



*Admiral Linda Fagan
Commandant
U.S. Coast Guard*

*Via electronic submission to: <http://www.regulations.gov/>
RE: Energy Trade Association Comments
Supplemental Notice of Proposed Rulemaking
Docket Number: USCG–2013–1057 - Marine Casualty Reporting on the Outer Continental Shelf*

September 11, 2023

Dear Admiral Fagan:

On June 14, 2023, the U.S. Coast Guard (USCG) published a supplemental notice of proposed rulemaking (SNPRM), proposing to change the reporting criteria for certain casualties that occur on foreign floating outer continental shelf (OCS) facilities (FOFs), mobile offshore drilling units (MODUs), and vessels engaged in OCS activities. The American Petroleum Institute (API), the International Association of Drilling Contractors (IADC) and the Offshore Operators Committee (OOC) provide the following comments for consideration.

THE ASSOCIATIONS

API, IADC and OOC represent oil and natural gas operators, drilling contractors and service providers who conduct essentially all the offshore oil and natural gas exploration and production activities in the Gulf of Mexico. Our members recognize that offshore operations must be conducted safely and in a manner that protects the environment. The offshore industry in the Gulf of Mexico has a long history of safe operations that have advanced the energy security of our nation, and the energy resources in the region are also crucial to our nation's economy.

API is a national trade association representing 600 member companies involved in all aspects of the oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API and its members are dedicated to meeting environmental requirements, while economically developing and supplying energy resources for consumers.

Since 1940, IADC has exclusively represented the worldwide oil and gas drilling industry. IADC's contract-drilling members own most of the world's land and offshore drilling units that drill the vast majority of the wells producing the planet's oil and gas. IADC's membership also includes oil-and-gas producers, and manufacturers and suppliers of oilfield equipment and services. Through conferences, training seminars, print and electronic publications, and a comprehensive network of technical

publications, IADC continually fosters education and communication within the upstream petroleum industry.

OOC is an offshore energy trade association that serves as a technical advocate for companies operating on the US Outer Continental Shelf (OCS). Founded in 1948, the OOC has evolved into the principal technical representative regarding regulation of offshore energy related operations.

The following comments are offered for your consideration. These comments are made without prejudice to any of our member companies who may have differing or opposing views.

We are not supportive of this supplemental notice of proposed rulemaking (SNPRM) and strongly recommend the Coast Guard withdraw it in order to make the necessary and substantial revisions required to support its stated purpose and objectives. We believe withdrawing and revising the SNPRM is a more efficient and practical approach than addressing the myriad of tremendous ambiguities the SNPRM creates and the new or revised Coast Guard policy and guidance documents that certainly would follow should the SNPRM be promulgated in its current form.

We will provide more detail regarding our concerns with this SNPRM; however, our primary concerns are:

1. The rulemaking is not easy to read or follow. Some of this has to do with the additional concerns identified below, but overall it provides the impression the author(s) did not have a sufficient awareness or understanding of Outer Continental Shelf (OCS) activities related to either oil and gas exploration and production or non-mineral energy resources.
2. The preamble of the SNPRM refers to terms that conflict with existing regulatory definitions provided in 33 CFR 140.10. Also, the proposed revised definition for *floating OCS facility* conflicts with other definitions in Coast Guard regulations and may conflict with the regulations of other government agencies and U.S. law. For example, the preamble to the SNPRM uses the term *foreign floating OCS facility* (or a variant of that term) approximately 100 times, and the SNPRM proposes to revise the definition for *floating OCS facility* to include “a U.S. or foreign buoyant OCS facility.” Both the existing and proposed definitions clearly state that the term “...does not include mobile offshore drilling units and other vessels;” however, the preamble consistently lumps *floating OCS facilities* together with mobile offshore drilling units and vessels as if they were similar or interchangeable units. They are not. As *floating OCS facilities* are not “mobile offshore drilling units and other vessels,” they are not registered in, or flagged with, any nation, nor are they regulated by international conventions or U.S. vessel inspection laws. Instead each *floating OCS facility* is a point or place within the United States under exclusive federal jurisdiction throughout its operational life. While the Coast Guard has determined that U.S. or foreign “mobile offshore drilling units and other vessels” are OCS facilities “when in contact with the seabed of the OCS for exploration or exploitation of subsea resources,” such a determination is unnecessary for *floating OCS facilities* as they are not “mobile offshore drilling units and other vessels” by definition.
3. The vessel regulations codified at Title 46 are not appropriate for every type of *unit* engaged in an OCS activity. The marine casualty reporting regulations applicable to a unit engaged in an OCS activity that is a *floating OCS facility, fixed OCS facility, OCS facility, manned platform, unmanned facility, or unmanned platform* should remain entirely at 33 CFR Subchapter N. Marine casualty regulations applicable to a *unit* engaged in an OCS activity that is a *mobile offshore drilling unit or vessel* should remain at 33 CFR Subchapter N and refer to 46 CFR 4 where reasonable.

4. This SNPRM does not consider CG-OES Policy Letter 01-22 (dated February 4, 2022). This policy letter provides the Officer in Charge, Marine Inspection (OMCI) with a framework to determine whether a *unit* is a *floating OCS facility* throughout its operational life or a *vessel* that is an *OCS facility* when in contact with the seabed of the OCS for exploration or exploitation of subsea resources (as the italicized terms are defined in 33 CFR 140.10).
5. It is unclear how or if this will apply to vessels conducting OCS activities in support of “non-mineral” resources. The “Garamendi Amendment” (NDAA 2021) added the four words “including non-mineral energy resources” to the Outer Continental Shelf Lands Act (OCSLA). This was done to extend the application of the Jones Act on the EEZ to vessels performing transportation related activities in support of non-mineral energy development. While the OCSLA has been amended, the OCSLA implementing regulations for the USCG in 33 CFR Subchapter N have not been revised. The exception being for Part 147 which was applied to “non-mineral” activities via a Technical Amendment published in the Federal Register on January 11, 2023, Docket Number USCG-2022-0549). This nascent industry involves many types of vessels and many of those vessels are foreign flagged. So, it would seem the same objectives the USCG has with this SNPRM should also apply to vessels working on the OCS in the “non-mineral” (i.e., renewable energy) industry.

Should the USCG withdraw this SNPRM to make revisions, we strongly recommend the USCG consider issuing their National Offshore Safety Advisory Committee (NOSAC) a Task Statement as a vehicle to gather industry input on suggested revisions, including clarification of terms and other definitions commonly used on the OCS (in regulation or otherwise). Ostensibly, this is why the NOSAC exists and we believe it should have already been used in this manner to help craft this SNPRM.

Conceptually, this SNPRM provides for a more effective marine casualty reporting process by ensuring certain U.S. and foreign “units” (as defined in 33 CFR 140.10) operating on the U.S. Outer Continental Shelf (OCS) are held to the same reporting requirements applicable to U.S. vessels and foreign vessels operating on the navigable waters of the U.S. We recognize that effective reporting of marine casualties and the thoughtful analysis of data derived from these reports and any subsequent investigations should assist the Coast Guard with developing and proposing more meaningful regulations for units engaged in OCS activities. We support the Coast Guard’s effort to align the marine casualty reporting requirements for “vessels” (as defined in 33 CFR 140.10) operating on the OCS with those for similar U.S. vessels and foreign vessels operating on the navigable waters of the U.S. However, we are very concerned that this SNPRM blurs the clear distinction between vessels and other types of OCS units as those units are defined in 33 CFR 140.10. For example, a floating OCS facility (FOF) is a type of OCS unit that is not a vessel. A vessel, whether U.S. or foreign, may also be an OCS facility (as defined in 33 CFR 140.10), but it cannot be a FOF. According to their respective definitions in 33 CFR 140.10, the terms “vessel” and “floating OCS facility” are mutually exclusive. Therefore, the phrase “foreign floating OCS facility(ies)” which appears throughout the SNPRM is not consistent with the definitions found in 33 CFR 140.10. We strongly encourage the Coast Guard to replace this phrase with “foreign vessel” throughout the SNPRM to clarify that the term applies to a foreign vessel whether or not the unit is also an OCS facility.

Like the 2014 NPRM, we have the same concerns related to this rulemaking and we will identify the additional concerns we have with this SNPRM.

USCG resource constraints and limitations in the USCG marine investigations program

We have concerns regarding the Coast Guard’s organizational capability to carry out additional investigation activities on the OCS. For example, since the 2014 NPRM, there have been two high profile

incidents involving USCG type-approved lifesaving equipment on the Gulf of Mexico (GOM) OCS. One involved multiple fatalities during a lifeboat drill and the other involved the failure of a wire rope which caused a fast rescue craft (FRC) to fall to the water after it was operated. In the latter incident, personnel had just exited the craft before the failure, so this event could have easily led to additional serious injuries and/or fatalities.

Both incidents were elevated to a “formal” level of investigation by the Coast Guard Eighth District Commander. In the lifeboat incident, it took the Coast Guard nearly two and a half years to publish its Report of Investigation (ROI). The ROI was published without USCG Commandant comments on the numerous recommendations made by the Investigating Officer and *those comments have still not been published*. The FRC incident occurred in January 2021 and, as of the date of this letter, a USCG ROI has not been published. In both incidents, related Coast Guard safety alerts regarding the suspected causal factors were extremely slow to develop and took several months to be released to the industry. These delays caused a great deal of uncertainty around the routine testing of this equipment and well-defined Coast Guard guidance is still lacking in this regard. Further, the USCG has not taken any action on the recommendations in the ROI for the lifeboat fatalities or any other actions related to advancing lifeboat testing safety offshore. This further reinforces the concerns we have with the ability of the agency to investigate, evaluate findings, and implement mechanisms to improve and advance safety offshore.

We raise these two examples because these are investigations that existing regulations require the Coast Guard to conduct. The SNPRM will impose a much larger reporting burden upon our members, and a much larger administrative burden, and potentially a larger investigatory workload, upon the Coast Guard. It is extremely unlikely that the Coast Guard will meet the goals set out in the SNPRM with its existing resource capacity and capability in this area.

Conflicts with the Bureau of Safety and Environmental Enforcement (BSEE) reporting requirements

Like our comments in 2014, we feel the issue of duplicative reporting to both the USCG and BSEE remains an issue. While we appreciate the Coast Guard’s explanation of this issue in the SNPRM, we still urge both the Coast Guard (and BSEE) to find ways to streamline incident reporting to reduce, as much as possible, instances requiring separate reporting to each agency which is a burden on the industry. We also encourage and support a revision of [BSEE/USCG MOA OCS-05](#) to the extent it can make any improvements to the reporting processes required by both agencies.

The Coast Guard’s inconsistent distinction between OCS units that are vessels and those that are not

As we noted above, this SNPRM blurs the clear distinction between vessels and other types of OCS units as they are defined in 33 CFR 140.10. The term “unit” in 33 CFR 140.10 means “*any OCS facility, vessel, rig, platform, or other vehicle or structure, domestic or foreign*”. The additional terms introduced in the SNPRM preamble conflict with and confuse existing definitions in §140.10. Additionally, in early 2022, CG-OES published their [Policy Letter 01-22](#) which provides guidance to an OCMI to determine if a Floating OCS facility is a vessel *or not a vessel*. Since this guidance was published, the USCG District Eight OCS OCMI has determined that all floating OCS facilities in the GOM which are permanently moored and not flagged, self-propelled oceangoing vessels practically capable of being used as transportation on the water to **not be vessels**. The three other floating OCS facilities installed in the GOM are production facilities but are also foreign flagged, self-propelled seagoing vessels. We will further describe these facility types in our following comments.

Because of the vessel/non-vessel distinction that exists now both between floating units and fixed OCS facilities (which are neither vessels nor floating units - they are bottom founded), the alignment of the casualty reporting criteria in 33 CFR 146 and 46 CFR 4 needs to be more specific. Where an OCS unit is a vessel, the casualty reporting regulations should be aligned as proposed by this SNPRM. Where an OCS unit is *not a vessel*, but more appropriately described as either a fixed OCS facility or a floating OCS facility (both more commonly referred to as “platforms”) then they should only follow the reporting requirements in 33 CFR 146, and recommend that this reference be updated to increase the damage value threshold from \$75k to \$250k. The risk profiles between floating OCS facilities and vessels are different, and application of vessel-based reporting requirements in 46 CFR 4, as explained above, are not appropriate. Additionally, nearly all of the vessel-based marine casualty criteria in 46 CFR 4 are not applicable to FOFs which are not vessels (as determined by the OCMI).

The “Garamendi Amendment” and non-mineral resource vessel activities

As mentioned above, the OCSLA was amended in the 2021 National Defense Authorization Act (NDAA, Sec. 9503). The addition of four words “*including non-mineral energy resources*” were added to the OCSLA in 43 U.S.C. 1333(a)(1) “*Jurisdiction of the United States on the Outer Continental Shelf*”. The purpose for adding this amendment was to apply the Jones Act to vessel transportation related activities associated with non-mineral (or renewable energy) on the OCS. However, now that the OCSLA has been amended to cover “non-mineral” energy resources on the OCS, the USCG should make the necessary revisions to their implementing regulations for the OCSLA in 33 CFR Subchapter N. The USCG has already done this via the technical amendment mentioned above. Logic dictates the current definition of *OCS Activity* in 33 CFR 140.10 should be revised to read “*OCS activity means any offshore activity associated with exploration for, or development or production of, the minerals **or non-minerals** of the Outer Continental Shelf*” (emphasis added).

The USCG has been unable to advance rulemaking necessary to implement the critical revisions to Subchapter N to keep pace with the advancing technology and evolving operations in the offshore oil and gas industry. The last meaningful revision to Subchapter N was in 1982 and this was followed by an open rulemaking that languished for well over 30 years and was finally withdrawn in 2018. The burgeoning offshore renewable energy industry and the OCS activities associated with it, should highlight *yet another* need for the USCG to revise this Subchapter forthwith. Absent a revision of Subchapter N that incorporates “*all*” OCS activities under the USCG purview it derives via the authority granted in the OCSLA, this SNPRM will only serve to perpetuate the “*information asymmetry*” and the incomplete domain awareness the USCG contends with for oil and gas (mineral) and renewable (non-mineral) energy activities on the OCS.

Other comments related to the SNPRM (listed by Section Number)

V. Background

As previously mentioned, this SNPRM introduces new acronyms and terms that require further clarification. The term “Foreign Floating Outer Continental Shelf Facility (foreign FOF)” is not defined in 33 CFR 140.10. The current, applicable definition is “Floating OCS Facility”. This regulatory definition was added to Subchapter N in the 1982 revision and several years before an actual Floating OCS Facility was installed on the GOM in 1989. Since this time, there have been other acronyms to describe a Floating OCS Facility, such as “Floating Offshore Facility (FOF)” “Floating Offshore Installation (FOI)”, “Floating Production Unit (FPU)”, “Floating Production System (FPS)” and other variations of the same theme.

The USCG has recently, and more consistently, been using the term FOF which can be used – generally - to describe a variety of floating installations on the OCS. We recommend additional specificity. As it concerns the current definition of “Floating OCS Facility” in 33 CFR 140.10, there are over 50 of these in the GOM. The majority of these are non-self-propelled floating production units of various hull types. The hull types most used are semi-submersible, SPAR (single point anchor reservoir), and TLP (tension leg platform). These meet the definition of “Floating OCS facility” with regard to being “a buoyant OCS facility securely and substantially moored so that it cannot be moved without a *special effort*”. The term “special effort” is not defined in §140.10. The definition in 140.10 also lists “shipshape hulls”, however, we believe this should be revised since a shipshape hull is a ship/vessel thus introducing conflict within this definition as it does not include “MODUs or other vessels”. Please see the image below for a graphical description of the hull types discussed above.

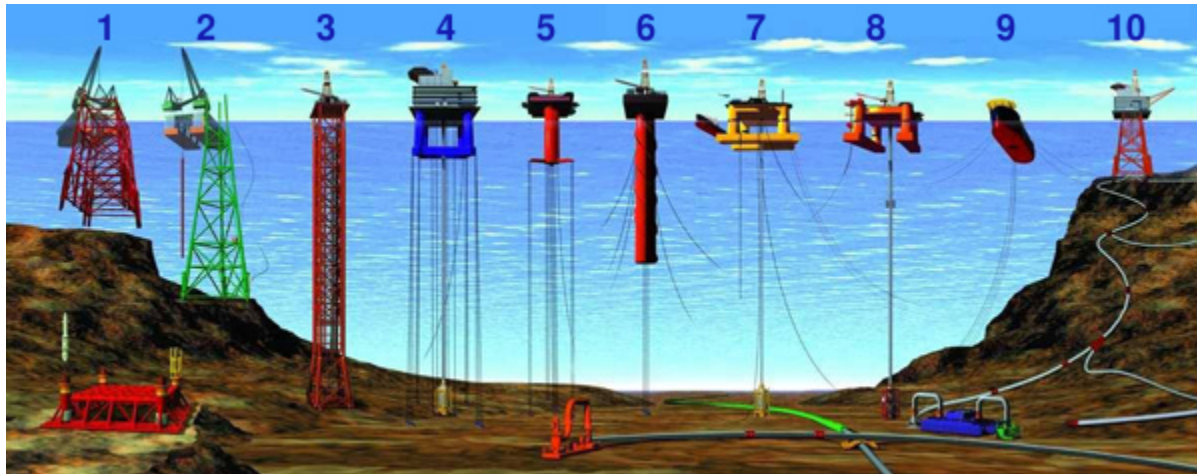


Image from Wikipedia. Credit to NOAA Ocean Explorer

- 1-3 and 10 are types of bottom founded “fixed OCS facilities”
- 4-8 are “floating OCS facilities” and are not vessels in accordance with OES Policy Letter 01-22 and subsequent USCG District Eight OCS OCMI determination:
 - 4 represents a TLP
 - 5 represents a “mini-TLP”
 - 6 represents a SPAR
 - 7 & 8 represent a semisubmersible (in this graphic they also have rig packages installed).
- 9 represents a ship-shaped FPSO which is a “vessel”

Additional information on the various types of units present on the US OCS can be found at the USCG’s own Outer Continental Shelf National Center of Expertise [website](#).

The term “foreign FOF” in the SNPRM creates additional confusion. First, none of the non-shipshape FOF hull types listed above are documented by the USCG, nor are they officially “flagged”. Second, per [CG-OES Policy Letter 01-22](#) , the USCG has determined that facilities of this type are not vessels. Since this policy was published, the USCG District Eight OCS OCMI has issued non-vessel designations to all the FOFs hull types represented by numbers 4-8 in the figure above. The FOFs which cannot receive this designation are the “foreign FOFs” described in the SNPRM because they *are* self-propelled, seagoing vessels. For the sake of clarity, we request these be listed separately and not lumped under the general FOF umbrella. It is important to make this distinction because the three units in GOM that meet the “foreign FOF” criteria in the SNPRM are flagged, sea-going vessels capable of decoupling from their turret and getting underway. This is not the case with the FOFs of the other hull types. Those FOF types

are permanently moored in place and stay moored throughout their lifecycle (~20-30+ years). Therefore, the amount of “special effort” (to be moved) involved between a vessel FOF and non-vessel FOF is substantially different.

The “foreign FOFs” described in the SNPRM are best described by their function. Two are Floating Production Storage and Offloading (FPSO) systems. The other is a Mobile Offshore Production Unit (MOPU). In all three cases, they are best described as “vessels” because they are foreign flagged, self-propelled, oceangoing vessels. The sole MOPU in the GOM is DP2, the two FPSOs are not dynamically positioned.

Similarly, drillships are flagged, seagoing vessels and are also classified as Mobile Offshore Drilling Units (MODUs). Drillships maintain station by using dynamic positioning (DP) systems which is a form of propulsion. It is recognized that one of the drivers for this rulemaking was to find a way for the USCG to require the operators of foreign flagged drillships (currently, almost all MODUs in GOM are foreign flagged) to report loss of or reduced capability relative to their DP systems. The current regulatory definition of “Floating OCS Facility” does not include MODUs or “other vessels”.

The SNPRM uses the term “artificial island” in this section. We request clarification from the USCG regarding the definition of “artificial island” in the context of the Outer Continental Shelf Lands Act . Fundamentally, we would like to understand how this term differs from “installation”. Our belief is that “artificial island” best describes a manmade island built on the seabed and upon which is placed equipment necessary to explore for and/or produce mineral resources. An example of this would be [Northstar Island](#) in the Beaufort Sea. Our understanding of “installation”, “structure”, or “device” would best describe the fixed and floating platforms currently installed in the GOM.

In Section V,, the USCG states: *“Further, the Coast Guard believes the casualty reporting regulations in 33 CFR parts 140 and 146 lag both technological developments and present-day operations in the OCS industry, because the Coast Guard has not updated marine casualty reporting requirements on the OCS since 1982”.*

Comment: Although we realize it is beyond the scope of this rulemaking, it should be worth noting that there are several sections of 33 CFR Subchapter N that the USCG hasn’t revised since it was first published in **1956**. Because this Subchapter is so dated and the USCG also recognizes there have been “technological developments” in this industry and their regulations lag behind “present-day operations”, this should beg the question as to why the USCG is not completely revising this entire Subchapter. If, for nothing else, the nascent renewable energy industry (i.e., offshore wind) should prompt a revision since “non-mineral” energy resources were added to the OCSLA.

In Section V, the USCG states: *“In the past 30 years, the use of floating MODUs and facilities has become commonplace as exploration and production activities moved into deeper waters of the OCS. Today, FOFs and MODUs operate in waters up to 8,000 feet deep, much further offshore, and distant from emergency assistance. These floating facilities and MODUs are more like ocean-going vessels than fixed OCS facilities and MODUs grounded to the seabed”.*

Comment: 1) All MODU types are *floating*. Jack-up type MODUs being the exception only when their legs are jacked down to the seafloor and the hull is lifted above the waterline. 2) There are at least three installations in the GOM in greater than 8,000 ft water depth. 3) As discussed above the “Floating OCS Facilities” in the GOM of the semi-submersible, SPAR, and TLP hull types are not vessels and certainly not ocean-going vessels. 4) The use of the term “grounded” in the context of a MODU implies it is “aground”. A better term for fixed facilities is “bottom founded”

(like the definition for the same in §140.10). A better term for MODUs is “attached” (temporarily) to the subsoil or seabed of the OCS (again, to align with the regulatory definitions already in §140.10).

In Section V,, the USCG states: *“This action would improve collection and analysis of casualty information on the OCS to help the Coast Guard and industry develop policies and procedures that prevent future marine casualties”.*

Comment: We disagree with this statement. We support this, in concept, but remain cautiously optimistic given the experience related to the two casualties recently investigated in GOM we identified above and the fact this SNPRM won’t apply to OCS activities related to non-mineral energy as discussed above. We believe this will only exacerbate the current situation unless and until Subchapter N is revised to include non-mineral energy resource related OCS activities.

VI. Discussion of the Supplemental Proposed Rule

In Section VI, the USCG proposes to add the term “dynamically positioned floating facilities” to the current definition of “floating OCS facility”.

Comment: We disagree based on the comments provided above. We believe if a “unit” (as currently defined in §140.10) has DP or other means of propulsion, then it is a “vessel”. This would confuse the current definition of “floating OCS facility” as it does not include “other vessels”. As an alternative, we recommend additional clarification in this definition or that additional definitions are created to define FPSO and similar ship-shaped, flagged, and self-propelled vessels that also have production facilities on board and clearly delineate those from other types of units that are not vessels and permanently moored (e.g., semisubmersible, SPAR, TLP, etc.).

Under 33 CFR 146.30 – *Notice of Casualties*, the USCG states: *“We propose applying the casualty reporting criteria listed in this section to FOFs only. See the discussion of proposed 46 CFR 4.03–1 below, in which we propose to require the owner, operator, or person in charge of FOFs, MODUs, and vessels engaged in an OCS activity to report casualties under 46 CFR part 4. We also propose to raise the dollar threshold for reporting property damage from \$25,000 per incident to \$75,000. In addition, we propose removing the phrase “. . . drydocking or demurrage . . .” in paragraph (d), as these terms do not apply to a fixed OCS facility”.*

Comment: As explained above, floating OCS facilities are not “vessels” and should only follow the notice requirements in 33 CFR 146 and not the requirements in 46 CFR 4. Additionally, the terms *drydocking or demurrage* do not apply to non-vessel FOFs. As stated earlier, we recommend the reporting threshold be increased from \$75,000 to \$250,000.

Under 46 CFR 4.03 – *Definitions*, the USCG proposes to add §4.03-0 “Definitions” in this subpart, to explain that subpart 4.03 contains terms defined for the purposes of Part 4.

Comment: As discussed above, the reporting requirements in 46 CFR Part 4 should only apply to OCS units that are vessels (flagged, self-propelled, oceangoing vessels). Most of the terms used in §4.03-1 can only apply to actual vessels and not FOFs that have been determined by the OCMI to be non-vessels.

Under 46 CFR 4.03-65 – *Significant Harm to the Environment*, the USCG proposes to amend the definition of *Significant harm to the environment* to include incidents on an FOF, MODU, or vessel when they are engaged in an OCS activity.

Comment: We disagree and believe this will only create additional burden due to existing contradictory requirements relative to reporting a sheen under the Clean Water Act, the exemptions for sheens from permitted discharge points (NPDES under EPA), and the conflicting requirement from BSEE in 30 CFR 254.46. We do not see any value added with adding an additional reporting mechanism via the CG-2692. Further, we recommend this is an issue that should be addressed by USCG, EPA, and BSEE with the objective to reduce conflicting requirements related to spill reporting.

Under 46 CFR 4.03-90 – *Floating OCS Facility*, the USCG proposes to add their revised definition for Floating OCS facility from 33 CFR 140.10.

Comment: The current definition in §140.10 defines a Floating OCS facility as “...a buoyant OCS facility securely and substantially moored so that it cannot be moved without a special effort. This term includes tension leg platforms and permanently moored semisubmersibles or *shipshape hulls* but does not include mobile offshore drilling units *and other vessels*” (emphasis added). We strongly recommend a clear distinction between Floating OCS facilities (or FOFs) that are flagged, self-propelled, seagoing vessels from non-vessel FOFs such as SPARs, TLPs, and semi-submersible floating production units that are permanently moored. We recommend the USCG find a way to clarify this even if it requires developing additional definitions in 33 CFR 140.10.

Under 46 CFR 4.04 – *Notice of Potential Vessel Casualty*, the USCG proposes broadening the applicability of reporting requirements to include all FOFs, MODUs, and vessels engaged in an OCS activity.

Comment: We disagree. As explained above, we strongly recommend a clear distinction between FOFs that are vessels from those that are non-vessels. Only vessel-type FOFs should fall under 46 CFR Part 4 and non-vessel FOFs should follow the current reporting requirements in 33 CFR 146.

Under 46 CFR Subpart 4.05 – *Notice of Marine Casualty and Voyage Records*, the USCG states: “We propose broadening the notice and record retention requirements to include all FOFs, MODUs, and vessels engaged in an OCS activity”.

Comment: As explained above, we strongly recommend a clear distinction between FOFs that are vessels from those that are non-vessels. Only vessel-type FOFs should fall under 46 CFR Part 4 and non-vessel FOFs should follow the current reporting requirements in 33 CFR 146. Also, non-vessel FOFs do not have voyage records because they are permanently moored during their entire service life.

Under 46 CFR 4.06 – *Mandatory Chemical Testing Following Serious Marine Incidents Involving Vessels in Commercial Service*, the USCG states: “We propose broadening the post-casualty chemical testing requirements to include all FOFs and MODUs when engaged in an OCS activity. We also propose adding a new paragraph 4.06–15(b)(3) allowing the owner, operator, or person in charge of an FOF, MODU, or vessel to request an alternative drug testing process in lieu of the drug testing requirements in 49 CFR part 40 - Procedures for Transportation Workplace Drug and Alcohol Testing Programs, referenced in 46 CFR 4.06–15.

Comment: We disagree to the extent this would apply to non-vessel FOFs as they are not engaged in transportation and workers on these units are not subject to USCG Merchant Marine Credentialing (MMC) requirements as outlined in USCG Policy Letter CG-MMC 01-22. We strongly recommend a clear distinction from FOFs that are vessels from those that are non-vessels. Only vessel-type FOFs should fall under 46 CFR Part 4 and non-vessel FOFs should follow the current reporting requirements in 33 CFR 146. Further, we do not believe the

regulatory analysis for this SNPRM adequately or accurately estimates the significant cost burden associated with creating a DOT-type drug testing program for operators of non-vessel FOFs. We recommend the USCG recognize there are already robust drug and alcohol testing programs in the industry.

Under 46 CFR 4.07-45 – *Foreign Units of Coast Guard, Investigation by*, the USCG states: “We propose broadening the applicability to all FOFs and MODUs when engaged in an OCS activity”.

Comment: We disagree. As explained above, we strongly recommend a clear distinction from FOFs that are vessels from those that are non-vessels. Only vessel-type FOFs should fall under 46 CFR Part 4 and non-vessel FOFs should follow the current reporting requirements in 33 CFR 146.

VII. Discussion of Comments on the 2014 NPRM

In Section VII, the USCG shared the BSEE recommendation that casualty reporting for Fixed OCS facilities remains in 33 CFR 146 and that the USCG concurred with this.

Comment: We also agree and recommend again that non-vessel FOFs only follow 33 CFR 146 for casualty reporting. Non-vessel FOFs should not fall under 46 CFR 4 because they are not vessels.

In Section VII, the USCG references a report from the National Offshore Safety Advisory Committee (NOSAC) that contained five comments related to the original NPRM. After reviewing the Task Statement issued to the NOSAC and the subsequent report, we believe this SNPRM could also benefit from a refreshed Task Statement and new NOSAC effort as discussed above. The 2014 NOSAC report is almost nine years old now and is reflective of the OCS vessel activity occurring at that time. Since then, there has been a marked decrease in exploration and related activity (i.e., seismic and drilling). There is also a statement in the Task Statement that says “...much of the activity on the U.S. OCS is conducted by foreign flag OCS units”. This is not an accurate statement because there has never been a comprehensive analysis of vessel utilization for vessels conducting OCS activities on the U.S. OCS. Lacking the kind of data required to understand what vessel utilization looks like, any statement in this regard is anecdotal at best.

Regarding the 2014 NOSAC report and the comments made therein, we agree with their position that the vessel populations used in the 2014 cost and benefit analysis are underestimated. We note the USCG recognizes this NOSAC report is “out of date” and the data used in this SNPRM has been refreshed.

Comment: We recommend the USCG issue a new Task Statement to NOSAC related to this SNPRM so that the NOSAC can provide a fresh analysis better reflective of current vessel utilization and operations on the U.S. OCS. As discussed above, we believe this rulemaking would benefit from NOSAC input.

In Section VII, the USCG references a joint publication titled “*United State Coast Guard & Bureau of Safety and Environmental Enforcement Joint Activity Summary 2017-2018*”.

Comment: We note there were two reports like this for the years 2016-2017 and 2017-2018. This reference was made in the context of an explanation as to why harmonization of incident reporting for USCG and BSEE is challenging. We believe the information in these reports was helpful. We note there has not been a similar report published in the last five years and this supports our concerns about USCG resourcing and raises additional concerns relative to the transparency of USCG and BSEE interaction related to incident investigations.

In Section VII, the USCG states: “*In the NPRM, we proposed including FOFs and MODUs in the definition of “vessel” for the purposes of that proposed rule. We decided that this approach could cause confusion*”

and we seek to resolve that issue in this SNPRM by proposing revisions to 33 CFR 146.30 and 146.301 and 46 CFR 4.03–1 that distinctly delineate the regulation’s applicability to vessels, FOFs, and MODUs”.

Comment: The SNPRM has only added additional confusion to this issue. As we’ve commented throughout, we recommend the USCG work to more cleanly delineate the various kinds of OCS “units” and make a clear distinction between vessels and non-vessels, especially considering the guidance provided in CG-OES Policy Letter 01-22. Units that are non-vessels should only fall under 33 CFR 146 reporting criteria. OCS units that are vessels should also be subject to 46 CFR 4 if they do not already.

VIII. Differences Between the NPRM and SNPRM

In Section VIII, the USCG states: “In the 2014 NPRM, we proposed to move all OCS facilities marine casualty reporting requirements from 33 CFR Subchapter N to 46 CFR part 4. In this SNPRM, we have moved away from that approach and instead use the term “Floating OCS Facility” to differentiate between floating and fixed facilities”.

Comment: The existing definitions in 33 CFR 140.10 are sufficient to differentiate fixed from floating OCS facilities. The USCG needs to provide additional clarification relative to floating OCS units to provide a clear delineation between vessel and non-vessel units.

In Section VIII, the USCG states: “The 46 CFR Part 4 regulations are vessel casualty regulations for *floating entities* and provide appropriate regulations for floating OCS facilities but not necessarily for fixed OCS facilities for the following reasons. Floating OCS facilities experience similar types of accidents as other vessels, such as flooding, loss of stability, and *inability to maintain station.*” (emphasis added)

Comment: Here again the USCG introduces a new term (“floating entities”) that lacks a regulatory definition. So, we are unclear as to the meaning or context of this term. As discussed above, the USCG needs to provide additional clarification relative to floating OCS units to provide a clear delineation between vessel and non-vessel units. We agree that floating OCS facilities (i.e., permanently moored semi-submersible, SPAR, and TLP production units) can experience some similar types of incidents as vessels. Loss of stability and flooding are examples. The USCG uses the phrase “inability to maintain station” here and we believe this is normally used in the context of dynamic positioning which does not apply to floating OCS facilities because they are not self-propelled. Consequently, we don’t believe this type of incident is applicable to a floating OCS facility.

In Section VIII, the USCG states: “The 33 CFR Part 140 and 146 are more relevant and tailored to fixed platforms *and* facilities.” (emphasis added)

Comment: this should say “Fixed OCS facilities”. The term “fixed platform” is not defined in 33 CFR 140.10.

In Section VIII, the USCG states: “In this SNPRM we propose revising the definition of *Floating OCS facility* in 33 CFR 140.10 by adding language to include dynamically positioned facilities. We propose this change to update our regulations with technology changes on the OCS since the regulations were published in 1982.”

Comment: We disagree. The USCG needs to provide additional clarification relative to floating OCS units to provide a clear delineation between vessel and non-vessel units. As discussed above, DP is a type of propulsion. If a unit has DP, then it is self-propelled and, therefore, a vessel. Floating OCS facilities that are permanently moored and of the semi-submersible, SPAR, and TLP hull types are not fitted with DP and are not vessels as determined by the D8 OCS OCMI.

In Section VIII, the USCG states: “However, after reviewing the comments on the NPRM, we ultimately abandoned this approach because the resulting definition of *vessel* in 46 CFR Part 4 would conflict with the statutory definition found in 1 U.S.C. 3: of “...every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.” Therefore, in this SNPRM, we propose, instead, adding in 46 CFR Part 4 the title 33 of the CFR definitions for *OCS activity*, *floating OCS facility*, and *MODU* and writing out how this SNPRM applies to each.

Comment: We disagree. The USCG needs to provide additional clarification relative to floating OCS units to provide a clear delineation between vessel and non-vessel units. Citing the 1 U.S.C. 3 statutory definition also introduces additional ambiguity given the policy direction in CG-OES Policy Letter 01-22, wherein a distinction was made between vessels that are *theoretically capable* of transportation from ones that are *practically capable* of transportation. This test has been applied in several notable court cases to help determine when something is not a vessel, also recognizing that this distinction is usually applied within the context of the application of a specific law or laws (e.g., eminent domain, Jones Act injury, etc.).

IX. Regulatory Analyses

Note: *We wish to highlight the GAO report “Actions Needed to Ensure Investments in Key Data System Meet Mission and User Needs” (GAO-20-562, published July 16, 2020). This report is available at: [Coast Guard: Actions Needed to Ensure Investments in Key Data System Meet Mission and User Needs | U.S. GAO](#). We note this report identified numerous deficiencies with the USCG’s Marine Information for Safety and Law Enforcement (MISLE) data system and that only one of the four recommendations made by the GAO have been “partially addressed” with the other remaining open (not addressed). In that this SNPRM cites MISLE data throughout, we question the validity and accuracy of this data given the significant deficiencies with MISLE data integrity highlighted in this report.*

In Section IX, the USCG states: “We added additional detail on the affected population since the NPRM to address NOSAC’s concerns that the population of Industrial Vessels in the MISLE database undercounts the affected population, particularly FOFs. The affected population numbers have also been reviewed by the floating OCS vessel working group to ensure accuracy. The impacts of the proposed changes of this SNPRM are summarized in Table 3”. Table 3 shows an affected population of 588 foreign FOFs, MODUs, and vessels, and 1754 fixed platforms.

Comment: We question the validity of this data for a number of reasons:

- 1) The 2014 NOSAC report contains dated and questionable data. The amount of vessel activity in the GOM in 2014 is much different than now (e.g., drilling activity is much less so the associated support vessel activity is less as well).
- 2) It is unclear how an “Industrial Vessel” would be classified by the USCG and what specific vessel types would fall within this definition. The regulatory definition provided in 46 CFR 90.10-16 provides examples but is not all inclusive of the vessel types that could be included in this category.
- 3) The NOSAC report correctly identifies that non-vessel FOFs were classified as Industrial Vessels; however, the USCG forced this designation on them merely to apply a vessel type so that a vessel inspection user fee could be assigned. The NOSAC report also suggests using USCG Port State Control (PSC) data to identify foreign flagged OCS vessels working offshore. This would be problematic considering many of these vessel types are not subject to any USCG PSC activity and the USCG does not have an oversight regime for these kinds of vessels when they are operating on the OCS/EEZ.
- 4) Given this, we believe the 588 foreign FOFs, MODUs, and vessels identified in Table 3 to be overstated.

5) Likewise, the number of fixed platforms in Table 2 (1754) is overstated. BSEE information retrieved on August 23, 2023 via the Data Center on the BSEE website indicates 1620 total platforms in the GOM. Of these, 454 are manned, 50 floating OCS facilities (non-vessel FOFs), and 404 fixed platforms. This provides a total of 1570 fixed platforms (404 of those being manned) in the GOM. There are 23 fixed platforms on the OCS off California with 22 of those being manned and 1 unmanned. This makes for a total of 1593 fixed platforms.

6) We recommend the USCG find other ways to ensure this data is more accurate and consider using other sources of data. We do not believe the MISLE data is accurate or reliable in this regard.

In Section IX, under the “Affected Population” section, the USCG states: “As in the NPRM, the affected population comprises all foreign FOFs identified in the MISLE database as floating production systems and floating production storage offloading vessels, as well as various types of industrial vessels, MODUs, and lift boats”.

Comment: This is the first time in the SNPRM that the term “foreign FOF” is linked with an FPSO type of installation. The term “floating production system” is also used. Neither term is defined in 33 CFR or elsewhere in the SNPRM. The USCG needs to provide additional clarification relative to floating OCS units to provide a clear delineation between vessel and non-vessel units. There is also a footnote (18) associated with the term Industrial Vessel. As defined in 46 CFR 90.10-16, an Industrial Vessel is: “...every vessel which by reason of its special outfit, purpose, design, or function engages in certain industrial ventures. Included in this classification are such vessels as drill rigs, missile range ships, dredges, cable layers, derrick barges, pipe lay barges, construction and wrecking barges. Excluded from this classification are vessels carrying freight for hire or engaged in oceanography, limnology, or the fishing industry.” The footnote associated here says “The following vessel types are excluded: cable laying, dredger, dredger barge, factory ship, fishing support vessel, floating dry dock, orbital launch, offshore service vessel, pilot vessel, radio ship, and subsea mining vessel. Supply vessels not listed as offshore service vessels and operating on an ocean route are included.” This statement provides a tremendous amount of ambiguity and raises additional questions about the integrity of the data in MISLE and/or the USCG’s ability to interpret this data because the regulatory definition of Industrial Vessel *includes* cable laying vessels and dredge vessels. It would not include Offshore Supply Vessels as those are regulated by Subchapter L (or Subchapter I when they are operating as a general cargo vessel).

In Section IX, in Table 6 - Affected Population, the USCG lists numbers associated with certain vessel types. These vessel types are: Industrial Vessels (foreign), Oil Supply Vessels (foreign), MODUs (foreign), Lift Boats (foreign), Floating OCS Facilities (foreign). It also lists the figure for Fixed Platforms discussed above.

Comment:

- 1) 310 foreign industrial vessels are listed for both 2014 and 2020. Given the USCG does not have an oversight regime for foreign vessels (except MODUs) operating on the OCS, we have concerns about the validity of this data. We understand the USCG would have information relative to this vessel type in MISLE *if* it was associated with a PSC activity. Also, given the discussion above about the ambiguity in how the USCG has used the term Industrial Vessel here, it reinforces our concerns with the validity of this data.
- 2) The term Oil Supply Vessel is not defined. This term more accurately describes a tankship.
- 3) 257 foreign MODUs are listed for 2020. This is a marked increase from 2014 when drilling activity in the GOM was much higher. We note the comment under this table that says it reflects “active” MODUs as reported by MISLE, however, this number appears to be greatly overstated.

- 4) 8 Floating OCS Facilities (foreign) are listed. As discussed, we are not sure how the USCG defines this but we believe it to be associated with the 2 FPSOs and 1 MOPU currently installed in the GOM. These are (foreign) vessels, not floating OCS facilities.

We do not believe any of the data presented in Table 6 is accurate.

In Section IX, under the “Benefits” section, the USCG states: “These proposed changes would help provide consistency on the OCS and increase our maritime domain awareness by creating the mechanism for more complete casualty data that leads to planning contingencies, evaluating risks, and identifying trends.”

Comment: We agree, in concept. However, as we’ve already discussed above, we do not believe this objective can be achieved unless *all* vessel activities on the OCS (mineral and non-mineral) fall under the same reporting regime.

In this same section, the USCG references their “Marine Safety Manual” but does not identify which volume. It is assumed it would be Volume V since that has to do with “Investigations and Enforcement”. We also note this Manual has not been revised or updated since it was originally published in 2008.

In Section IX, under the “Alternatives Considered” section, the USCG again identifies “information asymmetry” and (maintaining/increasing) “maritime domain awareness” as objectives of this SNPRM. As we have commented above, we do not believe either objective will be attained unless the USCG revises Subchapter N to also include vessel activities associated with the exploration and exploitation of “non-mineral” energy resources.

In Section IX, under the “Collection of Information” section, the USCG lists “Marine Inspection Office” and “Coast Guard Group Office” as USCG facilities that can be notified of a marine casualty. The “Sector” field organization construct the USCG implemented after 9/11 absorbed these types of offices into the Sector construct so it is puzzling to see them listed here.

Conclusion

We again strongly recommend the Coast Guard withdraw this SNPRM. We do not believe the stated objectives of this rulemaking can be achieved until the USCG revises 33 CFR Subchapter N to include vessel activities on the OCS related to both mineral *and* non-mineral energy resources. In addition, as highlighted throughout our comments, this SNPRM introduces terms that are either not defined in regulation or do not align with existing regulatory definitions. The Coast Guard has also not considered CG-OES Policy Letter 01-22 and made a distinction for floating OCS facilities that are vessels from those that are not. Lastly, this entire SNPRM is underpinned by the unreliable and inaccurate data provided by the Coast Guard’s MISLE data information system.

We do not believe any risk will be incurred for withdrawing this proposed rulemaking to consider the significant amount of comments made above to achieve the intent of this regulation. We strongly recommend the Coast Guard engage the NOSAC and affected industry groups to revise this rulemaking.

If you have any questions regarding these comments or require further information or clarification, please do not hesitate to contact us.

Sincerely,

Tim Charters
Director
American Petroleum Institute

A handwritten signature in black ink that reads "Tim Charters". The signature is written in a cursive style with a large initial "T".

Jim Rocco
Senior Director - Government & Industry Affairs - Offshore
International Association of Drilling Contractors

A handwritten signature in black ink that reads "Jim Rocco". The signature is written in a cursive style with a large initial "J".

Evan H. Zimmerman
Executive Director
Offshore Operators Committee

A handwritten signature in black ink that reads "Evan H. Zimmerman". The signature is written in a cursive style with a large initial "E".