



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2024-1093]

RIN 1625-AA00

Safety Zone; Cable Laying Corridor, Atlantic Ocean, Virginia Beach, Virginia

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary, moving safety zone to surround nearshore operations conducted by a cable laying barge. This action is necessary to provide for the safety of life on these navigable waters near Virginia Beach, Virginia. Cable lay and burial operations will create navigational hazards moving along a corridor from shore extending seaward 12 NM. This rulemaking will prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port, Sector Virginia or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through March 1, 2026. For the purposes of enforcement, actual notice will be used from March 2, 2025, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2024-1093 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 LCDR Justin Strassfield, Sector Virginia, Waterways Management Division, U.S. Coast Guard, Telephone: (571) 608-2969; or viriniawaterways@uscg.mil .

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BOEM	Bureau of Ocean Energy Management
CLB	Cable Lay/Layer Barge
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NEPA	National Environmental Policy Act of 1969
NM	Nautical Miles
ROD	Record of Decision
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On January 28, 2024, the Bureau of Ocean Energy Management (BOEM) approved the Construction and Operations Plan for the Coastal Virginia Offshore Wind – Commercial (CVOW-C) Project. As explained in the Record of Decision (ROD)¹ for the project, the action consists of the construction, operation, maintenance, and eventual decommissioning of a wind energy facility consisting of up to 202 wind turbine generators and three offshore substations in Lease Area OCS-A 0483 *and associated export cables located offshore Virginia*. In December 2023, Dominion Energy notified the Coast Guard that it would begin construction of the generators and substations, and the Coast Guard issued a temporary final rule establishing a safety zone around the construction areas on March 26, 2024 (89 FR 20851). On December 3, 2024, Dominion Energy notified the Coast Guard that it planned to begin the cable laying portion of the

¹ BOEM announced the availability of the ROD at 88 FR 75624 (Nov. 3, 2023). The ROD is available online, at <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/CVOW-C-ROD.pdf> .

project in January 2025 and Dominion Energy requested that the Coast Guard establish a moving safety zone to limit access to areas surrounding the cable laying operations, to be conducted by the CLB (cable layer barge) ULISSE.

To address stability requirements for the cable laying and burial process, the CLB uses multipoint anchorage configurations which are highly dynamic and which create large, unseen hazards to navigation. To mitigate these hazards, someone familiar with the CLB's current anchoring positions must determine if there are safe transit corridors within 1000 yards of the CLB to allow a vessel to transit, or if a transiting vessel must avoid the full 1000 yards radius of the safety zone. The Sector Virginia Captain of the Port (COTP) therefore determined that the hazards associated with anchorage arrangements warranted action by the Coast Guard, and the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Safety Zone; Cable Laying Corridor, Atlantic Ocean, Virginia Beach, Virginia" on Jan 15, 2025 (90 FR 3729). During the comment period that ended Jan 29, 2025, we received one submission.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because action is needed to protect personnel, and vessels in the navigable waters within the moving safety zone while cable laying operations conducted by the CLB ULISSE are underway.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. As explained in section II, above, the anchorage configurations used to support the cable laying and burial operations are highly dynamic and create large, unseen hazards to navigation. A safety zone is needed to allow a designated representative, in communication with the anchor-handling vessels, to determine if safe transit corridors exist, whether to allow transit through the safety zone, and to communicate these hazards

and possible safe transit corridors, thereby allowing the Coast Guard to minimize the burden on non-project vessels seeking to transit safely through or around the safety zone.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one submission. The commenter raised both environmental concerns associated with the underlying cable laying action and concerns associated with the potential effect of the proposed safety zone on navigation and commercial fishing. He requested a reduction both in the size of the safety zone and in its duration. He also requested that there be an environmental assessment or environmental impact statement, in accordance with the National Environmental Policy Act of 1969 (NEPA). The establishment of the safety zone, however, is independent of authorization to conduct the underlying cable laying operations, and the environmental issues the commenter raises are therefore outside the scope of this rulemaking. The commenter may wish to direct his environmental concerns to BOEM, which, as noted in a footnote in the background section. We will, however, address the commenter's recommendations relating to the impact of the safety zone on navigation and on commercial fishing operations.

To address his commercial fishing and navigation concerns, the commenter recommended that the Coast Guard:

- Reduce the safety zone to 500 yards, which, the commenter says, would still provide a buffer around the cable-laying barge while mitigating undue restrictions on fishing vessels;
- Designate safe (static) transit corridors through the affected area, allowing vessels to navigate safely without needing COTP permission for every transit;
- Implement time-of-year restrictions that avoid peak spawning and migration periods for blue crabs and finfish species. The commenter may wish to direct his environmental concerns to BOEM, which, as noted in a footnote in the background

section, evaluated the environmental effects of the CVOW-C project in a ROD announced November 3, 2023.

The Coast Guard weighed designation of the safety zone and possible alternatives, including reducing the size of the zone, or not designating any safety zone at all, against the Coast Guard's interest in mitigating navigational risk associated with the hazards created by the required anchoring arrangements. We have explained above, the reason the Coast Guard concluded there is a need to have a safety zone, and the reason we cannot designate a static safety zone which would not require vessels to obtain permission for every transit. Here, we explain why reducing the size of the safety zone was not considered a workable solution.

The anchor lines required for proper operation of the CLB ULISSE can at times extend up to 3280 feet from the barge. In addition, the barge will continue to operate 24 hours a day in sea States that might present visibility challenges for mariners attempting to recognize the location of these lines and to assess the draft allowances the lines would allow for vessels to safely cross over them, if that is even possible, given the tension on the line and the depth of the water. While reducing the size of the safety zone is not a viable alternative, we note that the area within which the safety zone will move is limited. The operational boundaries described in this rule, which extend up to 12 miles from shore, identify a corridor within which the CLB ULLISE is expected to place anchors, and at no time will operations impact more than 20% of the waters in the corridor. As this rule describes mitigations to the risks identified by anchors, the size of the moving zone being reduced to significantly smaller than the size of the possible anchorage arrangement, was not considered a workable alternative.

Implementing time of year restrictions on the cable laying operations is beyond the scope of the Coast Guard's authorities. As we explain above, the Coast Guard is not the agency charged with approving the project and with placing restrictions on how it is

accomplished. The Coast Guard's role here is limited to mitigating the navigational risks associated with the project, as it has been approved. Moreover, a decision to not support the operation with a safety zone would not prevent the project from occurring, as it is not the Coast Guard which authorized the action. Failing to designate the safety zone would merely leave the risks identified unmitigated.

We intend to by designate a US flagged vessel working with the project as a representative, thereby providing vessels seeking to transit up-to-date information on the safety of transiting to the east of the zone, to the west of the zone, or through the zone. Due to the implementation of this rule, safe transit corridors will be identified when they exist and provided to mariners who communicate with the designated representative that they will have difficulty transiting around the zone. Without this rule, the hazards would remain, and less information would be provided.

For the reasons stated above, there are no changes in the regulatory text of this rule from the proposed rule in the NPRM except that the dates provided in the enforcement period paragraph have been pushed forward by a few days.

This rule establishes a safety zone on March 2, 2025, for approximately one year. The safety zone will cover all navigable waters within 1000 yards of the CLB ULISSE, only while it conducts cable handling and burial in the Atlantic Ocean beginning roughly 300 yards from the shore of the State Military Reservation in Virginia Beach, Virginia out to 12 NM, the U.S. Territorial Seas border. The duration of the zone is intended to ensure the safety of vessels and these navigable waters during the 365-day period. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a 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.

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 section 3(f) of Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration and time of day of the regulated area. Vessel traffic would be able to safely transit around this safety zone to the east initially without losing sight of land and the impact the nearshore recreational boaters near Rudee Inlet in Virginia Beach, Virginia would be reduced further as the CLB moves further from shore, providing safe transit options to the west along the shoreline.

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 did not receive any 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 the safety zones may be small entities, for the reasons stated in section IV.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 (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 does 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 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 safety zones to protect the public from hazards created by cable laying and burial operations, as well as the anchoring configurations, required for the operations of the CLB ULISSE. It is categorically excluded from further review under paragraph L60a 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.

List of Subjects in 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 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T05-1093 to read as follows:

§ 165.T05-1093 Safety Zone; Cable Laying Corridor, Atlantic Ocean, Virginia Beach, Virginia.

- (a) *Location.* The following area is a moving safety zone: Any navigable waters located within 1000 yards in all directions from the Cable Laying Barge (CLB) ULISSE while operating off the coast of Virginia Beach, Virginia while it conducts work within 12 nm of the shore. The CLB operations will occur within a perimeter enclosed by positions: 36° 49' 4.8" N, 75° 57' 43.2" W; 36° 49' 13.9" N, 75° 42' 39.8" W; 36° 47' 11.7" N, 75° 41' 50.8" W and 36° 48' 28.8" N, 75° 57' 43.2" W.
- (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 Captain of the Port Sector Virginia (COTP) in the enforcement of the safety zone. The term also includes the master of a U.S.-flagged vessel, initially the Tug Washington, supporting the CLB ULISSE for the sole purpose of designating and establishing safe transit corridors, to permit passage into or through this safety zone, or to notify

vessels and individuals of the actual hazards present if they have entered the safety zone and inform them of the safe direction to which they should depart. If the US flagged vessel supporting the CLB changes, updates will be provided in the District Five Local Notice to Mariners.

(c) *Regulations.*

(1) Under the general safety zone regulations in subpart C of this part, no vessel or person may enter or remain in any safety zone described in paragraph (a) of this section unless authorized by the COTP, or designated representative. If a vessel or person is notified by the COTP, or designated representative that they have entered one of these safety zones without permission, they are required to immediately depart in a safe manner following the directions given.

(2) Mariners requesting to transit this safety zone must first contact the designated representative who will be monitoring VHF-FM channels 13 and 16 while work is ongoing. If permission is granted, mariners must proceed at their own risk and strictly observe any and all instructions provided by the COTP, or designated representative to the mariner regarding the conditions of entry to and exit from any location within the moving safety zone.

(d) *Enforcement.* The Sector Virginia COTP may enforce the regulations in this section and may be assisted by any Federal, State, county, or municipal law enforcement agency.

(e) *Enforcement period.* This section will be subject to enforcement from March 2, 2025, until March 1, 2026. If cable laying work is completed before March 1, 2026, or for a different reason the COTP determines the zone need no longer be enforced, they will issue a general permission to enter.

Dated: March 2, 2025.

Peggy M. Britton,
Captain, U.S. Coast Guard,
Captain of the Port, Sector Virginia

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