

# National Offshore Safety Advisory Committee (NOSAC)

## Production Subcommittee Final Report

(March 28, 2018)

### **NOSAC Task Statement of July 17, 2017 – Input to Support Regulatory Reform of Coast Guard Regulations - Executive Orders 13771 and 13283**

#### **Purpose**

This report will address the regulations assigned to the Production Subcommittee as well as other regulations and policy documents affecting the offshore production community in the context of the NOSAC Task Statement. Despite the insufficiencies in the current regulatory construct, this report will focus on the regulations and policy as they exist today and comment as to whether they should be replaced, repealed, or modified in the context of the Task Statement. Recommendations on regulation and policy affecting the Production Sector are detailed in **Annex I**. Additional recommendations will be made detailing suggested alternative paths forward. Some of these recommendations could become the subject of future NOSAC Task Statements.

#### **Overview**

The Coast Guard has the legal authority under the Outer Continental Shelf Lands Act (OCSLA), as amended, to regulate, among other things, lights and other warning devices, safety equipment, and the safety of life and property on OCS units; hazardous working conditions on the OCS; and vessels used for OCS activities. Notwithstanding this vast legal authority, the current regulatory construct the Coast Guard has established for the OCS is woefully dated and incomplete.

The OCSLA is the legal basis for the Coast Guard's regulations in 33 CFR Subchapter N. This subchapter is titled "Outer Continental Shelf Activities." For nearly two decades the Coast Guard has attempted in vain to update this Subchapter. Nevertheless, 33 Subchapter N remains a collection of archaic and irrelevant regulations, some of which have not been updated since the Coast Guard first published them in 1956.

The most recent comprehensive rewrite to Subchapter N was published as a final rule in 1982 – almost 7 years before the first floating OCS facility was installed in the Gulf of Mexico (GOM). The Coast Guard issued an Advanced Notice of Proposed Rulemaking (ANPRM) in 1985 to update Subchapter N, but this effort went nowhere. In 1995 the Coast Guard stated that it "was considering a revision to Subchapter N" and issued a Request for Comments in the Federal Register. This led to a Notice of Proposed Rulemaking (NPRM) in late 1999 with comments due to the docket by April 5, 2000. In March 2000, the agency extended the comment period for this NPRM an additional 90 days to July 5, 2000. In June 2000, the agency issued a second extension to the comment period to November 30, 2000. Due to the events of September 11, 2001 and shifting mission priorities within the Coast Guard from vessel safety to maritime security, the agency pushed this regulatory project to the back burner where it has languished since. **Annex II** describes the history of the Subchapter N rulemaking process in more detail.

The dated construct of 33 CFR Subchapter N poses challenges for owners and operators of fixed and floating OCS facilities and Coast Guard marine inspectors. The Coast Guard is responsible for the oversight on fixed platforms of lifesaving equipment, portable fire extinguishers, workplace safety and health, means of escape, aids to navigation, and emergency drills. Unfortunately, the Coast Guard essentially abdicated its entire oversight responsibility in 2002 when it transferred this authority to the

Bureau of Safety and Environmental Enforcement (BSEE) (formerly the Minerals Management Service, or MMS), and BSEE has conducted inspections and other oversight activities on behalf of the Coast Guard since that transfer of authority.

The regulatory construct for floating OCS facilities is a byzantine patchwork of regulations found by referring to various Subchapters in both 33 CFR and 46 CFR, many of which were promulgated long before the first floating OCS facility was installed in the GOM. This construct is archaic, ineffective, inefficient, and burdensome. Even careful navigation of this maze of regulations leads to Coast Guard marine inspectors enforcing requirements which are not applicable to floating OCS facilities. This ineffectiveness obviously poses challenges to both operators eager to demonstrate compliance with applicable Coast Guard regulations and Coast Guard marine inspection resources.

Floating OCS facilities are not vessels, and there are virtually no Coast Guard design, equipment, and marine operations regulations that consider the unique nature of a floating OCS facility. Instead, the “launching point” for the convoluted maze of Coast Guard design and equipment regulations applicable to floating OCS facilities starts at an Outer Continental Shelf Activities regulation in 33 CFR 143.120 and ends at one of the many vessel inspection regulations in 46 CFR. Paragraph (a) of 33 CFR 143.120 states that before construction begins on a floating OCS facility, an operator must submit the plans and information listed in 46 CFR 107, Subpart C to the Coast Guard for approval. This paragraph is silent on such submittals after construction of the floating OCS facility has been completed. Also, it is silent on all other subparts in 46 CFR 107, including those regarding inspection and certification. Paragraph (b) of 33 CFR 143.120 states the facility must comply with the requirements of 46 CFR 108 (Mobile Offshore Drilling Units – Design and Equipment), 46 CFR Subchapter F (Marine Engineering), and 46 CFR Subchapter J (Electrical Engineering). Paragraph (c) of 33 CFR 143.120 states that cognizant Officer in Charge, Marine Inspection (OCMI) issues a Certificate of Inspection (COI) to a floating OCS facility that meets the requirements of paragraph (b), and that an inspection of the facility *may* be required as part of this determination.

Despite the increase in the number of floating OCS facilities installed in the GOM in the past two decades, the Coast Guard has yet to promulgate modern regulations to address the existing insufficient regulatory construct by which they are presently governed. Today the number of floating OCS facilities on the U.S. OCS continues to grow, and the technology involved in their construction continues to advance. Instead of correcting the situation by promulgating modern regulations applicable to fixed and floating OCS facilities or extensively updating existing regulations, the Coast Guard has resorted to publishing numerous policy documents over the years that have become *de facto* regulations, even though these documents are intended to be used as guidance and do not have the force of properly promulgated regulations issued in accordance with the Administrative Procedure Act (APA).

### **Production Subcommittee Findings and Recommendations**

The Subcommittee representing the Production Sector held six teleconferences and two in-person meetings that also featured the ability for others to join by phone. There were typically 10-15 participants at each meeting. The Subcommittee would like to specifically recognize the assistance and support of the Offshore Operators Committee (OOC) with this effort. Specifically, the Subcommittee appreciates OOC hosting the two in-person meetings in Houston.

As the effort around this report progressed, it became evident it was more challenging than simply identifying regulations and policies to replace, repeal, or modify. The dated regulatory construct for this sector and the fact a more appropriate framework has never evolved for offshore production facilities - specifically floating OCS facilities - highlighted several areas of historical oversight with no identifiable regulatory basis. The Subcommittee feels these additional issues must be addressed as well. Specific

issues of concern by platform type are listed below followed by our overall recommendations. Recommendations on regulation and policy affecting the Production Sector are detailed in **Annex I**.

### **Concerns for Fixed OCS Facilities**

1. Dated regulations have not been modernized to keep pace with the advancement of the offshore industry.
2. Coast Guard regulations for manned platforms, especially those related to lifesaving equipment, treat all such fixed OCS facilities uniformly and do not consider specific risk factors like the number of personnel working on them during routine and non-routine operations or their distance to shore or to other manned OCS facilities.
3. Historically, there has been a lack of direct regulatory oversight by the Coast Guard as the agency has delegated its oversight to BSEE (formerly the MMS), which inspects manned platforms on behalf of the Coast Guard.

### **Concerns for Floating OCS Facilities**

1. Dated regulations have not been modernized to keep pace with the advancement of the offshore industry.
2. Existing regulations apply “ship type” Mobile Offshore Drilling Unit (MODU) regulations to floating OCS facilities that are permanently moored to the seabed.
3. Multiple Coast Guard Eighth District policy letters covering many subjects regarding floating OCS facilities (e.g. manning and licensing/credentialing of floating OCS facility personnel, in-service inspection plans, etc.) have no basis in applicable regulations. In fact, at least one may have no legal basis whatsoever, but these policy letters have become *de facto* regulations over the last two decades.
4. The Coast Guard has yet to develop any regulations based on offshore industry best practices concerning inspections for new floating OCS facility hulls constructed overseas, during integration, during Hook-up and Commissioning (HUC), and while in-service. This has created tremendous inconsistency with Coast Guard oversight from project to project.

### **Specific Recommendations**

1. The Coast Guard should withdraw the current 33 CFR Subchapter N rulemaking published as an NPRM, *Outer Continental Shelf Activities*, in the Federal Register on December 7, 1999 (64 FR 68418) so that it can be updated and reissued as a new NPRM subject to comment. The new 33 CFR Subchapter N should clearly state that it preempts the regulations of other federal agencies in addition to state or local regulations in the same field.
2. The Coast Guard should revoke 46 CFR Subchapter I-A. These regulations are not suitable for floating OCS facilities and, given the dearth of U.S.-flagged MODUs, it hardly seems necessary for the Coast Guard to maintain a specific inspection Subchapter for this class of vessel.
3. The Coast Guard should adopt a process to review and update its Navigation and Vessel Inspection Circulars (NVICs) and HQ policy letters on a periodic basis, but at least once every five years.
4. The Coast Guard should revoke CG-ENG Policy Letter 01-16, *Portable Accommodation Module (PAM) Guidance* immediately. The Coast Guard should consider publishing a future notice of proposed rulemaking to address the use of Portable Accommodations Modules on OCS facilities. As a part of this effort, the Coast Guard should ensure that it does not duplicate the regulations of another federal agency (i.e., BSEE).

5. The Coast Guard should review and revoke, as necessary to comport with its authority under OCSLA and the regulations applicable to floating OCS facilities located at 33 CFR Subchapter N, certain policy letters issued by the Coast Guard Eighth District. Immediately upon revocation of the affected policy letters, the Coast Guard should consider publishing the contents contained therein as a future notice of proposed rulemaking. As a part of this effort, the Coast Guard should ensure that it does not duplicate the regulations of another federal agency (i.e., BSEE). The pertinent policy letters include, but are not limited to:
  - a. D8 Policy Letter 03-2000 (CH-1), *Policy on Manning of Non-Self Propelled Floating Outer Continental Shelf (OCS) Facilities*
  - b. D8 Policy Letter 08-2001, *Licensing Requirements for Personnel on Non-Self Propelled Floating Outer Continental Shelf (OCS) Facilities*
  - c. D8 Policy Letter 03-2004, *In-Service Inspection Program (ISIP) for Floating Facilities in the Outer Continental Shelf (OCS)*
  - d. D8 Policy Letter 01-2014, *Guidance on Post-Hurricane Inspection Requirements for Floating Offshore Production Facilities*
  - e. D8 Policy Letter 01-2016, *Interim Guidance on Life Extension (Continued Service) Requirements for Floating OCS Facilities*
  - f. D8 Policy Letter 02-2016, *Structural Integrity Management (SIM) Program as an Alternative Hull Inspection for Floating Outer Continental Shelf (OCS) Facilities.*
6. The Coast Guard should review and modify or delete, as necessary to comport with its authority under OCSLA and the regulations applicable to floating OCS facilities located at 33 CFR Subchapter N, portions of Marine Safety Manual (MSM), Volume 2, Section G including, but not limited to:
  - a. Chapter 1, Subsection I - *Post Hurricane and Natural Disaster Inspection Requirements*
  - b. Chapter 1, Subsection K - *Portable Accommodation Modules*
  - c. Chapter 4, Subsection B - *Plans*
  - d. Chapter 4, Subsection C - *Standards*
  - e. Chapter 4, Subsection D - *Drydock Exam Requirements*
  - f. Chapter 4, Subsection F - *Additional Requirements for Stowage of Oil in Bulk*
  - g. Chapter 4, Subsection K – *In-Service Inspection Plans (ISIP)*
  - h. Chapter 4, Subsection L - *Manning of Non-Self Propelled Floating Outer Continental Shelf (OCS) Facilities.*
7. The Coast Guard should publish an inspection guide for floating OCS facilities (e.g. CG-840 book) to help eliminate the regulatory ambiguity inherent in the incomplete regulatory construct. An official inspection guide has never been published, although one has been in development for several years. There are unofficial guides and checklists in use; however, they incorrectly cite parts of 46 CFR Subchapter I-A which either do not apply or are not appropriate for application to a floating OCS facility.
8. The Coast Guard should discontinue its arrangement with BSEE which permits BSEE inspectors to conduct safety inspections of manned platforms on behalf of the Coast Guard. Instead, the Coast Guard should implement a process in which Approved Third Party Organizations (TPO) conduct inspections and audits on behalf of the Coast Guard. Note that the Coast Guard has implemented a similar process for the inspection and certification of towing vessels (46 CFR Subchapter M) and has proposed a similar process for commercial diving operators (46 CFR 197). The Coast Guard should continue to permit BSEE to inspect unmanned platforms on its behalf.
9. The Coast Guard should discontinue issuing Certificates of Inspection (COIs) to floating OCS facilities and instead adopt an approach in which, upon completion of a Coast Guard inspection, the OCMI provides the Person in Charge (PIC) of the facility with a written report of the results of the inspection which are to be kept on board the facility for at least 5 years. The Coast Guard should consider an identical process for significant fixed OCS facilities (e.g., manned platforms).

10. All legacy Coast Guard Eighth District policy letters and promulgated guidelines should be properly indexed in one document, reviewed annually, and their applicability reaffirmed as either remaining in force or rescinded (either vacated or superseded and citation made for same) so that industry can transparently view under one cover all policies in effect in a searchable PDF (non-scanned) document. Also, the Coast Guard should stop hand signing and then scanning hard copies of policy letters. Rather, they should be digitally signed. All policy letters should be in searchable PDF format so that they can be researched more easily by industry and Coast Guard personnel.
11. All regulatory projects currently classified by the Coast Guard as in being in an *ex parte status* and associated with an NPRM or ANPRM issued in the Federal Register before September 28, 2016 should be purged permanently from the Coast Guard rule making process.
12. The Coast Guard should re-evaluate the applicability of the Maritime Transportation Security Act, 2002 (MTSA) to offshore activities and reconsider the risk factors that require fixed and floating OCS facilities to comply with 33 CFR Subchapter H – Maritime Security.
13. The requirement to obtain/maintain a TWIC should be evaluated by the Coast Guard. This program is not providing any additional security on the OCS beyond that afforded in the “pre-TWIC” period. It has been poorly administered and is burdensome in cost and operational/personnel logistics to the offshore industry. It is recommended a new Task Statement be developed on this issue.
14. The Coast Guard should issue a new Task Statement to NOSAC requesting its input regarding the employment of foreign citizens on the OCS as the agency took no discernable action on the NOSAC report issued as the result of a similar Task Statement issued in 2009.
15. The Coast Guard should issue NOSAC a new Task Statement to evaluate the suitability of the regulations in 46 CFR Subchapter F (Marine Engineering) and 46 CFR Subchapter J (Electrical Engineering) to floating OCS facilities.
16. The Coast Guard should act on the specific recommendations provided in this section and each recommendation, as appropriate, contained in **Annex I** for the regulations and policy guidance evaluated as part of this report.

The recommendations above and the ones that follow in **Annex I** are the consensus of the Production Sector Subcommittee and are respectfully submitted.

**Annex II** is included as a 60+ year summary of Subchapter N and is not a direct work product of the Production Sector Subcommittee.

  
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Grant Johnson  
Production Sector Co-Chair  
28 MARCH 2018

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Chris Woodle  
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## **Annex I - Review of Coast Guard Regulations and Policy per the NOSAC Task Statement**

Under this NOSAC Task Statement, the Production Subcommittee was charged with reviewing the regulations in **33 CFR Part 106, 33 CFR Subchapter N, 46 CFR Part 107 Subpart C, and 46 CFR Part 108**. The Subcommittee reviewed those regulations and provides the following comments in the context of the NOSAC Task Statement. The Subcommittee also reviewed other Coast Guard regulation and guidance (policy) documents and provides comments on those in this report as well.

### **33 CFR Part 106: Marine Security – OCS Facilities**

**Cite:** §106.105

**Recommendation:** Modification

**Comments:** The applicability section in §106.105 needs more clarity either in the form of modification or via policy guidance as to when a Facility Security Plan (FSP) is required to be approved and implemented on an OCS facility. The term “operating” is used in the current definition and that would seem to indicate “installed and operating” as a production facility; however, Coast Guard guidance over the years has been inconsistent on this point. A facility that is still under construction and not operating (i.e. not producing hydrocarbons) should not be required to implement an FSP. Incorrect application of this in the past has required operators to perform Facility Security Assessments (FSA) on projects that are incomplete, not installed, and not operating in their normal environment. This results in an FSA that cannot accurately assess the security risks of an installed and operating facility. This leads to FSAs that require subsequent amendments, revision of FSPs, and similar associated re-work. For operators who choose to utilize outside contractors for this work, it results in additional expenses sometimes on the order of \$10,000 per plan. This regulation is not consistently enforced as written and imposes burdens that exceed benefits.

### **33 CFR Subchapter N – OCS Activities**

**Overall Recommendation:** Replace (with a completely revised and updated Subchapter)

**General Comments:** *As repeatedly noted in this report, the current version of Subchapter N is long overdue for a major revision. In its current form, it is difficult to take it seriously as legitimate regulation as it is so dated its practical utility is questionable at best. As noted in Recommendation #1, the Coast Guard should withdraw the current version they have in their rulemaking process, substantially revise it, and resubmit it in a new NPRM subject to comment. The following comments highlight issues with specific regulations within this Subchapter and the impact they have on the Production Sector. Most of this Subchapter is outdated, no longer enforced as written, ineffective, and imposes burdens that exceed benefits.*

### **Part 140 Subpart A – General**

**Cite:** §140.4(a)

**Recommendation:** Modify

**Comments:** Change reference from U.S. Geological Survey to Bureau of Safety and Environmental Enforcement. This is not causing angst within the Industry but it should serve to highlight the need to update this Subchapter as the USGS was the precursor to MMS which was established in 1982 and has since been changed to BSEE - with this most agency name change occurring over 5 years ago.

**Cite:** §140.7

**Recommendation:** Modify

**Comments:** This section should be modified to incorporate all applicable U.S. and International standards that have been Incorporated by Reference. In its present form, it is inaccurate, incomplete, not useful to the Industry as guidance, outdated, and ineffective.

**Cite:** §140.10

**Recommendation:** Modify

**Comments:** The definitions in this section require updating to conform with the present capabilities found on the OCS. As examples; *Attending Vessel* should have mention of dynamic positioning (DP). *Constructed* is not a useful definition for either fixed or floating facilities. *Floating Facility* should define specific floating OCS facility hull types (e.g. SPAR, TLP, Semi-submersible, FPSO), there is currently no definition provided for a fixed or floating OCS facility with an installed drill package, etc. This cite is ineffective.

**Cite:** §140.25

**Recommendation:** Modify

**Comments:** This section should be modified to align with the current OCS OCMI construct in place at Coast Guard Eighth District.

**Cite:** §140.101

**Recommendation:** Modify

**Comments:** This section should be modified to indicate that Coast Guard Approved TPOs may conduct inspections on manned platforms on behalf of the Coast Guard, not BSEE.

**Cite:** §140.103

**Recommendation:** Repeal

**Comments:** This section should be repealed and replaced to allow Coast Guard Approved TPOs to conduct inspections on manned platforms on behalf of the Coast Guard.

**Cite:** §140.201

**Recommendation:** Modify

**Comments:** The Coast Guard should publish *Marine Casualty Reporting on the OCS* (Docket No. USCG-2013-1057) as a Final Rule. This would resolve the regulatory ambiguity between the requirements in 33 CFR and 46 CFR as they concern marine casualty reporting. This regulation is outdated, ineffective, no longer enforced as written, and imposes burdens that exceed benefits.

**Cite:** §140.203

**Recommendation:** Modify

**Comments:** Paragraph (b) needs to be updated to indicate BSEE vice USGS. This regulation is outdated. See cite §140.4(a) above.

## **Part 141- Personnel**

**General comments:** The NOSAC approved a Subcommittee report on a Task Statement related to the Use of Foreign Citizens Engaged in Outer Continental Shelf Activities at their November 5, 2009 meeting. This report included a draft update to NVIC 7-84 and recommended the Coast Guard reissue this update as Change 1 to the NVIC. To date, the Coast Guard has not taken any action on this report or the recommendations therein. As with the rest of Subchapter N, Part 141 is in dire need of updating. In the interim, it is recommended the Coast Guard develop policy guidance related to Letters of Determination (LODs). The LOD issue remains a significant administrative burden for both the industry and the Coast

*Guard. For many years, the OCS OCMI responsibilities were divided amongst six Coast Guard field offices. This led to widely varying interpretations regarding the purpose of, and application for the Letter of Determination. Fall-out from this inconsistency exists today.*

**Cite:** §141.15

**Recommendation:** Modify

**Comments:** As discussed above, the LOD issue remains a constant administrative burden for both the industry and the Coast Guard. Aside from the work done by NOSAC in 2009 there have been draft policies developed at various other times that encourages the Coast Guard to adopt a list of “pre-approved” positions or other general categories of positions that are “non-regular complement”. To date, none of those have been implemented.

- Paragraph (b) attempts to answer what constitutes the “regular complement of the unit”. This section is outdated and ineffective. Further, it is focused on MODU specific positions and not positions commonly found on fixed or floating OCS facilities.
- Paragraph (c) of this cite says the OCMI “may” determine. Over time, this has become more of a “shall” determine so regulatory clarity is requested. This cite is no longer enforced as written and imposes burdens that exceed benefits.

The lack of established, uniform policy guidance on the issue of LODs imposes additional costs and creates delays to operations given the dynamic nature of the industry and the frequency of scenarios that demand short-term technical expertise offshore that may happen to require the expertise of a non-U.S. citizen or Resident Alien. It simply does not recognize the realities of the globalized oil and gas industry.

## **Part 142 - Workplace Safety and Health**

**General comments:** *All the requirements in this Part need updating. They are outdated and ineffective.*

## **Part 143 – Design and Equipment**

**Cite:** §143.15

**Recommendation:** Modify

**Comments:** This cite references 33 CFR Part 67 which is largely unchanged for the last several decades making it outdated and ineffective in its application to all OCS structures. It is recommended the Coast Guard reevaluate the issue of Aids to Navigation on offshore structures, especially Deepwater facilities, with the intent to determine which types of aids provide the most practical benefit. For example, archaic sound signals and obstruction lights may not be as effective as modern methods such as Automatic Identification Systems (AIS) or Radar Beacons (RACON) for marking an OCS facility.

**Cite:** §143.120(a), (b), and (c)

**Recommendation:** Modify

**Comments:** The issues with this regulation are discussed in detail in the main body of this report.



**Cite:** §143.401

**Recommendation:** Modify

**Comments:** Vessels that meet 46 CFR Subchapter L need to be added to the list. It is recommended the Coast Guard develop regulations or clarifying policy that indicates what types of situations or operations create a need for a Standby Vessel. The Coast Guard has historically applied inconsistent standards in this regard and it can create a significant cost burden for an operator given the average day rates for vessels that might be required or available. This cite is no longer enforced as written and imposes burdens that exceed benefits.

## **Part 144 – Lifesaving Appliances**

**Cite:** Subpart 144.01

**Recommendation:** Modify

**Comments:** As with the rest of Subchapter N, this Subpart needs significant revision and updating. To start, the Coast Guard should conduct a thorough risk assessment that evaluates the various types of lifesaving appliances available to determine the most suitable application for each given the type of OCS facility in question (fixed or floating, manned or unmanned, shallow water or deep water, etc.). This analysis should also take into consideration platform size, number of POB, location, water depth, proximity to other platforms, and other pertinent factors. The use of life floats on manned platforms should be eliminated. The use of life floats on fixed facilities other than manned platforms should be fully evaluated as to their suitability in the offshore environment. The equipment list for lifeboats (if provided on a fixed platform) should mirror the requirements of a lifeboat on a floating OCS facility and what is required of those needs to be updated as well (see comment below on the Table in 46 CFR §108.575(b)). This section is outdated and ineffective.

**Cite:** §144.01-30

**Recommendation:** Modify

**Comments:** This cite should be modified to accept U.S. Coast Guard approved first aid kits. The reference to the Bureau of Mines should be deleted. This regulation is outdated, ineffective, and imposes burdens that exceed benefits.

**Cite:** §144.01-40

**Recommendation:** Repeal

**Comments:** Platforms have a variety of communication systems in use and available to them. It is recommended the type of communication system installed be at the discretion of the operator. This cite is outdated, ineffective, and no longer necessary.

## **Part 145 – Fire-fighting Equipment**

**General comments:** *Modification of this section is needed to clarify regulatory distinctions between fixed and floating facilities. In the case of a floating OCS facility, if this is to be deferred to 46 CFR Part 108 then this should be clearly indicated. As written this can create regulatory ambiguity. Jurisdiction over firefighting equipment is also split between two agencies (USCG and BSEE) and this can lead to confusion. This Part is outdated and ineffective.*

## Part 146 – Operations

**Cite:** §146.30

**Recommendation:** Modify

**Comments:** The NPRM titled *Marine Casualty Reporting on the Outer Continental Shelf* published January 10, 2014 should become a Final Rule. The necessary alignment this NPRM provides between Coast Guard casualty reporting regulations in 33 CFR Sub N and 46 CFR Part 4 were generally supported by the offshore industry. Publication of this rulemaking as a Final Rule will provide much needed clarity around the issue of casualty reporting. This cite is outdated, ineffective, and no longer enforced as written.

**Cite:** §146.45

**Recommendation:** Repeal

**Comments:** This cite references 33 CFR Part 135. It is requested the Coast Guard confirm if this cite is still valid or if it has been superseded by the requirements in 30 CFR Part 553. If no longer valid, it is recommended this cite/Part be repealed.

**Cite:** §146.103

**Recommendation:** Repeal

**Comments:** This regulation seems unnecessary since floating OCS facilities do not transit in full operational status. Their hulls move from the integration yard to the offshore construction site where they are moored, connected to subsea infrastructure and commissioned.

**Cite:** §146.104

**Recommendation:** Repeal

**Comments:** This regulation seems unnecessary since floating OCS facilities do not transit in full operational status. Their hulls move from the integration yard to the offshore construction site where they are moored, connected to subsea infrastructure and commissioned.

**Cite:** §146.140

**Recommendation:** Modify (lift requirement for review and approval)

**Comments:** It is recommended operators maintain an EEP that contains, at a minimum, the contents of this cite. However, the requirement to submit them to the Coast Guard for review and approval should be repealed. The EEPs have historically been subject to very inconsistent review and approval by the Coast Guard and this process is delayed by excessive turnaround times. Further, it is suggested that the Coast Guard does not possess the requisite administrative capacity to provide oversight in this regard. Instead, it is recommended the Coast Guard review the EEPs during regular inspection activities offshore. As it is, this can pose an administrative burden for both the Coast Guard and the Industry and, as implemented, this cite is ineffective, no longer enforced as written, and imposes burdens that exceed benefits.

## Part 147 – Safety Zones

**General Comments:** *Any vessel that is not an “attending vessel” (as defined in §147.20) should be specifically excluded from the list of vessels allowed within the 500-meter safety zone. Smaller vessels that are not “attending” pose the most risk to offshore platforms and associated infrastructure. These include commercial fishing vessels, recreational vessels, and towing vessels. These vessels also comprise a demographic that is largely unregulated in terms of design, equipment, operational standards, and required operator competency (if one is required at all). To exempt higher threat vessels like this from*

*the Safety Zone requirements does not align with the same concerns the Coast Guard has over OCS facilities in terms of Maritime Security (33 CFR Part 106) so it does not make sense to allow them within 500 meters of critical offshore infrastructure. It is recommended the Coast Guard modify this section to exclude all non-attending vessels from the 500-meter Safety Zone.*

## **46 CFR Subchapter I-A**

### **46 CFR Part 107 – Inspection and Certification**

**General Comments on Part 107:** *The Coast Guard should formally clarify in writing that not all of 46 CFR Part 107 is applicable to floating OCS facilities. The only exception is Subpart C of 46 CFR Part 107, which applies only before construction begins on a new floating OCS facility. As currently written, 33 CFR §143.120 (see above) only invokes 46 CFR Part 107 Subpart C (Plan Approval) and applies only to a new floating OCS facility. It is silent on the applicability of Subparts A, B, and D; thus, those Subparts currently do not apply to floating OCS facilities.*

### **46 CFR Part 107 Subpart C – Plan Approval**

**Cite:** §107.305

**Recommendation:** Modify

**Comments:** The Coast Guard should issue a new regulation that specifically addresses plans and information required to be submitted before construction is started on a proposed floating OCS facility as required by 33 CFR 143.120(a). This new regulation should combine the applicable principles of NVIC 10-82, NVIC 10-92, and NVIC 3-97, and it should clearly state that it does not apply to floating OCS facilities once construction is completed as 33 CFR 143.120(a) does not require plans to be reviewed and/or approved by the Coast Guard for modifications made after construction has been completed. The Coast Guard should issue a separate new regulation that specifically addresses the plans and information required to be submitted to the Coast Guard for modifications made to floating OCS facilities after construction has been completed. When drafting both new regulations, the Coast Guard should carefully consider and address the roles of the Coast Guard and BSEE in plan review before and after construction is started on a proposed floating OCS facility.

### **46 CFR Part 108 - Design and Equipment**

**General Comments on Part 108:** *This part was written for (U.S. Flag) MODUs and does not reference floating OCS facilities. It is invoked by 33 CFR 143.120 as a standard a floating OCS facility must meet to be certificated by the Coast Guard. However, these regulations are not entirely suitable for a floating OCS facility and are more appropriate for more traditional vessel applications. It should be noted that the Coast Guard has not historically enforced all of Part 108 for floating OCS facilities; however, there has never been accompanying guidance (e.g. “840 book”) published that would assist a Coast Guard Marine Inspector in the proper application of these requirements for a floating OCS facility either. This, coupled with the frequent transitional nature of Marine Inspectors, which inhibits the Coast Guard’s ability to develop proficiency in the inspection of floating OCS facilities, leads to tremendous inconsistency in the application of these requirements. This results in administrative burdens for operators (i.e. seeking alternatives or exemptions), unnecessary costs for compliance for items that may not apply, and imposes burdens that exceed benefits.*

**Cite:** §108.101

**Recommendation:** Modify

**Comments:** This cite needs to be updated to incorporate more standards. This cite is outdated and ineffective.

**Cite:** §108.113

**Recommendation:** Modify

**Comments:** This cite needs to be updated to apply to floating OCS facilities and to accept other applicable class rules from Coast Guard recognized classification societies. This cite is outdated and ineffective.

**Cite:** §108.207(b)

**Recommendation:** Modify

**Comments:** This cite is not appropriate for large floating OCS facilities with higher numbers of persons working on them. It is common that offshore personnel eat in shifts. Taken literally, this cite could be enforced to require an operator to unnecessarily design a larger galley space than is needed. This cite is outdated, no longer enforced as written, ineffective, and imposes burdens that exceed benefits.

**Cite:** §108.241

**Recommendation:** Repeal

**Comments:** The Coast Guard should accept other recognized industry standards regarding helicopter deck lighting and marking. This cite conflicts with CAP 437 (although it is recognized policy letter CG-ENG 03-15 addresses this). It is recommended that the marking and lighting requirements for helicopter decks be established by other authorities with expertise in this area. This cite is outdated, ineffective, no longer necessary, and imposes burdens that exceed benefits.

**Cite:** §108.427

**Recommendation:** Modify or Repeal

**Comments:** This is not applicable to a floating OCS facility installed on the U.S. OCS. Historically, it has not been enforced; however, it is not clear in the regulations either. This cite is outdated and ineffective.

**Cite:** §108.497

**Recommendation:** Modify

**Comments:** This cite should be modified to incorporate the latest standards and the reference to the minimum number of outfits should be removed. All floating OCS facilities have a much larger number of complete outfits and most also have at least two separate emergency lockers where fire teams can dress out and prepare. It is recommended that the number, stowage, and type of equipment necessary for a fire team be at the discretion of the operator. This cite is outdated and ineffective.

**Cite:** §108.503

**Recommendation:** Modify

**Comments:** The non-applicability of this cite to floating OCS facilities should be stated.

**Cite:** §108.515

**Recommendation:** Modify

**Comments:** The grandfathering allowed by this cite came out of the vessel regulations and it may not be suitable for an installed floating OCS facility. As it concerns not requiring life rafts, the location of the unit, number of POB, risks during egress, etc. should be considered. This cite is outdated, ineffective,

and may impose additional risks to safety not adequately considered for an installed floating OCS facility.

**Cite:** §108.525(a)(2)

**Recommendation:** Modify

**Comments:** The requirement for liferafts to be arranged for float free launching when installed on many types of floating OCS facilities (i.e., TLPs and Spars) is impractical and not conducive to the safe evacuation of personnel. This cite is outdated, ineffective, and may impose additional risks to safety not adequately considered for a floating OCS facility.

**Cite:** §108.530(a)(4)(ii)

**Recommendation:** Modify

**Comments:** The 20-degree adverse list requirement is not suitable or appropriate for an installed floating OCS facility (especially a Tension Leg Platform). This is another example of a requirement that is well-placed for traditional vessels but not for floating OCS facilities which are not designed like traditional vessels. It is recommended the installation of a lifeboat on a floating OCS facility be evaluated on a case-by-case basis during plan review and that it not be restricted to the 20-degree list requirement. This cite is ineffective, no longer enforced as written, and imposes burdens that exceed benefits.

**Cite:** §108.540(d)

**Recommendation:** Modify

**Comments:** The 3-minute rule for boarding needs to be evaluated for the higher capacity lifeboats in service today. Proof of this requirement is not appropriate for lifeboats in the stowed position and is best achieved during on-shore training in boats installed for this purpose. It is recommended the Coast Guard remove specific time requirements from this regulation. Instead, operators should be allowed the latitude to train and drill in a manner that is best suited for the design and layout of their facility as well as the types of boats and arrangements they have installed. This cite is outdated, ineffective, and imposes burdens that exceed benefits.

**Cite:** §108.550(b)

**Recommendation:** Modify

**Comments:** Like the comments above, a specific time requirement should not be listed. Every floating OCS facility is different and several also have additional crew protection features (e.g. protected egress routes) not found on traditional vessels or MODUs where this requirement may be more suitable. Instead, operators should be allowed the latitude to train and drill in a manner that is best suited for the design and layout of their facility as well as the types of boats and arrangements they have installed. This cite is outdated, ineffective, and imposes burdens that exceed benefits.

**Cite:** §108.550(e)(1) & (2)

**Recommendation:** Modify

**Comments:** Please see the comments for §108.530(a)(4)(ii) above.

**Cite:** §108.550(f)(2)

**Recommendation:** Modify

**Comments:** Clarification is needed concerning floating OCS facilities under construction. Semi-submersible and TLP hulls in an integration yard have historically been required to have lifeboat falls sufficient to reach the water even though the unit is under construction and at light draft. A unit under construction should not be considered “operational”. Further, considering the unit will spend the clear majority of its service life at an increased operational draft, the falls should only be required to reach the water at this reduced air gap. Because this cite has been applied to require additional fall length for

boats on units under construction it has often resulted in costly changes to, or in some cases, completely changing the winches in a launch system. In most cases these are systems with components from the same manufacturer and designed to be used as a complete system. When forced to equip the floating OCS facility with a larger capacity winch from a manufacturer that is different than what was originally specified, this poses unintended consequences in terms of winch location, the routing of the control wires, and other factors that can create additional design and operational challenges to the system. It obviously also results in a costly modification to achieve compliance with a regulation that is not appropriate or applicable for a floating OCS facility hull during construction at light draft. Input from one operator that was forced to do this in 2013 indicates it resulted in an additional \$500,000 worth of new equipment, installation, and testing costs. This requirement is outdated, ineffective, and imposes cost and safety burdens that exceed benefits.

**Cite:** §108.553(c)

**Recommendation:** Modify

**Comments:** Like the comments for §108.550(f)(2) above, this cite needs to be modified so that it cannot be used to compel an operator to install longer fall lengths than necessary considering a floating OCS facility spends the bulk of its service life at a greatly increased operational draft (reduced air gap). The verbiage in this cite about “lightest sea-going condition” has been misinterpreted for floating OCS facilities under tow from the shoreside integration yard to the offshore construction site, not to mention these units are not “sea-going”. A floating OCS facility in this case is still only at light draft for a very short time and under construction. Operators have installed additional life rafts to facilitate evacuation of the unit during this construction phase. Consideration of alternative evacuation methods is preferable to unnecessarily modifying an approved launching system. This cite is outdated, ineffective, and imposes cost and safety burdens that exceed benefits.

**Cite:** Table §108.575(b)

**Recommendation:** Modify

**Comments:** Lifeboats on floating OCS facilities have historically been held to the equipment standard for “Lifeboats” in “Other than International Service”. Even so, there is equipment in this list that is not suitable or necessary for lifeboats on a floating OCS facility or a fixed facility with lifeboats installed (please see comments for 33 CFR Subpart 144.01 above). As an example, lifeboats on fixed or floating OCS facilities cannot launch via the use of a painter line as these units are permanently moored. Further, the requirement for water and distress signals is excessive. Rescue resources in the GOM are plentiful so it is difficult to envision a scenario that would keep persons in a lifeboat for a prolonged period. This table requires operators to purchase and maintain equipment not suitable for this type of lifeboat application. The associated costs to purchase this equipment can easily reach \$2500 or more per boat every few years. It is recommended the Coast Guard work with Industry groups to come up with a more suitable list of equipment for lifeboats on floating OCS facilities and fixed platforms. The requirements in this table are outdated, ineffective, and impose cost and safety burdens that exceed benefits.

**Cite:** §108.595(b)(1)

**Recommendation:** Repeal or Modify (clarify this does not apply to floating OCS facilities)

**Comments:** This requirement is more suitable for a vessel and not a floating OCS facility. It is recommended this be at the discretion of the operator. Twelve USCG/SOLAS approved parachute flares can easily be \$500 or more to procure. This cite is outdated, ineffective, no longer necessary, and imposes burdens that exceed benefits.

**Cite:** §108.597

**Recommendation:** Repeal or Modify (clarify this does not apply to floating OCS facilities)

**Comments:** This requirement is more suitable for a vessel and not a floating OCS facility. It is recommended this be at the discretion of the operator. The self-contained line throwing apparatus are approximately \$550 per unit. This cite is outdated, ineffective, no longer necessary, and imposes burdens that exceed benefits.

**Cite:** §108.601

**Recommendation:** Modify

**Comments:** This regulation needs to be modified to align with the latest API Specification (API RP 2D). Clarification on the status of Coast Guard Rulemaking Project "Revision of Crane Regulation Standards for MODUs, OSVs, and Floating OCS Facilities (USCG-2011-0992)" is requested as it has been indicated this is no longer an active rulemaking. This cite is outdated and ineffective.

**Cite:** §108.650

**Recommendation:** Repeal or Modify (clarify this does not apply to floating OCS facilities)

**Comments:** This requirement is more suitable for a vessel and not a floating OCS facility. It is recommended this be at the discretion of the operator. The cost of a float-free EPIRB can easily be \$800 or more plus associated costs for battery and hydrostatic release replacement. This requirement is outdated, ineffective, no longer necessary, and imposes burdens that exceed benefits.

**Cite:** §108.659

**Recommendation:** Repeal or Modify (clarify this does not apply to floating OCS facilities)

**Comments:** Floating OCS facilities do not have to comply with SOLAS. This requirement is more suitable for a vessel that operates in a manner that makes it SOLAS compliant. This requirement is outdated, ineffective, no longer necessary, and imposes burdens that exceed benefits.

**Cite:** §108.701

**Recommendation:** Repeal or Modify (clarify this does not apply to floating OCS facilities)

**Comments:** While this may not be enforced by the Coast Guard, the current regulatory construct that stems from 33 CFR §143.120 says floating OCS facilities "...must comply with the requirements of 46 CFR Part 108." Sounding equipment has no practical utility on a floating OCS facility permanently moored in deep water. This regulation is ineffective.

**Cite:** §108.705

**Recommendation:** Modify

**Comments:** This needs to be modified to identify other Coast Guard Authorized Classification Societies and to delineate that the mooring standards for floating OCS facilities also fall under the jurisdiction of the BSEE. This requirement is outdated and ineffective.

**Cite:** §108.707

**Recommendation:** Modify

**Comments:** This cite should only specify a Coast Guard approved first-aid kit. It should also consider floating OCS facilities that have installed hospital spaces and/or telemedicine capabilities. This cite is outdated and ineffective.

**Cite:** §108.715

**Recommendation:** Repeal or Modify (clarify this does not apply to floating OCS facilities)

**Comments:** While this may not be enforced by the Coast Guard, the current regulatory construct that stems from 33 CFR §143.120 says floating OCS facilities "...must comply with the requirements of 46 CFR

Part 108.” A magnetic or gyrocompass has no practical utility on a floating OCS facility permanently moored in deep water. This cite is outdated and ineffective.

**Cite:** §108.717

**Recommendation:** Repeal or Modify (clarify this does not apply to floating OCS facilities)

**Comments:** While this may not be enforced by the Coast Guard, the current regulatory construct that stems from 33 CFR §143.120 says floating OCS facilities “...must comply with the requirements of 46 CFR Part 108.” Installation and use of a radar system should be at the discretion of the operator. This cite is outdated and ineffective.

**Cite:** §108.801

**Recommendation:** Repeal or Modify (clarify this does not apply to floating OCS facilities)

**Comments:** This is not applicable to floating OCS facilities as they do not “navigate” and are not fitted with a “navigation bridge”. This cite is outdated and ineffective.

### **Other Coast Guard Regulations and Policy**

#### **Miscellaneous Regulations (33 and 46 CFR)**

**Cite:** 33 CFR 138 – Financial Responsibility for Water Pollution (Vessels) and OPA 90 Limits of Liability

**Recommendation:** Repeal or Modify (clarify the applicability to floating OCS facilities)

**Comments:** It is requested the Coast Guard clarify the application of this regulation and the requirement to obtain a Certificate of Financial Responsibility (COFR) for a floating OCS facility hull under tow from the U.S. shoreside integration facility to the installation site offshore as well as for units in operation.

Historically, there has been tremendous inconsistency with Coast Guard application of COFR requirements on floating OCS facility hulls that are being towed out to the installation site from the shoreside integration yard. The applicability of a COFR on a hull that has (bulk) fuel in it is not necessarily in question, rather it is the way the NPFC establishes liability limits. Floating OCS facilities are not issued a Certificate of Documentation (COD) by the Coast Guard, therefore, no gross tonnage for these hulls is ever officially established. Further, the USCG/NPFC has inconsistently and arbitrarily set limits of liability for floating OCS facility hulls by mischaracterizing them as "tank vessels" which they are not as they do not carry oil as cargo. For this reason, the liability limit in 138.230 (a)(2) should apply if the COFR is deemed to apply at all.

The operator must also obtain an Oil Spill Financial Responsibility (OSFR) from the Bureau of Ocean Energy Management (BOEM) which greatly eclipses CG limits for a COFR and also proves financial ability to respond to an oil spill. This appears to be a case of two agencies essentially requiring the same thing. Lastly, there is at least one floating OCS facility operator in the GOM who has been required by the Coast Guard to maintain a COFR on their facility at all times. Again, clarity is requested in this regard as the unit is clearly not “transporting bulk fuel or cargo” like a traditional seagoing vessel would do. Also, the operator has an OSFR in place making the requirement for a COFR seem unnecessary. Consultation with various operators has shown that the insurance premium required to obtain a COFR can range from \$100,000 to over \$250,000 annually. As written, this cite is outdated, ineffective, and imposes administrative and cost burdens that exceed benefits.

**Cite:** 33 CFR 153, Subpart B – notifications

**Recommendations:** Modify

**Comments:** The Clean Water Act (Section 311) specifically exempts discharges from a permitted discharge source from the mandatory reporting requirements. Regardless, operators may get cited by the Bureau of Safety and Environmental Enforcement (BSEE) for not reporting sheens regardless of



source. Many companies have internal policies to report all sheens to avoid a BSEE citation. When reporting sheens from permitted discharge sources to the Coast Guard, operators have often been subject to follow-up Coast Guard enforcement actions via a Letter of Warning or Civil Penalty. This is despite the fact the discharge was permitted by an EPA National Pollutant Discharge Elimination System (NPDES) permit and sampling proving compliance with the permit was provided. This results in the Coast Guard enforcing something under the EPA's jurisdiction as a permitted discharge is not a Clean Water Act Violation. Even if the operator was in violation of their EPA permit, it is still not a Coast Guard enforcement issue. Two Coast Guard policy letters were written in the late 1990's to address this issue: G-MOR 16451 letter dated July 1, 1997 and D8 16465 letter dated April 3, 1998 (since rescinded). The G-MOR letter clarified that that Coast Guard will forward cases to the EPA when the discharge is from a permitted source and that the guidance in this letter would be incorporated in future updates of Marine Safety Manual, Volume IX (now the "Marine Environmental Response and Preparedness Manual). This policy guidance has never been incorporated as intended. Likewise, the (now rescinded) D8 policy letter clarified that discharges from permitted source is an EPA enforceable issue and the Coast Guard will refer these reports to the EPA once an operator has provided "sufficient explanation to establish that the discharge was the result of an NPDES process". Despite this clarification of the Coast Guard's role this issue, operators continue to experience widely varying interpretations of this policy from the various COTP offices in the Gulf of Mexico that may conduct a follow-up investigation after a report of discharge has been made to the NRC. Often, there seems to be a lack of familiarity on the part of the Coast Guard Pollution Investigator with these guidance letters and how to interpret them as well as basic jurisdictional issues between the Coast Guard and the EPA. As mentioned above, this has resulted in follow-up enforcement actions for an issue that is clearly outside of Coast Guard jurisdiction. Operators can usually get the Coast Guard to withdraw the action but only after a significant amount of effort. This cite is no longer enforced as written, ineffective, and imposes burdens that exceed benefits.

**Cite:** 46 CFR 2.10 – User Fees

**Recommendation:** Repeal or Modify (establish correct fee for floating OCS facilities based on Table 2.10-101)

**Comments:** As floating OCS facilities are not listed as a vessel subject to inspection per 46 USC 3301, the application of this cite requires further clarification. As a matter of practice, the Coast Guard has held floating OCS facilities to one of the two fees assigned for "Industrial Vessels". This is due to limitations with the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) system because a vessel service type must be assigned. Because of this, floating OCS facilities were lumped into the Industrial Vessel definition even though that definition does not apply. The Coast Guard has not developed a User Fee structure for floating OCS facilities as they were left out of the 1995 Final Rule for Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels (CGD 91-030). Because a floating OCS facility cannot be considered an Industrial Vessel neither of those fees should apply. Instead, the fee for "Any inspected vessel not listed in this table" (\$1030) should be used *if a fee is to be assigned at all*. This cite is outdated, ineffective, no longer enforced as written, and imposes burdens that exceed benefits.

**Cite:** 46 CFR Subchapter F – Marine Engineering

**Recommendation:** The suitability of these regulations for a floating OCS facility should be evaluated via a separate NOSAC Task Statement.

**Cite:** 46 CFR Subchapter J – Electrical Engineering

**Recommendation:** The suitability of these regulations for a floating OCS facility should be evaluated via a separate NOSAC Task Statement.

## Coast Guard Regulatory Projects (ANPRMs and NPRMs):

**ANPRM - SEMS Requirements for Vessels on the US OCS (USCG-2012-0779):** This ANPRM was not supported by the Production sector. Please see the comments from the Offshore Operators Committee to the Docket at <https://www.regulations.gov/document?D=USCG-2012-0779-0039>.

**ANPRM - Training and Manning of MODUs and OSVs Engaged in US OCS Activities (USCG-2013-0175):** This ANPRM was deficient in that it did not capture offshore oil and gas production operations. The Production sector was generally supportive of an effort to evaluate the necessity of certain offshore training and look at ways to provide uniformity of training requirements even though this ANPRM fell short in both instances. Please see the comments from the Offshore Operators Committee to the Docket at <https://www.regulations.gov/document?D=USCG-2013-0175-0018>.

**NPRM - Revision of Crane Regulation Standards for MODUs, OSVs, and Floating OCS Facilities (USCG-2011-0992):** The Production sector was generally supportive of this rulemaking. It is recommended the Coast Guard merge this rulemaking project with a new Subchapter N rulemaking project with the aim to incorporate the latest API standards for cranes and establish additional methods to certify cranes as intended by this rulemaking. Please see the comments from the Offshore Operators Committee to the Docket at <https://www.regulations.gov/document?D=USCG-2011-0992-0012>. Please also see the comments above for 46 CFR §108.601.

**NPRM - Marine Casualty Reporting on the OCS (USCG-2013-1057):** The Production Sector was supportive of this rulemaking. Please see the comments from the Offshore Operators Committee to the Docket at <https://www.regulations.gov/document?D=USCG-2013-1057-0007>. Please also see the comments above for 33 CFR §146.30.

## Policy/Guidance Documents

### Navigation Vessel Inspection Circulars (NVICs)

**General Comments for NVICs:** *As listed in our recommendations above, it is recommended the Coast Guard establish a schedule to review and update NVIC policy. Many of the NVICs in use in the industry today, while in force, are so dated their practical use becomes increasingly challenging over time because they are not routinely reviewed or updated.*

**Policy:** NVIC 7-80 – Use of Fire Detection Systems Which are Not Approved Under 46 CFR §161.002

**Recommendation:** Modify

**Comments:** This NVIC needs to be updated to account for the Harmonization of Standards for Fire Protection, Detection, and Extinguishing Equipment (Final Rule) published July 22, 2016. This would allow for more efficient approval of components vice having to go through a type approval process. Also, this NVIC is not consistently applied by the Coast Guard. The NVIC clearly indicates the OCMI can make the determinations allowed by this policy but in actual practice this is frequently pushed to Coast Guard Headquarters and results in a lengthy approval process. This was clearly not intended by this NVIC. This NVIC is outdated, no longer enforced as written, and imposes burdens that exceed benefits.

**Policy:** NVIC 10-82, CH-2 – Acceptance of Plan Review and Inspection Tasks Performed by ABS for New Construction or Major Modification of US Vessels

**Recommendation:** Modify

**Comments:** This policy needs to be updated to account for other classification societies which are authorized by the Coast Guard and to include applicability to floating OCS facilities that are classed. Enclosures (1) and (2) to be revised to address the scope of required plan review and inspection of floating OCS facilities. In addition, the policy needs to be revised to include applicability to post-construction activities such as modifications and conversions. To maximize its resource optimization and cost savings objectives, it is also recommended that the Coast Guard implement an effective training system to support the uniform application of the provisions of the NVIC across the various OCMI zones. In addition, if a floating OCS facility was initially approved to be designed and inspected under the NVIC and it remains Classed by the same Class Society, the OCMI should not have to approve design review and inspection for each modification that occurs as is currently required. The application by the operator and approval by the OCMI for design and inspection under NVIC 10-82 for each modification is overly burdensome for both the operator and USCG and serves no beneficial purpose.

**Policy:** NVIC 7-84 – OCS Citizenship Requirement; Exemption From

**Recommendation:** Modify

**Comments:** This NVIC and the issue of citizenship of workers on the OCS was the topic of a NOSAC Task Statement in 2009. Please see the comments above for 33 CFR Part 141. It is recommended the issue of OCS citizenship requirements be revisited via a new NOSAC Task Statement as almost 10 years has passed since the last Task Statement, and the Coast Guard did not act on those recommendations. This NVIC is outdated and imposes burdens that exceed benefits.

**Policy:** NVIC 2-89 – Guide for Electrical Installations on Merchant Vessels and MODUs

**Recommendation:** Modify

**Comments:** This NVIC should be updated to include guidance for electrical applications on floating OCS facilities. As currently written, this NVIC is outdated.

**Policy:** NVIC 10-92, CH-2 – CG Recognition of Registered Professional Engineer Certification of Compliance with CG Requirements

**Recommendation:** Modify

**Comments:** This policy needs to be updated to include applicability to floating OCS facilities. To maximize its resource optimization and cost savings objectives, it is also recommended that the Coast Guard implement an effective training system to support the uniform application of the provisions of the NVIC across the various OCMI zones.

**Policy:** NVIC 3-97 – Stability Related Review Performed by ABS for US Flag Vessels

**Recommendation:** Modify

**Comments:** This policy needs to be updated to account for other classification societies which are authorized by the Coast Guard and to include applicability to floating OCS facilities.

### **Marine Safety Manuals:**

#### **Marine Safety Manual, Volume II – Materiel Inspection**

**General Comments:** *Various sections of MSM, Volume II should be modified or repealed as discussed below. These policies are outdated, ineffective, and impose cost and administrative burdens that exceed benefits.*

**Cite:** Section B, Chapter 1 (page B1-88 of most recent revision of MSM, Vol. II)

**Recommendation:** Modify

**Comments:** Paragraph #5 indicates the Coast Guard Marine Inspector should direct the completion of at least three stop-start cycles when lowering a lifeboat during the 10% overload test. This is given in the context of a 10% overload test conducted during a COI inspection or after the falls have been replaced, not for prototype testing or installation tests where it may be more appropriate. This policy has appeared in the MSM for many years and has never been revised to align with similar IMO/SOLAS direction for how to conduct a 10% overload test. IMO/SOLAS and manufacturer guidance only call for the boat to be stopped “abruptly” after the lowering speed is determined. Manufactures may require frequent stop-start cycles after the replacement of a centrifugal brake to “burnish” or wear in the brake pads; however, this is done with a light boat, not one that is at 10% overload. The extra stop-start cycles called for in the Coast Guard’s MSM policy are not supported by any recognized standard or other rationale. It is suggested the extra stop-start cycles accomplish nothing more than excess wear on the equipment and the introduction of unnecessary risk to the weight testing procedure provided the IMO/SOLAS and manufacturer accepted testing protocols have already been satisfied. This policy is outdated, no longer necessary, ineffective, and imposes burdens that exceed benefits.

**Cite:** MSM, Vol. II, Section G, Chapter I, Paragraph C.2

**Recommendation:** Modify

**Comments:** This section details internal Coast Guard policy for the administration and scheduling of overseas inspections of floating OCS facility hulls in foreign yards during construction. It is recommended this section be modified to require that Coast Guard inspection personnel detailed to conduct these inspections overseas be qualified in the inspection of floating OCS facilities. Historically, the Coast Guard has sent some personnel who do not have the requisite expertise in floating OCS facility inspections on these activities as an opportunity to provide training and experience. In that this activity is ultimately reimbursed by the company involved, it is not appropriate or ethical to saddle these costs with the company. If the Coast Guard desires to send unqualified personnel on these inspections to assist in their qualification and development, then the Coast Guard should bear these costs. Further, the Coast Guard team size of four to six people is excessive. The policy requirement for the inspection details to be entered into MISLE is noted; however, this has historically been an issue of concern for several projects where the overseas inspectors did not enter the information and this resulted in the U.S. based OCMI re-inspecting many of the same items the Coast Guard inspectors overseas already inspected. This resulted in delays and extra costs for the operator. Lastly, the actual scope of the inspection should be identified to cover only those items where the Coast Guard has established regulatory authority. As this report has detailed in several instances, there are areas of inspection the Coast Guard has historically exerted their authority; however, in many cases there may not be an actual regulatory basis to do so. This policy is outdated, ineffective, and imposes burdens that exceed benefits.

**Cite:** MSM, Vol. II, Section G, Chapter I, Paragraph E.2

**Recommendation:** Modify

**Comments:** This section should be revised to include all BSEE and USCG Memoranda of Agreement (MOAs). The current listing is dated and incomplete.

**Cite:** MSM, Vol. II, Section G, Chapter I, Paragraph F

**Recommendation:** Modify

**Comments:** Please see the comment above for 33 CFR Part 138.

**Cite:** MSM, Vol. II, Section G, Chapter I, Paragraph H

**Recommendation:** Modify

**Comments:** Please see the comments above for 33 CFR Part 141 and NVIC 7-84.

**Cite:** MSM, Vol. II, Section G, Chapter I, Paragraph I.2

**Recommendation:** Modify

**Comments:** This section is not aligned with D8 Policy Letter 01-2014. Further, the Coast Guard does not have a clear regulatory basis for In-Service Inspection Plans (ISIPs) or other methods to assess hull integrity and this will be discussed in more detail in the section below concerning ISIPs.

**Cite:** MSM, Vol. II, Section G, Chapter I, Paragraph J

**Recommendation:** Modify

**Comments:** Operators have been required to obtain Marine Chemists to facilitate hull entry/confined space entry by Coast Guard Marine Inspectors. It is requested the Coast Guard clarify their regulatory basis to require hull entry by their personnel. Absent this clarification, operators should not be required to obtain the services of a Marine Chemist. The costs for a Marine Chemist to go offshore on the U.S. OCS can easily reach or exceed \$10,000 for a 2-day visit. This policy imposes burdens that exceed benefits.

**Cite:** MSM, Vol. II, Section G, Chapter I, Paragraph K

**Recommendation:** Modify

**Comments:** This section does not align with the guidance in CG-ENG Policy Letter 01-16 (discussed below).

**Cite:** MSM, Vol. II, Section G, Chapter 4, Paragraph A

**Recommendation:** Modify

**Comments:** The older MOA is referenced. The current BSEE/USCG MOA OCS-04 for Floating OCS Facilities was effective as of 28 January 2016.

**Cite:** MSM, Vol. II, Section G, Chapter 4, Paragraph D

**Recommendation:** Repeal or Modify (confirm regulatory basis)

**Comments:** The Coast Guard does not have a clear regulatory basis for drydocking inspections (or ISIPs) of FOIs. 33 CFR 143.120 only invokes 46 CFR 107 Subpart C, whereas a link to regulatory authority could be found in 46 CFR 107 Subpart B; however, this does not appear to apply to floating OCS facilities.

**Cite:** MSM, Vol. II, Section G, Chapter 4, Paragraph E.1

**Recommendation:** Modify

**Comments:** The move to a Quarters Habitable (QH) letter vice the historical misuse of the Temporary Certificate of Inspection is most welcome. It is suggested; however, that this cite be modified to provide detail around the minimum requirements the Coast Guard will confirm to issue a QH Letter. Currently, there is no structure around what constitutes a successful QH inspection. There is also a need for the Coast Guard to clarify a regulatory basis for items historically considered to be under their jurisdiction. Until this can be done, the QH inspection process will remain fluid and it will likely create delays, uncertainty, and incur excess costs for operators working to put a new floating OCS facility into operation.

**Cite:** MSM, Vol. II, Section G, Chapter 4, Paragraph E.2

**Recommendation:** Modify

**Comments:** Much like the QH section discussed above, there is a need for the Coast Guard to expand further on this MSM policy for "Buy-Back Gas". The specific concerns of the Coast Guard and items of

inspection should be detailed here. Until this can be done, it will likely prove to be an inconsistent process further exacerbated by the frequent rotation of Coast Guard inspection personnel and fluctuating levels of experience and expertise. It is suggested the Coast Guard memorialize best practices around unique issues such as this and other aspects of floating OCS facility hook-up and commissioning. As it is now, this is not done and there is not a consistent level of expertise amongst Coast Guard field personnel to address the complexities of this issue.

**Cite:** MSM, Vol. II, Section G, Chapter 4, Paragraph F

**Recommendation:** Repeal

**Comments:** Based on the definition of “Tank Vessel” found in 46 USC §2101, it is unclear how the Coast Guard arrived at the determination found in this policy. It is recommended this be analyzed further.

**Cite:** MSM, Vol. II, Section G, Chapter 4, Paragraph I

**Recommendation:** Repeal

**Comments:** The same comment made above for 46 CFR 108.241 applies here as well.

**Cite:** MSM, Vol. II, Section G, Chapter 4, Paragraph K

**Recommendation:** Repeal

**Comments:** This policy and other Coast Guard policy regarding ISIPs (e.g. G-MOC-2 Policy Letter 03-01) cite 46 CFR 107 Subpart B (107.261 and 107.265). In that the regulations in 33 CFR 143.120 only invoke 46 CFR 107 Subpart C, it does not appear the Coast Guard has established a firm regulatory basis for requiring or approving ISIPs or developing policy around them. Further, this calls into question the authority Coast Guard marine inspectors use to require tank entry and two other Eighth District Policy letters having to do with Continued Service and Structural Integrity Management. Until the Coast Guard can clarify this, it is recommended this policy be repealed or at least not enforced. Even without this policy, operators will still have robust asset integrity plans in place and classed facilities will still have to abide by class rules with regard to an ISIP. As currently enforced, this policy imposes administrative and cost burdens in terms of plan submittal, approval timelines (for something it does not appear the Coast Guard can regulate), and having to obtain a Marine Chemist to facilitate Coast Guard marine inspector tank entry.

**Cite:** MSM, Vol. II, Section G, Chapter 4, Paragraph L

**Recommendation:** Repeal

**Comments:** The policy in this section of the MSM comes from D8 Policy Letter 03-2000, CH-1. Like the ISIP issue above, it is not clear that the Coast Guard has established a legal or regulatory basis to regulate manning on a floating OCS facility in terms of “marine crew” and, instead, is regulating by policy. It appears well intended but it has never been formalized. Further, the guidance in this policy (which is the same as the D8 letter) is outdated and ineffective. The information regarding Lifeboatman certification is not correct as merely holding a deck officer license does not make one a certified Lifeboatman. This policy also cites 46 CFR Part 109 which is not applicable to floating OCS facilities. It is recommended this policy be repealed and the Coast Guard work with Industry groups to determine what marine related competencies are essential to floating OCS facility operations. In lieu of regulation, an industry standard could be created and adopted for use.

**Cite:** MSM, Vol. II, Section G, Chapter 5, Paragraph D.5

**Recommendation:** Modify or Repeal (remove requirement for review and approval)

**Comments:** Please see the comments above for 33 CFR §146.140.

**Cite:** MSM, Vol. II, Section G, Chapter 5, Paragraph D.6

**Recommendation:** Modify

**Comments:** Please see the comments above for 33 CFR §144.01.

## **Marine Safety Manual, Volume III – Marine Industry Personnel**

**General Comments:** *There is no policy in this Marine Safety Manual regarding the marine crew on a floating OCS facility. Policy in this manual regarding citizenship and credentialing requirements on U.S. Flag vessels; however, does impact support for production operations and this will be discussed below.*

**Cite:** MSM, Vol. III, Part B, Chapter 1, Section H.

**Recommendation:** Modify

**Comments:** The definition for what constitutes a “seaman” on a U.S. Flag vessel in this section is overly broad, has been inconsistently applied, or not enforced at all. While conducting specialized offshore and subsea construction activities, the technical assistance of shore-based engineering or manufacturer representatives - U.S. Citizens or foreign - may be required to perform the operation safely and within manufacturer specifications. When a U.S. Flagged/documentated installation vessel is utilized, this policy has proven to be a barrier to placing these essential technical personnel on board, even though their presence is temporary and they are not marine crew responsible for the operation or navigation of the vessel. Further, the Jones Act may require the use of a U.S. Coastwise compliant vessel; however, the current Coast Guard view on this issue is a limiting factor on the overall technical capability of this category of vessel required to perform complex offshore and subsea construction activities. This external expertise is essential for some operations because the equipment or techniques to install it are often proprietary. In many cases this equipment is foreign sourced so the technical expertise to support it is often only available via the use of a non-U.S. citizen specialist. However, even if the specialist is a U.S. citizen, the current Coast Guard interpretation of this policy would require them to obtain a Merchant Mariner Credential (MMC) because they could be considered a “seaman”. It is suggested the Coast Guard has already found a way forward in this regard through the interpretation they provided in their December 19, 2008 letter from CG-5432 to Mr. Charles R. Havnen of Charles R. Havnen and Associates. That letter established final agency action on the issue of whether foreign anchor handling “specialists” could perform work on U.S. Documented vessels conducting anchor handling operations in the U.S. OCS. The position taken by this letter was that the functions performed by the anchor handling specialists was temporary and episodic, they are not part of the ship’s regular “complement”, and they are not considered to be a “seaman”. In that the work provided by U.S. or foreign specialists to support OCS construction activities is essentially the same scope of work (technical specialist support) provided by the anchor handling specialists addressed in this letter, it seems the Coast Guard has already established a precedent that would support this. It is recommended the policy guidance in this cite be modified accordingly. As currently written, this policy is outdated, ineffective, no longer enforced as written, and imposes burdens that exceed benefits.

### **Other Marine Safety Manual Policy**

**Policy:** Marine Safety Manual, Vol. V – Investigations and Enforcement

**Recommendation:** Modify

**Comments:** Floating OCS facilities are not specifically addressed anywhere in this policy. Chapter B12 for Offshore Incident Investigation requires updating and incorporation of the USCG/BSEE MOA on Incident Investigations. Chapter B8 needs clarifying policy on the interaction and level of investigative effort between the CG and EPA on spills from permitted discharge points (e.g. produced water sheens). Please see comments above for 33 CFR 153, Subpart B. This policy is outdated and ineffective.

**Policy:** (Legacy) Marine Safety Manual, Vol. IX – Marine Environmental Response and Preparedness Manual

**Recommendation:** Modify

**Comments:** Please see the comments above for 33 CFR 153, Subpart B. This policy is outdated and ineffective.

**CG-CVC Policy Letters:**

**Policy:** MOC Policy Letter 02-01 – Regular Complement of Crew Determinations for Units Engaged in OCS Activities

**Recommendation:** Modify

**Comments:** Please see the comments above for 33 CFR 141 and NVIC 7-84. This policy is outdated, ineffective, and imposes burdens that exceed benefits.

**CG-ENG Policy Letters:**

**Policy:** CG-ENG 01-13 – Alternate Design and Equipment Standards for FOI and FPSO Units on the OCS

**Recommendation:** Modify

**Comments:** This can serve a valuable accompanying policy to support design and equipment regulations for floating OCS facilities. It is recommended this policy be expanded to include non-classed FOIs as it is essentially making classification a requirement via policy. Further, the policy letter should be clarified to indicate that the designer can choose to follow the alternate design for a specific piece of equipment or design outlined in the policy letter and still follow regulations for other equipment or designs in lieu of the alternate design allowed in the policy letter.

**Policy:** CG-ENG Policy Letter 01-16 – Portable Accommodation Module (PAM) Guidance

**Recommendation:** Repeal

**Comments:** It is recommended this policy letter be repealed and that the Coast Guard work with concerned industry groups to craft a more workable policy. We also have concerns this is regulation disguised as policy. We recommend the Coast Guard review and take into consideration the numerous recommendations made in the NOSAC report on Accommodation Modules dated January 24, 2011. As written, this policy imposes burdens that exceed benefits.

**Coast Guard Marine Safety Center Technical Notes (MTNs):**

**Policy:** MTN 04-95 – Lightship Change Determination

**Recommendation:** Modify

**Comments:** This policy guidance is largely unworkable for floating OCS facilities - especially SPAR hulls - and is overly conservative. The definition of “certified weights” is too narrow and does not reflect the way weights are added or removed from floating OCS platforms. Due to the nature of production systems on floating OCS platforms, modifications frequently occur during the operational life of the facility and are conducted offshore with the unit in place, not in a shipyard. It is not practicable to weigh each piece of pipe or infill structure that is added or removed from the platform. Alternate methods, such as using computer based design models, have been demonstrated to show they are as accurate in determining weight changes as getting certified weighing of pipe or individual structural members. Further, models can calculate the CG of the changes which cannot be determined by weighing individual pieces of pipe or structure. Alternate methods that have been demonstrated to be within the same accuracy as certified weighing should be treated the same as certified weights in determining the maximum aggregate weight change that can occur prior to conducting a new stability



test. Incline tests are impossible on moored facilities and deadweight surveys will include large amounts of error when performed on permanently moored offshore facilities (poorly controlled due to environmental factors and inaccuracies in mooring chain/riser tension readings). In-service stability monitoring software using multiple weight shifts and inclines in addition to routing pitch and roll motions to smooth inherent error is an alternative to an incline, but face the same issues with weather and chain/riser tension monitoring – and it is also very expensive. Mandating this type of reaction to lightship changes is not value added nor does it improve safety for certain hull forms such as SPARs that inherently have large AVCG margins and can easily absorb VCG penalties. A prescriptive and tiered VCG penalty system for uncertified lightship weight additions beyond a specific threshold would be preferred to mandating deadweight surveys and incline tests. If an operator cannot take the penalty, it will be up to them to either find certified weights or to work with the Marine Safety Center to justify their lightship conditions through deadweight surveys, tension calibrations/verifications, and stability monitoring software. There is no Coast Guard guidance that exists for dealing with "phantom weights" (propose a 1% of Total Displacement rule before additional VCG penalties kick in). This MTN is acceptable for traditional vessel forms but it should exclude all permanently moored FOIs. It should be modified to include hull-form specific policy for permanently moored units. Additionally, it should address "phantom weights" for floating OCS facilities. This policy is ineffective and imposes burdens that exceed benefits.

#### **National Maritime Center Policy and Guidance Documents:**

**Policy:** D8 Policy Letter 08-2001 – Licensing Requirements for Personnel on Non-Self Propelled Floating OCS Facilities

**Recommendation:** Repeal

**Comments:** To be detailed further below under "Coast Guard Eighth District Policy Letters". This policy is highlighted here since the National Maritime Center (NMC) is the Merchant Marine Credential issuing authority for the Coast Guard. This policy is still listed in its original form under Eighth District letterhead; however, it is unclear whether Eighth District or the NMC "own" this policy.

#### **Coast Guard Eighth District (D8) Policy Letters:**

**Policy:** CGD8INST 16711.1 – Fixed Platform Inspection Program

**Recommendation:** Modify

**Comments:** It is requested the Coast Guard work with concerned industry groups to revise this policy or create new policy if this one is no longer valid. This policy is outdated, ineffective, and no longer enforced as written

**Policy:** D8 Policy Letter 03-2000, CH-1 – Policy on Manning of Non-Self Propelled Floating OCS Facilities

**Recommendation:** Repeal

**Comments:** Please see comments above for MSM, Vol. II, Section G, Chapter 4, Paragraph L. The issue for manning (required marine crew) on floating OCS facilities has never been formalized in regulation. It is recommended this policy be repealed and the Coast Guard work with Industry groups to determine what kinds of marine related competencies are essential to floating OCS facility operations. In lieu of regulation, an industry standard could be created and adopted for use.

**Policy:** D8 Policy Letter 08-2001 – Licensing Requirements for Personnel on Non-Self Propelled Floating OSC Facilities

**Recommendation:** Repeal

**Comments:** Like the issue with (marine crew) manning on floating OCS facilities discussed above, licensing (or Merchant Marine Credentialing) requirements for floating OCS facilities have never been formalized in regulation which seems to make this another “regulation by policy” document. It was likely well-intended when it first came out as floating OCS facilities were still a relatively new concept on the U.S. OCS. Just the same, it is not supported by regulation and it imposes tremendous cost and other administrative burdens on individuals and companies to address a competency issue that has never been adequately evaluated for application to a floating OCS facility. Instead, the Coast Guard basically mirrored what they require for U.S. Flag MODUs and this is not an entirely appropriate when applied to floating OCS facilities. Further, it is unclear which Coast Guard office “owns” this policy. It was written at D8 but eventually migrated to the NMC. Because regulation specific to marine crew credentialing has never been developed, this leads to inconsistencies in the way the NMC administers this credential. Floating OCS facility marine crew in possession of one of these MMCs have frequently been issued an MMC for service on a MODU and this is clearly not appropriate.

The costs associated with obtaining an original issue floating OCS facility credential as a Ballast Control Operator can easily approach \$6000. This includes the Coast Guard credentialing fees, associated training, credentialing courses from a third-party provider, and other administrative fees. The credential holder must also obtain a Transportation Worker Identification Card (TWIC) to satisfy the security element of the MMC and TWIC fees for a new applicant are currently \$125.25. An MMC holder must renew the TWIC and MMC every 5 years so this is another \$125.25 fee for the TWIC and additional fees of at least \$95.00 for the MMC. None of this considers travel and lodging costs (if required) for the person to be able to visit the Coast Guard Regional Exam Center and TWIC issuing office. Holding an MMC also subjects the holder to Suspension and Revocation action, compliance with DOT drug testing, and NVIC 4-08, CH-2 (Guidance for Evaluating the Physical and Medical Conditions of Applicants for Merchant Mariner’s Documents, Licenses, Certificates of Registry, and STCW, collectively referred to as Credentials). Since an MMC for floating OCS facility marine crew is not required by law or regulation, this imposes additional burdens that have not been fully considered. It is recommended the Coast Guard repeal this policy and work with industry groups to identify the appropriate competencies for certain floating OCS facility personnel in marine related positions. The issue of whether these competencies should fall under the umbrella of an MMC needs to be fully evaluated and established in regulation before it can be required. This policy is outdated, ineffective, no longer necessary and imposes burdens that exceed benefits.

**Policy:** D8 Policy Letter 01-2014 – Guidance on Post Hurricane Inspection Requirements for Floating Offshore Production Facilities

**Recommendation:** Repeal

**Comments:** This policy references the ISIP policy in Marine Safety Manual, Volume II. Please see the comments for MSM, Vol. II, Section G, Chapter 4, Paragraph K above. Until the Coast Guard can establish a regulatory basis for an ISIP, reference to an ISIP should be removed from this policy. This policy is outdated and imposes burdens that exceed benefits.

**Policy:** D8 Policy Letter 01-15 – EEP Approvals

**Recommendation:** Repeal

**Comments:** Please see the comments above for 33 CFR §146.140. This policy is ineffective, no longer enforced as written, and imposes burdens that exceed benefits.

**Policy:** D8 Policy Letter 01-16 – Interim Guidance on Life Extension (Continued Service) Requirements for Floating OCS Facilities

**Recommendation:** Repeal

**Comments:** As mentioned in previous comments regarding the application of 46 CFR Part 107 Subpart B, the Coast Guard does not appear to have a regulatory basis to require ISIPs. Please see the comments above for MSM, Vol. II, Section G, Chapter 4, Paragraph K. This policy is well intended and discusses an issue that needs resolution; however, the lack of supporting regulation and other criteria in this policy make compliance with it an elusive concept. As currently written, this policy requires that the Coast Guard grant a life extension for an operator to operate a facility beyond its original stated minimum design life, which may have been understated at the time the facility was designed since operators tend to look at the minimum life they need for the facility, not the maximum life that the design actually supports. Further, this Coast Guard approval is contingent upon approval by the BSEE. The BSEE does not have regulations in place that allow them to grant an approval for life extension/continued service. Attempting to comply with this policy may require an operator to spend several hundreds of thousands of dollars for supporting engineering analyses and not result in continued service being approved. This policy is ineffective and imposes burdens that exceed benefits.

**Policy:** D8 Policy Letter 02-16 – SIM Program as an Alternative Hull Inspection

**Recommendation:** Repeal

**Comments:** As mentioned previously in our comments regarding the application of 46 CFR Part 107 Subpart B, the Coast Guard does not appear to have a legitimate regulatory basis to require ISIPs. Please see the comments above for MSM, Vol. II, Section G, Chapter 4, Paragraph K. This policy is well intended and discusses an issue that needs resolution; however, the lack of supporting regulation and other criteria in this policy make compliance with it an elusive concept. In actual practice, seeking approval via this policy is inconsistent and significant time delays have occurred while waiting for Coast Guard approval from either the MSC or OCMI for something over which they do not appear to have jurisdiction. Facilities that are classed should only have to meet applicable class rules relative to Risk-Based Inspection criteria. This policy is ineffective and imposes burdens that exceed benefits.

**Policy:** D8 Policy Letter 03-16 – Risk-Based Inspection Resource Allocation

**Recommendation:** Modify

**Comments:** It is recognized this policy was intended to allow more intelligent resourcing of scarce Coast Guard Marine Inspection resources. It is recommended the Coast Guard provide some structure around the items for which they can issue requirements (i.e. “835s”). As an example, the way in which the BSEE has provided detail, structure, and possible enforcement outcomes for their Z-PINCs they can issue on fixed facilities should be emulated. Because 835’s are not weighted, it is not clear how accurate a Coast Guard established deficiency history is when used to assign a risk ranking using this policy. This policy imposes burdens that exceed benefits.

**Policy:** D8 Policy Letter 04-16 – Lifesaving Inspection and Drills

**Recommendation:** Modify

**Comments:** It is recommended the Coast Guard accept alternative methods to fully loading lifeboats in the stowed position on both fixed and floating facilities. This policy has not been enforced consistently despite the fact it acknowledges operators may have policies against loading their boats while in the stowed position. This policy is no longer enforced as written, ineffective, imposes burdens that exceed benefits, and potentially imposes unnecessary risks with the use of stowed lifeboats.

## Annex II: Brief History of 33 CFR Subchapter N

### BACKGROUND

Congress specifically granted to the Coast Guard in the Outer Continental Shelf Lands Act (OCSLA), as amended, the authority to regulate, among other things:

1. Lights and other warning devices, safety equipment, and the safety of life and property on OCS units. (43 U.S.C. 1333(d)(1) states that the Coast Guard “shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices” permanently or temporarily attached to the U.S. OCS and “erected thereon for the purpose of exploring for, developing, or producing resources” from the U.S. OCS.)
2. Hazardous working conditions on the OCS. (43 U.S.C. 1347(c) states that the Coast Guard “shall promulgate regulations or standards applying to unregulated hazardous working conditions related to activities on the outer Continental Shelf” when it determines such regulations or standards are necessary. Also, this section of the OCSLA grants the Coast Guard the authority to “modify any regulations, interim or final, dealing with hazardous working conditions on the outer Continental Shelf.”)
3. Vessels used for OCS activities. (43 U.S.C. 1356(a)(2) states that the Coast Guard shall “issue regulations which require that any vessel, rig, platform, or other vehicle or structure which is used for [OCS activities] comply. . . with such minimum standards of design, construction, alteration, and repair” as it establishes.)

The Coast Guard regulations issued in accordance with its authority under OCSLA, as amended, are found in 33 CFR Subchapter N – Outer Continental Shelf Activities. 33 CFR 140.1 states the purpose of Subchapter N is “to promote safety of life and property on Outer Continental Shelf (OCS) facilities, vessels, and other units engaged in OCS activities, protect the marine environment, and implement the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), as amended by the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372, 92 Stat. 629).”

### HISTORY

#### Original Subchapter N Rulemaking

To implement section 4 (e) of the Outer Continental Shelf Lands Act of 1953, codified at 43 U.S.C 1333, the Coast Guard issued a Notice of Proposed Rulemaking, *Subchapter N – Artificial Islands and Fixed Structures on the Outer Continental Shelf*, in the Federal Register on **December 22, 1955 (20 FR 9862)**. The subsequent final rule was published in the Federal Register on **February 9, 1956 (21 FR 903)** and became effective on **July 1, 1956**.

In the preamble to the 1956 final rule, the Coast Guard stated that the new regulations contained “requirements with respect to safety of life and property on artificial islands and fixed structures used directly or indirectly in connection with the exploration, testing, drilling, production, storage, etc., of natural resources of the subsoil and seabed of the outer continental shelf,” and that these new requirements were intended to address “special safety construction features, emergency equipment, lifesaving appliances, fire-fighting equipment, emergency operation procedures, and special inspections

thereof by the Coast Guard.” The Coast Guard specifically stated that it intended to enforce these new Subchapter N regulations only “after construction or erection of the artificial islands or fixed structures is completed.”

Until the Coast Guard revised them as discussed below, these regulations defined “artificial island or fixed structure” to mean “a building or platform secured to the seabed by fixed means or submerged onto the seabed so that for all practical purposes it becomes stationary. This includes both mobile and built-up platforms.” Furthermore, the term “mobile platform” meant “an artificial island or fixed structure which includes as an integral part of itself features which permit it to be moved as an entity from position to position and to be fixed to or submerged onto the seabed.”

### **The “first major phase” of the rulemaking project to update 33 CFR Subchapter N to implement the mandatory provisions of the 1978 Amendments to OCSLA**

To partially implement the 1978 amendments to the Outer Continental Shelf Lands Act, the Coast Guard published a Notice of Proposed Rulemaking, *Outer Continental Shelf Activities*, in the Federal Register on **May 1, 1980 (45 FR 29072)**.

### **OCSLA amendment items addressed in the 1980 Notice of Proposed Rulemaking**

The Coast Guard addressed the following sections of the 1978 amendments to OCSLA in the 1980 NPRM:

1. Section 22(b) of the Act, codified at 43 U.S.C. 1348(b), making it the duty of any holder of a lease or permit under the Act to:
  - a. maintain all places of employment free from recognized hazards to employees;
  - b. maintain operations in compliance with workplace safety and health standards and other regulations intended to protect persons, property, and the environment on the OCS; and
  - c. allow inspectors prompt access to the site of operations.
2. Section 22(c) of the Act, codified at 43 U.S.C. 1348(c), providing for both scheduled and unannounced inspections of OCS facilities.
3. Section 22(d) of the Act, codified at 43 U.S.C. 1348(d), requiring investigation and public report on each major fire, major oil spill, death, and serious injury resulting from operations conducted pursuant to the Act.
4. Section 22(e) of the Act, codified at 43 U.S.C. 1348(e), providing for Coast Guard review of any allegation of the existence of a violation of a workplace safety and health regulation issued under the Act.
5. Section 22(f) of the Act, codified at 43 U.S.C. 1348(f), authorizing administration of oaths and subpoenaing of witnesses during investigations.
6. Section 23 of the Act, codified at 43 U.S.C. 1349, establishing procedures pertaining to citizen suits, court jurisdiction, and judicial review.
7. Section 24 of the Act, codified at 43 U.S.C. 1350, providing a new system of remedies and penalties.

8. Section 30(a)(2) of the Act, codified at 43 U.S.C. 1356(a)(2), requiring the Coast Guard to issue regulations establishing minimum standards of design, construction, alteration, and repair for certain vessels, rigs, platforms, or other vehicles or structures used for activities pursuant to the Act.
9. Section 30(a)(3) of the Act, codified at 43 U.S.C. 1356(a)(3), directing the Coast Guard to issue regulations requiring certain vessels, rigs, platforms, or other vehicles or structures used for activities pursuant to the Act to be manned by United States citizens.

### **OCSLA amendment items not addressed in the 1980 Notice of Proposed Rulemaking**

The Coast Guard did not address the following sections of the 1978 amendments to OCSLA in the 1980 NPRM:

1. Best available and safest technologies (BAST): Section 21(b) of the Act, codified at 43 U.S.C. 1347(b), requiring on drilling and production operations, the use of the best available and safest technologies (BAST) which are economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment. The reason given by the Coast Guard was that existing Coast Guard regulations, in particular the standards for mobile offshore drilling units in 46 CFR Subchapter I-A (Parts 107 – 109), as well as existing U.S. Geological Survey (i.e., BSEE) requirements for drilling and production operations, already incorporated this principle to a large extent. Accordingly, the Coast Guard proposed to defer specific new rulemaking action concerning BAST until additional data became available, including the preliminary results of a joint BSEE/Coast Guard study of existing safety and health regulations required under section 21(a) of the Act, codified at 43 U.S.C. 1347(a), on the technology, equipment, and techniques available for exploration, development, and production of the minerals of the OCS. A public notice concerning the required joint study of existing safety and health regulations was published in the Federal Register on **February 28, 1980 (45 FR 13127)**.
2. Unregulated hazardous working conditions: Section 21(c) of the Act, codified at 43 U.S.C. 1347(c), authorizing the Coast Guard to promulgate regulations applying to hazardous working conditions not presently regulated and to modify any regulation, interim or final, dealing with hazardous working conditions already regulated. The Coast Guard proposed to address this provision of the Act in a separate rulemaking project first published as an Advance Notice of Proposed Rulemaking (ANPRM), *Unregulated Hazardous Working Conditions on the Outer Continental Shelf*, in the Federal Register on **September 20, 1979 (44 FR 54499)**. Drawing upon the information generated by this ANPRM, the Coast Guard published an NPRM, *Workplace Safety and Health Requirements for Facilities on the Outer Continental Shelf*, in the Federal Register on **January 9, 1984 (49 FR 1083)**. The Coast Guard published a final rule with the same title in the Federal Register on **July 10, 1986 (51 FR 25054)**, and it became effective on **January 12, 1987**.
3. Documenting of OCS units: Section 30(a)(1) of the Act, codified at 43 U.S.C. 1356(a)(1), directing the Coast Guard to publish regulations requiring that any vessel, rig, platform, or other vehicle or structure used for activities pursuant to the Act. "when required to be documented by the laws of the United States, be documented under the laws of the United States." The Coast Guard stated that this provision of the Act simply reaffirmed existing interpretations and applications of mandatory documentation under other U.S. laws; therefore, no new regulations were necessary.

## **Additional items addressed in the 1980 Notice of Proposed Rulemaking not mandated by the OCSLA amendments**

In addition to implementing certain sections of the 1978 Amendments to OCSLA, the Coast Guard proposed to apply certain new Coast Guard requirements for domestic mobile offshore drilling units of certain minimum tonnage and means of propulsion, or their equivalent, to all domestic and foreign mobile offshore drilling units operating on the OCS, regardless of tonnage and means of propulsion. These new Coast Guard requirements, *Requirements for Mobile Offshore Drilling Units*, had been published in the Federal Register on **December 4, 1978 (43 FR 56799)**.

### **The 1982 Final Rule**

The Coast Guard published the final rule, *Outer Continental Shelf Activities*, in the Federal Register on **March 4, 1982 (47 FR 9366)**, and it became effective on **April 5, 1982**. The Coast Guard stated that the publication of this final rule concluded the “first phase” of rulemaking to implement the mandatory provisions of the 1978 Act, and that the updated Subchapter N provided “a framework for the inclusion of more specific regulations to be developed in the future.” The final rule contained the following information worth noting:

1. In its summary, the Coast Guard stated that the final rule “amends requirements for facilities, vessels, and other units, domestic and foreign, engaged in mineral exploration, production, or development activities on the Outer Continental Shelf,” in keeping with the broader authority granted to the Coast Guard under the provisions of the 1978 Amendments to OCSLA. It ended the summary by stating the new regulations “are intended to ensure that foreign mobile offshore drilling units operating on the Outer Continental Shelf meet standards comparable to standards met by U.S. units, to implement statutory provisions for manning by U.S. citizens, and to improve the safety of activities on the Outer Continental Shelf.”
2. The Coast Guard received twenty-seven (27) written comments in response to the NPRM. No public meeting was requested, scheduled, or held. Some of the more interesting Coast Guard responses to these comments:
  - a. The Coast Guard and U.S. Geological Survey (i.e., BSEE) will review reporting requirements, data collection requirements, and current standards, regulations and orders and propose revisions where necessary to eliminate duplicative requirements. The relationship between the requirements of Subchapter N and requirements administered by BSEE is stated in § 140.4 of the regulations.
  - b. The joint BSEE/Coast Guard study of existing safety and health regulations required under section 21(a) of the Act, codified at 43 U.S.C. 1347(a), on the technology, equipment, and techniques available for exploration, development, and production of the minerals of the OCS had not been completed at the time of the publication of this final rule. Results of the study were expected to be available in the summer of 1982.
  - c. The Coast Guard did not propose to revise existing regulations for firefighting equipment on manned platforms and stated any changes to the existing rules which appeared necessary would be addressed in a subsequent rulemaking project.
  - d. Certification for fixed OCS facilities was not considered necessary because fixed facilities are “not subject to being moved from one Coast Guard marine inspection zone to another.”

- e. On December 18, 1980, the Commandant of the Coast Guard and the Director of the U.S. Geological Survey signed the first Memorandum of Understanding (MOU) concerning agency responsibilities for OCS activities. The agreement was reprinted in the Federal Register on **January 8, 1981 (46 FR 2199)**.
- f. Three comments suggested that the lessee's responsibility for maintaining all places of employment within the lease areas free from occupational hazards be revised to refer only to places of employment owned and operated by the lessee. The comments maintained that the operators of major equipment were separately and independently responsible for safety and health on those units. The Coast Guard responded that, although operators of major equipment including MODUs, barges, and other vessels are separately and primarily responsible for workplace safety and health on their units, section 22(b) of the Act, codified at 43 U.S.C. 1348(b), and on which 33 CFR 142.1(a) is based, specifically extends the workplace safety and health duties of lessees or permittees to all places of employment within the area covered by the lease or permit.

### **The “second major phase” of the rulemaking project to update 33 CFR Subchapter N to implement the mandatory provisions of the 1978 Amendments to OCSLA**

The Coast Guard published an ANPRM, *Revision of the Regulations on Outer Continental Shelf Activities*, in the Federal Register on **March 7, 1985 (50 FR 9290)** to initiate the “second major phase” to implement the provisions of the Outer Continental Shelf Lands Act Amendments of 1978 and to update 33 CFR, Subchapter N. The Coast Guard solicited public input for vessels used for OCS activities, fixed facility inspection, workplace safety and health, fire protection, evacuation and lifesaving, training, and casualty data.

Drawing upon the information generated by this ANPRM, the Coast Guard published an NPRM, *Self-inspection of Fixed OCS Facilities*, in the Federal Register on **July 7, 1987 (52 FR 25392)**. The Coast Guard published the final rule, *Self-inspection of Fixed OCS Facilities*, in the Federal Register on **May 26, 1988 (53 FR 18977)**, and it became effective on **June 27, 1988**. It is interesting to note that of the 697 comments the Coast Guard received as a result of the 1985 ANPRM, only twenty-three (23) addressed self-inspection.

Because of the 1985 ANPRM, the Coast Guard also published a second NPRM, *Emergency Evacuation Plan for Manned OCS Facilities*, in the Federal Register on **December 24, 1987 (52 FR 48717)**. The Coast Guard published the final rule, *Emergency Evacuation Plan for Manned OCS Facilities*, in the Federal Register on **May 18, 1989 (54 FR 21566)**, and it became effective on **June 19, 1989**. The publication of the NPRM and final rule were largely in response to recommendations contained in various investigation reports on the sinkings of the MODUs OCEAN RANGER, OCEAN EXPRESS, and PENROD 61. Furthermore, Congress passed legislation in 1986 requiring the Coast Guard to “issue final regulations, to become effective before September 1, 1987, relating to the evacuation of personnel as provided for in the advance notice of proposed rulemaking regarding the revision of the regulations on Outer Continental Shelf activities (50 FR 9290 (1985)), published March 7, 1985.”

### **The “final phase” of the rulemaking project to update 33 CFR Subchapter N to implement the mandatory provisions of the 1978 Amendments to OCSLA**

The Coast Guard published a Request for Comments, *Outer Continental Shelf Activities*, in the Federal Register on **June 27, 1995 (60 FR 33185)**, in which it stated that it was “considering amending its regulations on Outer Continental Shelf (OCS) activities.” Specifically, the Coast Guard stated that



possible amendments could include “improvements to the personnel safety regulations for fixed OCS facilities, new regulations governing the operation of mobile inland drilling units (MIDUs) on the OCS, and an alignment of the requirements for foreign vessels engaged in OCS activities with those for U.S. vessels similarly engaged.”

The Coast Guard did not publish an ANPRM after the 1995 Request for Comments. Instead, the Coast Guard published an NPRM, *Outer Continental Shelf Activities*, in the Federal Register on **December 7, 1999 (64 FR 68418)**. The Coast Guard stated that the NPRM marked a “major revision of its regulations on Outer Continental Shelf (OCS) activities” and would be the “final phase of an ongoing effort by the Coast Guard to update” 33 CFR Subchapter N and to implement its authority under the 1978 amendments to OCSLA. The Coast Guard published a correction and multiple extensions of the comment period, which formally ended on November 30, 2000. The Coast Guard has not issued a final rule for this “final phase” of its efforts to update 33 CFR, Subchapter N to implement its authority under the 1978 amendments to OCSLA.

#### **Updates to 33 CFR, Subchapter N since the closing of the 1999 NPRM comment period**

The Coast Guard has made several partial revisions to Subchapter N since November 30, 2000:

The Coast Guard published an NPRM, *Inspections Under, and Enforcement of, Coast Guard Regulations for Fixed Facilities on the Outer Continental Shelf by the Minerals Management Service*, in the Federal Register on **May 10, 2001 (66 FR 23871)**. The Coast Guard published a final rule with the same title in the Federal Register on **February 7, 2002 (67 FR 5912)**, which became effective on **June 7, 2002**. This rule authorized MMS (now BSEE) to perform inspections on fixed OCS facilities engaged in OCS activities and to enforce Coast Guard regulations applicable to those facilities in 33 CFR, Subchapter N.

The Coast Guard published an NPRM, *Electrical Equipment in Hazardous Areas*, in the Federal Register on **June 24, 2013 (78 FR 37760)**. The Coast Guard published a final rule with the same title in the Federal Register on **March 31, 2015 (80 FR 16990)**, which became effective on **April 30, 2015**. This final rule promulgated new regulations that added the International Electrotechnical Commission System for Certification to Standards relating to Equipment for use in Explosive Atmospheres (IECEx) as an accepted method of testing and certifying electrical equipment intended for use in hazardous locations on newly constructed mobile offshore drilling units (MODUs), floating outer continental shelf (OCS) facilities, and vessels other than offshore supply vessels (OSVs) that engage in OCS activities.

The Coast Guard published an NPRM, *Harmonization of Standards for Fire Protection, Detection, and Extinguishing Equipment*, in the Federal Register on **January 13, 2014 (79 FR 2254)**. The Coast Guard published a final rule with the same title in the Federal Register on **July 22, 2016 (81 FR 48242)**, which became effective on **August 22, 2016**. This final rule promulgated new regulations that updated certain design and approval standards for fire protection, detection, extinguishing equipment, and materials on inspected and uninspected vessels, outer continental shelf facilities, Deepwater ports, and mobile offshore drilling units.

#### **Non-finalized proposed updates to 33 CFR, Subchapter N since the closing of the 1999 NPRM comment period**

The Coast Guard has proposed several partial revisions to Subchapter N since November 30, 2000:

The Coast Guard published an NPRM, *Revision of Crane Regulations Standards for Mobile Offshore Drilling Units (MODUs), Offshore Supply Vessels (OSVs), and Floating Outer Continental Shelf (OCS) Facilities*, in the Federal Register on **May 13, 2013 (78 FR 27913)**. This NPRM proposes to revise only 46

CFR Subchapter I-A (Parts 107 – 109). There are no proposed changes to 33 CFR Subchapter N; however, as the title implies, the Coast Guard apparently intends to apply the final rule to floating OCS facilities without revising 33 CFR Subchapter N.

The Coast Guard published an NPRM, *Marine Casualty Reporting on the Outer Continental Shelf*, in the Federal Register on **January 10, 2014 (79 FR 1780)**.

The Coast Guard published an NPRM, *Requirements for MODUs and Other Vessels Conducting Outer Continental Shelf Activities with Dynamic Positioning Systems*, in the Federal Register on **November 28, 2014 (79 FR 70944)**.

The Coast Guard published an NPRM, *Commercial Diving Operations*, in the Federal Register on **February 19, 2015 (80 FR 9152)**. The NPRM proposes to revise only 46 CFR Part 8 and 197. There are no proposed changes to 33 CFR Subchapter N; however, the Coast Guard apparently intends to apply the final rule to diving operations conducted on the OCS without revising 33 CFR Subchapter N. The Coast Guard published an ANPRM, *Safety and Environmental Management System Requirements for Vessels on the U.S. Outer Continental Shelf*, in the Federal Register on **September 10, 2013 (78 FR 55230)**.

The Coast Guard published an ANPRM, *Training of Personnel and Manning on Mobile Offshore Units and Offshore Supply Vessels Engaged in U.S. Outer Continental Shelf Activities*, in the Federal Register on **April 14, 2014 (79 FR 20844)**.

The Coast Guard published a Request for Comments, *Accommodation Service Provided on Vessels Engaged in U.S. Outer Continental Shelf Activities*, in the Federal Register on **February 1, 2012 (77 FR 5039)**.

The Coast Guard published a Request for Comments, *Lifesaving and Fire-Fighting Equipment, Training and Drills Onboard Offshore Facilities and Mobile Offshore Drilling Units (MODUs) Operating on the U.S. Outer Continental Shelf (OCS)*, in the Federal Register on **November 23, 2012 (77 FR 70172)**.