



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 147

[Docket Number USCG-2023-0277]

RIN 1625-AA00

**Safety Zone; Vineyard Wind 1 Wind Farm Project Area, Outer Continental Shelf,**

**Lease OCS-A 0501, Offshore Massachusetts, Atlantic Ocean**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary interim rule and request for comments.

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**SUMMARY:** The Coast Guard is extending the effective period for the 63 temporary 500-meter safety zones around the construction of each facility during the development of the Vineyard Wind 1 Wind Farm project area within federal waters on the Outer Continental Shelf, approximately 12 nautical miles offshore of Martha’s Vineyard, Massachusetts. This rule extends the effective period of the existing safety zones for an additional two years. The safety zones will now end on May 31, 2026. When enforced, only attending vessels and vessels with authorization are permitted to enter or remain in the safety zones.

**DATES:** This temporary interim rule is effective from June 1, 2024, through May 31, 2026. 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–2023–0277 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-2023-0277 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](mailto:craig.d.lapiejko@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
ESP	Electrical Service Platform
FR	<b>Federal Register</b>
NPRM	Notice of Proposed Rulemaking
OCS	Outer Continental Shelf
NM	Nautical Mile
§	Section
U.S.C.	United States Code
WTG	Wind Turbine Generator
VHF-FM	Very High Frequency - Frequency Modulation
VW1WF	Vineyard Wind 1 Wind Farm

**II. Background, Purpose, and Legal Basis**

On June 30, 2023, the Coast Guard published a temporary final rule (TFR) establishing 63 temporary 500-meter safety zones around the construction of 62 wind turbine generators (WTGs) and one electrical service platform (ESP) located in the Vineyard Wind 1 Wind Farm (VW1WF) project area within federal waters on the Outer Continental Shelf (OCS), specifically in the northern portion of Bureau of Ocean Energy Management Renewable Energy Lease Area OCS–A 0501, approximately 12 nautical miles (NM) offshore of Martha’s Vineyard, Massachusetts and 12 NM offshore Nantucket, Massachusetts. (88 FR 42237).

The Coast Guard originally published a temporary rule to be effective, and enforceable, through May 31, 2024. We are now extending it to May 31, 2026, to

provide more time for the completion of the installation of the WTG structures. This rule extends the effective period of the safety zones for two years until May 31, 2026.

The First Coast Guard District Commander has determined that extension of the 63 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 63 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, 2026, 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 May 31, 2024, 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 June 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 Comments, Changes, and the Rule**

This rule extends the effective period of the 63 temporary 500-meter safety zones around the construction of 62 WTGs and one ESP on the OCS for two additional years until May 31, 2026. 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 June 30, 2023 (88 FR 42237) remain the same. If the project is completed before May 31, 2026, 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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866 as amended by Executive Order 14094 (Modernizing Regulatory Review). 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 VW1WF, 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, 2026, 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 all small entities in understanding this temporary final 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 temporary final 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 temporary final rule will not result in such an expenditure, we do discuss the potential effects of this temporary final rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this final 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 safety zones 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-2023-0277 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. Revise and republish § 147.T01-0277 to read as follows:

**§ 147.T01-0277 Safety Zones; Vineyard Wind 1 Wind Farm Project Area, Outer Continental Shelf, Lease OCS-A 0501, Offshore Massachusetts, Atlantic Ocean.**

(a) *Description.* The area within 500-meters of the center point of the positions provided in the following table 1 to paragraph (a) is a safety zone:

**Table 1 to Paragraph (a)**

<b>Name</b>	<b>Facility Type</b>	<b>Latitude</b>	<b>Longitude</b>
AL38	WTG	N 41.1370161	W -70.4638911
AM37	ESP	N 41.1200616	W -70.4851682
AM38	WTG	N 41.1203387	W -70.4635204
AM39	WTG	N 41.1206168	W -70.4414663
AN36	WTG	N 41.1030927	W -70.5072461
AN37	WTG	N 41.1033791	W -70.4851982

AN38	WTG	N 41.1036612	W -70.4631500
AN39	WTG	N 41.1039392	W -70.4411014
AP35	WTG	N 41.0861251	W -70.5289069
AP36	WTG	N 41.0864155	W -70.5068649
AP37	WTG	N 41.0867017	W -70.4848226
AP38	WTG	N 41.0869837	W -70.4627799
AP39	WTG	N 41.0872615	W -70.4407369
AP40	WTG	N 41.0875351	W -70.4186937
AP41	WTG	N 41.0878044	W -70.3966501
AQ34	WTG	N 41.0691535	W -70.5505566
AQ35	WTG	N 41.0694480	W -70.5285205
AQ36	WTG	N 41.0697382	W -70.5064840
AQ37	WTG	N 41.0700243	W -70.4844472
AQ38	WTG	N 41.0703061	W -70.4624101
AQ39	WTG	N 41.0705837	W -70.4403727
AQ40	WTG	N 41.0708571	W -70.4183350
AQ41	WTG	N 41.0711263	W -70.3962970
AQ42	WTG	N 41.0713913	W -70.3742587
AR33	WTG	N 41.0521781	W -70.5721951
AR34	WTG	N 41.0524766	W -70.5501649
AR35	WTG	N 41.0527709	W -70.5281343
AR36	WTG	N 41.0530609	W -70.5061034
AR37	WTG	N 41.0533468	W -70.4840722
AR38	WTG	N 41.0536285	W -70.4620407

AR39	WTG	N 41.0539059	W -70.4400088
AR40	WTG	N 41.0541792	W -70.4179767
AR41	WTG	N 41.0544482	W -70.3959442
AR42	WTG	N 41.0547130	W -70.3739115
AS32	WTG	N 41.0351987	W -70.5938225
AS33	WTG	N 41.0355012	W -70.5717982
AS34	WTG	N 41.0357995	W -70.5497735
AS35	WTG	N 41.0360937	W -70.5277485
AS36	WTG	N 41.0363836	W -70.5057231
AS37	WTG	N 41.0366693	W -70.4836975
AS38	WTG	N 41.0369508	W -70.4616715
AS39	WTG	N 41.0372281	W -70.4396452
AS40	WTG	N 41.0375012	W -70.4176186
AS41	WTG	N 41.0377701	W -70.3955918
AS42	WTG	N 41.0380347	W -70.3735646
AT33	WTG	N 41.0188243	W -70.5714016
AT34	WTG	N 41.0191225	W -70.5493824
AT35	WTG	N 41.0194164	W -70.5273630
AT36	WTG	N 41.0197062	W -70.5053432
AT37	WTG	N 41.0199917	W -70.4833231
AT38	WTG	N 41.0202731	W -70.4613027
AT39	WTG	N 41.0205502	W -70.4392819
AT40	WTG	N 41.0208231	W -70.4172609
AT41	WTG	N 41.0210918	W -70.3952396

AU36	WTG	N 41.0030287	W -70.5049636
AU37	WTG	N 41.0033141	W -70.4829490
AU38	WTG	N 41.0035953	W -70.4609341
AU39	WTG	N 41.0038722	W -70.4389190
AU40	WTG	N 41.0041450	W -70.4169035
AV37	WTG	N 40.9866364	W -70.4825752
AV38	WTG	N 40.9869174	W -70.4605659
AV39	WTG	N 40.9871942	W -70.4385563
AW38	WTG	N 40.9702395	W -70.4601980

(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 zones described in paragraph (a) of this section except for the following:

- (1) An attending vessel as defined in 33 CFR 147.20;
- (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 617-223-1560 (First Coast Guard District Command Center).

(e) *Effective and enforcement periods.* This section is effective from June 27, 2023, through 11:59 p.m. on May 31, 2026. 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, 2026, 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: <http://www.navcen.uscg.gov>.

Dated: April 27, 2024

J. W. MAUGER

Rear Admiral, U.S. Coast Guard

Commander, First Coast Guard District.

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