greater public involvement. The meetings were held in –

- Norfolk, VA, on July 19, 2016;
- Melfa, VA, on July 20, 2016; and
- Cape Charles, VA, on August 17, 2016.

At the three public meetings, we heard from 20 speakers and we received a total of 35 individual comment letters. On December 16, 2016, the Coast Guard issued a news release to inform the public that a review of comments and the environmental study would be conducted. In November 2017, the Coast Guard completed its environmental review. In January 2018, the Center for Disease Control, the U.S. Navy Fleet Forces Command, and the U.S. Army Corps of Engineers, North Atlantic provided comments identifying and addressing adverse impacts from the proposed anchorage establishment.

The purpose of this NPRM is to solicit comments on proposed rulemaking for establishing a federal commercial anchorage ground, Anchorage R, 3 nautical miles (NM) west of Cape Charles, VA and relocating the existing quarantine anchorage ground currently off Cape Charles, VA to a more secluded location in the lower Chesapeake Bay that is 6 NM southwest of Fishermans Island, VA. With the increasing trend of larger and deeper-draft ships calling within Virginia and Maryland, our efforts to improve navigation safety of both national defense and commercial vessels and to protect the environment can be accomplished by providing an anchorage of adequate size, depth and capacity.

The legal basis and authorities for this notice of proposed rulemaking are found in 33 U.S.C. 471, 33 CFR 1.05-1, DHS Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory anchorage grounds.

III. Discussion of Comments on ANRPM

This section provides a detailed discussion of the public comments received during the ANPRM's comment period and public meeting. We received 35 comment letters in response to the ANPRM. In addition, we hosted three public meetings to provide another forum for obtaining public feedback on the ANRPM.

Twenty-three comments were received from the public meetings. Comments submitted to the online docket and received at the public meeting aligned into five categories: environmental concerns, local economy and tourism, safety and security compliance concerns, view shed concerns, and anchorage proponent. Copies of the public meeting sign-in sheets and written comments received are available for viewing in the public docket for this rulemaking. Commenters represented a wide range of individuals and entities, including State and local government officials, port authorities, representatives of affected industries, such as maritime, port, and other facilities, and private citizens. The comments received from these parties helped to inform the proposal in this NPRM.

1. Environmental Concerns

We received 22 comments opposing the anchorage location due to environmental concerns, such as light and noise pollution and potential vessel discharge. In the ANPRM, we inquired about the possible establishment of a deep-water anchorage ground west of Cape Charles, VA on the Chesapeake Bay. These comments on the ANPRM combined with the results of our environmental study caused us to move the anchorages we are proposing in this NPRM further offshore. The Coast Guard has prepared a preliminary Record of Environmental Consideration (REC) for this NPRM and has made a preliminary determination that the proposed Anchorage R and new Quarantine Anchorage do not cumulatively or individually have a significant effect on the human environment.

Also, we noted that there are existing laws and regulations in place to govern behavior of mariners and vessels related to these concerns about the release of pollutants. In terms of the discharge of pollutants, our regulations in 33 CFR part 151 and the Act to

Prevent Pollution from Ships implement provisions of the International Convention for Prevention of Pollution from Ships and subject violators to penalties. Also, the Ports and Waterways Safety Act (PWSA) of 1972, (33 U.S.C. 1221, 1223, 1228, 1232 et seq.) and PWSA-implementing regulations help us ensure vessel compliance with all applicable standards, vessel operating requirements, vessel conditions for entry into port and enforcement provisions. In addition, 46 U.S.C. subtitle II, part B, specifically 3305, 3307, and 3714, authorize and call for merchant vessel inspections and examinations. Foreign-flagged vessels are subject to Port State Control examinations to ensure compliance with applicable marine pollution, sewage, waste, and safety and security laws and regulations. Additionally, under current COTP procedures, Sector Hampton Roads has instituted a random and unannounced spot check program for any vessel, foreign or U.S. flagged, anchored off of Cape Charles to ensure regulatory compliance.

Under 33 CFR 110.168(c)(8) and (9), the COTP may prescribe specific conditions for vessels preventing them from being in a dead ship status, (that is, control unavailable for normal operations) while in an anchorage ground, without prior approval of the COTP. Under § 160.216 of this chapter, vessels experiencing casualties, such as main propulsion, main steering or anchoring equipment malfunction, or which are planning to perform main propulsion engine repairs or maintenance, must immediately notify the Coast Guard COTP. Under § 160.111 of this chapter, the Coast Guard COTP may direct a vessel to depart the anchorage during periods of severe weather or at other times as deemed necessary in the interest of port safety. During these adverse weather conditions, under § 110.168(c)(8) and (9) of this chapter the vessel operator in an anchorage ground must comply with all severe weather precautionary measures directed by the COTP to include

but not limited to having additional anchors ready for letting go and standing a continuous and live anchor watch.

To further enhance the safety of the waters of the Chesapeake Bay, the Quarantine Anchorage was relocated to a more secluded location to provide an additional layer of protection should a hazardous condition exist onboard the vessel.

2. Local Economy and Tourism

Sixteen comments received were opposed to the anchorage due to the proximity to the shore and its impact to the commercial and recreational boaters that use the Cape Charles City Channel, also known as the Cherrystone Inlet Channel. In this NPRM, the Coast Guard shifted the anchorage 3 NM from the coastline and into deeper water keeping Cherry Stone Channel Inlet, connected to Cape Charles, VA, open to workboats, fishing vessels, and recreational boats transiting this inlet to support the local economy and tourism. Also, by moving the anchorage north of an existing regulated navigation area, 33 CFR 165.501, this will direct vessels to no longer routinely anchor offshore Bulters Bluff, Kiptopeke State Park Beach, Jackspot at the Sunset Beach and Chesapeake Bay Resort and Beach Club but instead to use a dedicated anchorage ground. This will move the lights from ships anchored there further offshore.

Although boaters would be allowed to fish in the proposed anchorage ground, we would strongly discourage crab pot fishing as we would around any places vessels anchor because lines may get caught or cut by the anchors and propellers of vessels anchoring. Mariners deciding to fish in the anchorage ground would do so at the risk of their lines or other fishing gear getting snagged or cut by anchor lines or propellers. Fishing vessels

would also need to comply with the provisions outlined in the Navigation Rules of the Road (see 33 CFR part 83).

An additional commenter opposed the anchorage contemplated in the ANPRM requesting that if the ships could not anchor closer to Norfolk than they should anchor at sea until they are called to port. The Coast Guard cannot direct vessels to anchor greater than 12 NM offshore or to stay at sea where they could become exposed to unsafe environmental weather conditions. However, in this NPRM, the proposed anchorage is being shifted further west from Cape Charles, VA and will now be regulated, enhancing the overall safety and security of both vessels and the public.

3. Safety and Security Compliance Concerns

Ten comments were received regarding vessel safety and crewmember security. Under 33 CFR part 160, subpart C, in general, U.S. vessels in commercial service and foreign vessels entering port must provide a Notice of Arrival to the Coast Guard. The vessel's Notice of Arrival is vetted by numerous federal agencies to ensure compliance with applicable safety and security laws prior to the vessel and its crews entering U.S. waters. Speaking specifically to foreign crewmembers, U.S. Customs and Border Protection (CBP) screen and provide escort protocol for those individuals who are seeking to go ashore. All crewmembers must remain onboard the vessel unless clearance from CBP has been obtained prior to going ashore.

4. View from Shore Concerns

A total of six comments were received opposing the anchorage due to the negative impact anchored vessels could have on the view from shore and diminished property values. The Coast Guard considered these comments to find an alternate anchorage area.

Based on exposure to weather, tug and barge traffic density, and navigational safety concerns for areas west of Chesapeake Channel due to drafts between 25 feet and 35 feet with numerous shoals, the proposed alternative areas were considered unsafe for deep draft vessels to anchor. To mitigate the issues associated with the view shed, the Coast Guard moved the anchorage to 3 NM offshore vice the original 1.5NM and as far west as 500 yards from the Chesapeake Channel. Directly east of Cape Charles heading north towards the Cherry Stone Camp Grounds, the anchorage gets progressively narrower to reduce the overall number of vessels offshore that would be viewed on the horizon.

5. Anchorage Proponent

Three responses were received in support of a new, deep-water anchorage due to the growing maritime infrastructure in the Commonwealth of Virginia. With the support of the anchorage, there were also recommendations to review the existing anchorages within the lower Chesapeake Bay, to maintain the original anchorage proposal, and to expand the boundaries of the anchorage proposal. The existing anchorages will not be reviewed for this rulemaking. The need to adjust the anchorage to include deep water to the north of the proposed area was suggested and incorporated into this adjusted proposal. Various mariner subject matter experts were consulted to ensure navigation safety of both anchored vessels and vessels transiting near the proposed Anchorage R and the proposed Quarantine Anchorage. With limited availability of a deep draft anchorage in the existing naval anchorages, this anchorage proposal is anticipated to enhance the navigation safety of the port and more safely and effectively support commercial vessel anchoring requirements on the Lower Chesapeake Bay.

IV. Discussion of the Proposed Rule

The Coast Guard proposes to establish a new Anchorage R and relocate the existing Quarantine Anchorage. This proposal reflects our consideration of all comments received from the ANPRM and the Record of Environmental Consideration. We believe this will more effectively establish a new deep-water anchorage ground for commercial vessels to support the new and projected growth in maritime commerce vessel traffic throughout the Port of Virginia. The approximate depths of the proposed new Anchorage R will be located in naturally deep water with charted depths between 25 and 101 feet. The average depth of the northern half of the anchorage is between 45 and 101 feet. The average depth of the southern half of the anchorage is between 25 and 45 feet.

The 7.9 NM long eastern boundary of the proposed Anchorage R is located 3 NM to the west of landside Cape Charles, VA on the Lower Chesapeake Bay. The southernmost boundary is 3.9 NM, and runs parallel with, and 500 yards north of the existing Regulated Navigation Area (33 CFR 165.501) connected along the SE to S coordinates listed in the proposed regulatory language below. The western boundary of the anchorage grounds runs parallel along, and no less than 500 yards east of York Spit Channel for 13.9 NM to include the 11.2 NM between lighted buoy 24 and lighted buoy 38 and then continues to the northeast for 2.7 NM north of lighted buoy 38, connected along the listed S, SW and NW coordinates. The final northern most boundary is 0.6 NM connected by the listed NW and NE coordinates.

The Coast Guard proposes moving the existing Quarantine Anchorage (Anchorage Q), from the current location 3.5 NM to the west of landside of Cape Charles, V.A., and east of York Spit Channel between lighted buoys 36 to 38, relocating it 6 NM southwest of Fishermans Point, VA. The new location runs 625 yards west of York Spit Channel

between buoys 16 and 18. The eastern boundary of proposed Anchorage Q runs parallel to York Spit Channel for 2.2 NM, connected by the NE and SE coordinates as outlined in the proposed regulatory language. The southernmost boundary is 1.3 NM from the emergency restricted area outside the Chesapeake Bay Bridge Tunnel, connected by the listed SE and SW coordinates. The westernmost boundary is 2.2 NM, connected by the listed SW and NW coordinates. The northernmost boundary is 450 yards southwest of York River Entrance Channel and runs for 1.3 NM, connected by the listed NW and NE coordinates.

The regulatory text we are proposing, including the coordinates mention above, appears at the end of this document. You may find a drawing of the proposed anchorage grounds in the docket. Look for Illustration of Contemplated Anchorage “R” and “Quarantine” Anchorage.

V. Regulatory Analyses

We developed this proposed 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 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and historical vessel traffic data pertaining to the proposed anchorage locations. The regulation would ensure approximately 18 square miles of anchorage grounds are designated to provide a necessary commercial deep draft anchorage and enhance the navigational safety of large naval and commercial vessels transiting within the lower Chesapeake Bay. In reviewing historical Automated Information System (AIS) track line data of vessel transits, the proposed Anchorages Quarantine and R areas are safe locations for vessels to anchor in a minimally trafficked section of the Chesapeake Bay while maintaining a more appropriate safe distance from shore.

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 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.

While some owners or operators of vessels intending to use the anchorage may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator. The towns and communities along the western coast of Eastern Shore of Virginia have an economy based on tourism and numerous small entities and businesses. The anchorage will regulate and

move vessels who are currently anchoring in the general vicinity away from the shore and beaches, lessening impacts these small entities may currently experience.

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 explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a 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 proposed 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 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed 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 proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1 (series) OM, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination 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 proposed rule involves amending the regulations for Hampton Roads and adjacent water anchorages by establishing an anchorage, Anchorage R, 3 NM west of Cape Charles, VA and relocating the existing Quarantine Anchorage, Anchorage

Q, to a more secluded position that is 6 NM southwest of Fishermans Point, VA.

Normally, such actions are categorically excluded from further review under paragraphs L59 (a) and L59 (b) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is 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 proposed rule.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy/ docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online

docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We plan to hold three public meetings to receive oral comments on this NPRM, one in Norfolk, VA and two in Cape Charles, VA. The first public meeting will be held on Monday, June 25, 2018, from 5 p.m. to 7 p.m. at Slover Public Library Meeting Room, 235 E. Plume Street, Norfolk, VA 23510. Two public meetings will be held on July 10, 2018 at Cape Charles Civic Center, 500 Tazwell Avenue, Cape Charles, VA; the first meeting will be held from 1 p.m. to 3 p.m. and the second meeting will be held from 6 p.m. to 8 p.m. For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact the person named in the FOR FURTHER INFORMATION CONTACT section, above.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110 – ANCHORAGE REGULATIONS

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

Authority: 33 U.S.C., 471, 1221 through 1236, 2071; 33 CFR 1.05-1; Department Homeland Security Delegation No 0170.1.

2. In §110.168, add introductory text in paragraph (a), revise paragraph (a)(6), and add paragraph (a)(7) to read as follows:

§110.168 Hampton Roads, Virginia and adjacent waters.

(a) *Anchorage Grounds*. All coordinates in this section for anchorage grounds are based on North American Datum of 1983 (NAD 83).

* * * * *

(6) *Anchorage Q. Quarantine Anchorage*. The waters bound by a line connecting the following points:

Latitude	Longitude
37° 05' 40" N	076° 08' 12" W.
37° 05' 40" N	076° 07' 19" W.
37° 03' 46" N	076° 05' 58" W.
37° 03' 46" N	076° 06' 51" W.

(7) *Anchorage R*. The waters all within the Chesapeake Bay, bound by a line connecting the following points:

Latitude	Longitude
37° 19' 10" N	076° 05' 00" W.
37° 12' 00" N	076° 05' 00" W.
37° 09' 08" N	076° 08' 19" W.
37° 11' 23" N	076° 08' 49" W.
37° 19' 10" N	076° 05' 46" W.

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Dated: June 8, 2018.

Meredith Austin,
Rear Admiral, U.S. Coast Guard,
Commander, Fifth Coast Guard District.
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