



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket Number USCG-2023-0073]

RIN 1625-AA00

Safety Zone; South Fork Wind Farm Project Area, Outer Continental Shelf, Lease OCS-A 0517, Offshore Rhode Island, Atlantic Ocean

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is extending the effective period for the 13 temporary 500-meter temporary safety zones around the construction of 12 wind turbine generators (WTGs) and one offshore substation (OSS) located in the South Fork Wind Farm (SFWF) project area within Federal waters on the Outer Continental Shelf (OCS), specifically, in the Bureau of Ocean Energy Management (BOEM) Renewable Energy Lease Area OCS-A 0517, approximately 16 nautical miles (NM) southeast of Block Island, Rhode Island, and 30 NM east of Montauk Point, New York. This rule extends the effective period of the existing safety zones for an additional five months. The safety zones will now end on May 31, 2024. This action is necessary to provide for the safety of life, property, and the environment during the anticipated construction of each facility's monopile type foundation and subsequent installation of the WTGs turbines and OSS platform. When enforced, only attending vessels and those vessels specifically authorized by the First Coast Guard District Commander or a designated representative are permitted to enter or remain in the safety zones.

DATES: This temporary interim rule is effective from January 1, 2024, through May 31,

2024. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG–2023–0073 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0073 in the search box and click "Search." Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Mr. Craig Lapiejko, Waterways Management, at Coast Guard First District, telephone 617-603-8592, e-mail craig.d.lapiejko@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BOEM	Bureau of Ocean Energy Management
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
OCS	Outer Continental Shelf
OSS	Offshore substation
NM	Nautical mile
§	Section
SFWF	South Fork Wind Farm
U.S.C.	United States Code
WTG	Wind turbine generator

II. Background, Purpose, and Legal Basis

On May 2, 2023, the Coast Guard published a temporary final rule (TFR) establishing 13 temporary 500-meter safety zones around the construction of 12 wind turbine generators (WTGs) and one offshore substation (OSS) located in the South Fork Wind Farm (SFWF) project area within Federal waters on the Outer Continental Shelf

(OCS), specifically, in the Bureau of Ocean Energy Management (BOEM) Renewable Energy Lease Area OCS-A 0517, approximately 16 nautical miles (NM) southeast of Block Island, Rhode Island, and 30 NM east of Montauk Point, New York (88 FR 27402).

The Coast Guard originally published a temporary rule to be effective, and enforceable, through December 31, 2023. We are now extending it to May 31, 2024, to provide more time for the completion of the installation of the wind turbine generator (WTG) structures. This rule extends the effective period of the safety zones for five months until May 31, 2024.

The First Coast Guard District Commander has determined that extension of the 13 safety zones through rulemaking is warranted to ensure the safety of life, property, and the environment within a 500-meter radius of each of the 13 facilities during their construction.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to extending the effective period for the safety zone because doing so would be impracticable and contrary to the public interest. The Coast Guard did not receive sufficient notice that the windfarm construction would not be completed until May 31, 2024, to allow time to publish an NPRM, reviewing public comment, and publishing a subsequent rule. Providing this prior public notice and opportunity to comment is contrary to the public’s interest and impracticable because doing so could result in a lapse in the safety zone’s

enforceability, and safety concerns with vessels and persons transiting too close to the construction efforts. Immediate action is needed to protect persons and property from the potential dangers associated with the construction.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary interim rule effective less than 30 days after publication in the Federal Register. The current temporary final rule around the windfarm construction ends on December 31, 2023, but the construction will be ongoing after that date.

Delaying the effective date of this temporary interim rule would be contrary to the public's interest and impracticable because action is needed starting January 1, 2024, to protect persons and vessels from the potential safety hazards associated with the ongoing windfarm construction.

We are soliciting comments on the extension of the enforcement period of this safety zone. If the Coast Guard determines that changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority provided in 14 U.S.C. 544, 43 U.S.C. 1333, and Department of Homeland Security (DHS) Delegation No. 00170.1, Revision No. 01.3. As an implementing regulation of this authority, 33 CFR part 147 permits the establishment of safety zones for non-mineral energy resource permanent or temporary structures located on the OCS for the purpose of protecting life and property on the facilities, appurtenances and attending vessels, and on the adjacent waters within the safety zone (see 33 CFR 147.10). Accordingly, a safety zone established under 33 CFR part 147 may also include provisions to restrict, prevent, or control certain activities, including access by vessels or persons to maintain safety of life, property, and the environment.

IV. Discussion of Changes and the Rule

This rule extends the effective period of the 13 temporary 500-meter safety zones around the construction of 12 WTGs and one OSS on the OCS for five additional months until May 31, 2024. When enforced, this rule will continue to prohibit unauthorized vessel or person to enter the safety zone without obtaining permission from the First Coast Guard District Commander or a designated representative. All other requirements in the temporary safety zone issued on May 2, 2023 (88 FR 27402), remain the same.

If the project is completed before May 31, 2024, enforcement of the safety zones will be suspended, and notice given via Local Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes and Executive orders follows.

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. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB).

Aligning with 33 CFR 147.15, the safety zones established will extend to a maximum distance of 500-meters around the OCS facility measured from its center point. Vessel traffic will be able to safely transit around the safety zones, which will impact a small, designated area in the Atlantic Ocean, without significant impediment to their overall voyage. These safety zones are necessary to provide for the safety of life, property, and the environment during the construction of each structure, in accordance with Coast Guard maritime safety missions and the First Coast Guard District Commander’s finding.

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 zero comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule may affect owners or operators of vessels intending to transit or anchor in the SFWF, some of which might be small entities. However, these safety zones will not have a significant economic impact on a substantial number of these entities because they are temporarily enforced, allow for deviation requests, and do not impact vessel transit significantly. Regarding the enforcement period, although these safety zones will continue to be in effect through May 31, 2024, vessels would only be prohibited from the regulated zone during periods of actual construction activity in correspondence to the period of enforcement. We expect the enforcement period at each location to last approximately 48 hours as construction progresses from one structure location to the next. Additionally, vessel traffic could pass safely around each safety zone using an alternate route. Use of an alternate route likely will cause minimal delay for the vessel in reaching their destination depending on other traffic in the area and vessel speed. Vessels will also be able to request deviation from this rule to transit through a safety zone. Such requests will be considered on a case-by-case basis and may be authorized by the First Coast Guard District Commander or a designated representative. For these reasons, the Coast Guard expects any impact of this rulemaking establishing a temporary safety zone

around these OCS facilities to be minimal and have no significant economic impact on small entities.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 call or email 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 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 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.

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (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 the establishment of a safety zone around an OCS facility to protect life, property, and the marine environment. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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.

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. If we determine that changes to the temporary interim rule are necessary, the Coast Guard will publish a temporary final rule or other appropriate document. 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.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2023-0073 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this temporary interim rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. Also, if you click on the Dockets tab and then the temporary interim rule, you should see a "Subscribe" option for email alerts. The option will notify you when

comments are posted, or a subsequent document is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (waters).

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 544; 43 U.S.C. 1333; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 147.T01-0073 to read as follows:

§ 147.T01-0073 Safety Zones; South Fork Wind Farm Project Area, Outer Continental Shelf, Lease OCS-A 0517, Offshore Rhode Island, Atlantic Ocean.

(a) *Description.* The area within 500-meters of the center point of the positions (North American Datum of 1983 (NAD83)) provided in the following table is a safety zone:

Table 1 to Paragraph (a)

Name	Facility Type	Latitude	Longitude
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AM05	WTG	N 41.10879493	W -71.19110374
AM06	WTG	N 41.10921219	W -71.16906236
AM07	WTG	N 41.10962524	W -71.14702052
AM08	WTG	N 41.11003408	W -71.12497822
AN05	WTG	N 41.09212418	W -71.19054951
AN06	WTG	N 41.09195639	W -71.16788437
AN08	WTG	N 41.09336261	W -71.12444068
AN09	WTG	N 41.093767	W -71.1024035
AP05	WTG	N 41.07545338	W -71.18999573
AP06	OSS	N 41.07587016	W -71.16796548
AP07	WTG	N 41.07628273	W -71.14593476
AP08	WTG	N 41.07669109	W -71.12390359
AP09	WTG	N 41.07709524	W -71.10187197

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the First Coast Guard District Commander in the enforcement of the safety zones.

(c) *Regulations.* No vessel may enter or remain in the safety zone in paragraph (a) of this section except for the following:

- (1) An attending vessel as defined in § 147.20; and
- (2) A vessel authorized by the First Coast Guard District Commander or a designated representative.

(d) *Request for permission.* Persons or vessels seeking to enter the safety zone

must request authorization from the First Coast Guard District Commander or a designated representative. If permission is granted, all persons and vessels must comply with lawful instructions of the First Coast Guard District Commander or designated representative via VHF-FM channel 16 or by phone at 866-842-1560 (First Coast Guard District Command Center).

(e) *Effective and enforcement periods.* This section is effective from January 1, 2024, through 11:59 p.m. on May 31, 2024. But it will only be enforced during active construction or other instances which may cause a hazard to navigation deemed necessary by the First Coast Guard District Commander. The First Coast Guard District Commander will make notification of the exact dates and times in advance of each enforcement period for the locations in paragraph (a) of this section to the local maritime community through the Local Notice to Mariners and will issue a Broadcast Notice to Mariners via marine channel 16 (VHF-FM) as soon as practicable in response to an emergency. If the project is completed before May 31, 2024, enforcement of the safety zones will be suspended, and notice given via Local Notice to Mariners. The First Coast Guard District Local Notice to Mariners can be found at: <https://www.navcen.uscg.gov>.

Dated: December 13, 2023.

J. W. Mauger,

Rear Admiral, U.S. Coast Guard,

Commander, First Coast Guard District.

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