

U.S. Department of
Homeland Security


United States
Coast Guard



Commandant
United States Coast Guard

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16713
CG-OES Policy Letter
No. 01-22
4 Feb 2022

From:  J. D. Butwid, CAPT
COMDT (CG-OES)

To: Distribution

Subj: DETERMINATION OF WHETHER A FLOATING OUTER CONTINENTAL SHELF FACILITY (FOF) IS A VESSEL

Ref: (a) Title 33 Code of Federal Regulations (CFR) Chapter I, Subchapter N
(b) Section 3 of Title 1, United States Code

1. PURPOSE. This policy letter provides guidance to Officers in Charge, Marine Inspection (OCMI) for determining if a floating outer continental shelf (OCS) facility (FOF) as defined in ref (a) is a vessel. The guidance remains in force until superseded.
2. ACTION. OCMI's should use the procedures outlined in this policy letter when determining if an FOF is a vessel for the purpose of applying regulatory requirements.
3. DIRECTIVES AFFECTED. None.
4. BACKGROUND.
 - a. Ref (a) defines an FOF 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."
 - b. Ref (b) defines a vessel for purposes of the United States Code as "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."
 - c. The Supreme Court has provided guidance on what structures are vessels in *Stewart v. Dutra Const. Co.*, 543 U.S. 481 (2005) and *Lozman v. City of Riviera Beach Fla.*, 568 U.S. 115 (2013). While many FOFs do not meet the definition of a vessel, some might. This policy provides guidance on determining if an FOF is a vessel in accordance with the guidelines established by the Supreme Court and delineates the OCMI's authority to designate inspection requirements on FOFs.

- d. In *Lozman v. City of Riviera Beach*, the Supreme Court held that to be a vessel, the structure's physical characteristics and activities would need to be such that a reasonable observer would conclude that the structure was designed to a practical degree to carry people or things on the water.
 - e. The Supreme Court did not rely upon any single structural characteristic in *Lozman* to reach its decision. The Court instead focused on the phrase "capable of being used as a means of transport." Citing *Stewart v. Dutra*, the court emphasized that for a structure to be considered capable of being used for transport it had to have a practical possibility of transporting people or goods over the water and not just be theoretically capable of doing so.
 - f. An FOF may be considered capable of being used for transportation over the water as many FOFs are designed to be towed to a leasehold often with associated machinery and personnel. However, the machinery and personnel involved with this transit to the leasehold should not be considered the transportation of actual cargo or passengers, rather they are necessary appurtenances for the work of exploring and exploiting energy resources on the OCS. An FOF should not be considered practically capable of transportation of people or things over the water based solely on the initial voyage to the leasehold or infrequent movement thereafter. This does not preclude finding an FOF is a vessel if other factors lead to that conclusion.
 - g. Therefore, FOF vessel determinations should be made on a case-by-case basis, using this analysis as a non-exhaustive guide to decide whether the FOF was designed to a practical degree for carrying people or things over the water. This policy applies to general determinations as to whether an FOF is a vessel. Such determinations will not alter the requirements of statutes that may expressly deem an FOF to be a vessel. For example, under the Act to Prevent Pollution from Ships, an FOF would still be considered a ship for purposes of APPS because the definition of "ship" in 33 U.S.C. § 1901(a)(12) expressly includes "fixed or floating platforms."
5. DISCUSSION. The following guidance is provided for Coast Guard OCMI in determining if an FOF is a vessel and would be subject to applicable regulations for vessels.
- a. Specifically, an OCMI should consider the following factors when determining if an FOF is a vessel:
 - i. Whether it has a mode of self-propulsion, steering mechanisms, navigation equipment, dynamic positioning equipment, or operating station;
 - ii. Whether it has a traditional hull;
 - iii. Whether it is meant to be towed into place and "securely and substantially" moored to the seabed for a long period of time; and

- iv. Whether it takes substantial monetary investment and a long lead-time to move from its anchored position or is capable of emergency disconnect allowing the FOF to float free or be underway.
 - b. The above list is not exhaustive and the existence of any one of these factors does not necessarily mean the FOF is a vessel. The OCMI must holistically consider all of the facts including taking into account the physical characteristics and activities of the facility to determine if it is designed to a practical degree for carrying people or things over water.
 - c. Due to the many existing configurations of FOFs and ever-increasing technology advancement in the energy exploration field, it is not possible to make a blanket determination for all FOFs. Each determination should be conducted on a case-by-case basis. The OCMI's servicing legal office can aid with FOF vessel determinations.
 - d. In all cases, the OCMI has authority in Ref (a) to apply inspections requirements.
 - e. If the FOF is determined to be a vessel, the OCMI should, in consultation with CG-CVC, use the authority provided under 46 U.S.C. § 3301 to determine the vessel requirements, and inspection and examination intervals. The OCMI should direct owners/operators of an FOF with unusual design or equipment to submit plans and information to the Office of Design and Engineering Standards (CG-ENG).
 - f. If the FOF is determined not to be a vessel, the OCMI will issue a Floating OCS Facility Determination letter (Enclosure 1) to the unit owner/operator advising the owner/operator of the OCMI's decision. The OCMI will issue with the determination letter a Floating OCS Facility Certificate of Inspection, a sample of which can be found in Enclosure 2. In the determination letter, the OCMI should address any special considerations, if applicable.
6. DISCLAIMER. This guidance is not a substitute for applicable legal requirements, nor is it itself a regulation. It is not intended to, nor does it impose legally-binding requirements on any party. This guidance represents the Coast Guard's current thinking on this topic and may assist industry, mariners, the general public, and the Coast Guard, as well as other Federal and State regulators, in applying statutory and regulatory requirements. Alternative approaches for fulfilling this policy may be acceptable if the approach satisfies the requirements of the applicable statutes and regulations.
7. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS.
- a. The development of this guidance and the general policies contained within it have been thoroughly reviewed by the originating Office in conjunction with the Office of Standards Evaluation and Development, Commandant (CG-REG). Pursuant to Department of Homeland Security Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the

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Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), we have determined that developing this guidance and enacting its associated policies is categorically excluded (CE) from further environmental analysis under paragraphs #A3, L5, L52 and L58 in Appendix A, of Table 1 of DHS Directive Instruction Manual 023-01, Rev. 1. Our rationale for applying these categorical exclusions is as follows. “Promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies ... and other guidance ... that implement, without substantive change, statutory or regulatory requirements” or “...that interpret or amend and existing regulation without changing its environmental effect “ are covered under DHS CE #A3 . Similarly, “Preparation of guidance documents that implement, without substantive change, the applicable Commandant Instruction or other Federal agency regulations, procedures, manuals, and other guidance documents” is covered by Coast Guard CE #L5. Finally, the policy letter includes elements that pertain to Coast Guard regulations dealing with vessel operation safety standards, as well as equipment approval and carriage requirements. These aspects of the policy letter and its associated guidance are covered under Coast Guard CEs #L52 and #L58, respectively. A final Record of Environmental Consideration (REC) supporting this determination has been generated and is available from the originating program office.

- b. This guidance will not have any of the following: significant cumulative impacts on the human environment; substantial controversy or substantial change to existing environmental conditions; or inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. All future specific actions resulting from the general policies in this guidance must be individually evaluated for compliance with the National Environmental Policy Act (NEPA), DHS and Coast Guard NEPA policy, and compliance with all other environmental mandates.
8. REQUEST FOR CHANGES. All requests for changes and questions regarding implementation of this policy and/or requests for changes should be directed to the Office of Operating and Environmental Standards (CG-OES), at (202) 372-1410 or matthew.k.meacham@uscg.mil.

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Enclosure 1: Floating OCS Facility (FOF) Determination Letter
Enclosure 2: Floating OCS Facility (FOF) Certificate of Inspection (COI)

Distribution: HQ Offices
All Area/District (p)
Marine Safety Center
All Sectors/MSUs/MSDs (p)
OCS NCOE
BSEE Office of Offshore Regulatory Programs (OORP)

Enclosure 1

U.S. Department of
Homeland Security

**United States
Coast Guard**



Commandant
United States Coast Guard
[Customize to reflect Unit]

Unit Street Address
City, State Zip Code
Phone: (xxx) xxx-xxxx
Fax: (xxx) xxx-xxxx
Email: officialmail@uscg.mil

16711
Serial OCS - XXXXX
Date

Operator Name
Attn:
Street Address
City, ST Zip

SUBJECT: FLOATING OCS FACILITY DETERMINATION FOR XXXX

I have determined that the subject floating OCS facility is not a vessel as defined in 1 U.S.C. § 3 due to the fact it is not practical for use as transportation on the water.

Because this facility is not a vessel and is not subject to inspection under 46 U.S.C. § 3301, the Coast Guard will not issue a vessel Certificate of Inspection. The facility is subject to inspection under Title 43 of the United States Code.

****The OCMI may add additional paragraphs to this letter in reference to special considerations, if applicable. ****

If you disagree with this determination you may request reconsideration in writing in accordance with 33 CFR § 140.25. Should you have questions please contact my office at (504) 671-2150.

Sincerely,

X.X. XXXX
Title, U.S. Coast Guard
Eighth District Outer Continental Shelf
Officer-In-Charge, Marine Inspection

Enclosure 2

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard
[Customize to reflect Unit]

Unit Street Address
City, State Zip Code
Phone: (xxx) xxx-xxxx
Fax: (xxx) xxx-xxxx
Email: officialemail@uscg.mil

16613
Serial No: Insert
MMM DD, YYYY

[Insert Co Name Here]
Attn: [Insert Person in Charge, Facility NAME]
[Insert Address]
[Insert Address]

**FLOATING OCS FACILITY CERTIFICATE OF INSPECTION, [INSERT FACILITY,
BLOCK #, CGXXXXXXXX, BSEE COMPLEX ID]**

This Floating OCS Facility (FOF) has been inspected and found to be in compliance with the requirements of applicable standards and this letter constitutes the certificate of inspection pursuant to 33 CFR 143.120(c). This FOF is subject to inspection at any time in accordance with 33 CFR 140.101 to verify compliance with applicable regulatory requirements and the operating conditions specified on this document. Subsequent attendances by U.S. Coast Guard to verify facility compliance may be documented on enclosure (1), Record of USCG Attendances.

It is the responsibility of the Person in Charge (PIC) required by 33 CFR 146.5 to adhere to the following conditions of operation at all times:

1. Persons Allowed--- XXX

The facility is equipped with the lifesaving equipment specified below for XXX persons and has accommodations (sleeping) spaces for XXX persons. As such, a maximum of XXX persons are allowed on the facility at any time.

2. Stability---

Stability conditions are to be maintained in accordance with the Facility's Permanent Stability Letter, [Insert Serial: XX-XXXXXX, issued by MSC-3 on MMM DD, YYYY]

3. Construction---

[Insert construction standards] See construction portfolio prior to commencing repairs.

4. Machinery Requirements---

[Insert: MAWP for all Pressure vessels, boilers, and steam piping]

5. Lifesaving Equipment---

Total equipment provided for XXX persons:

- Lifeboats: [Insert number: Xxx (XX)] totally-enclosed, motor-propelled, fire-protected lifeboats with a total capacity of [XXX] persons
- Rescue Boat: [Insert number: XXX (X)] with a capacity of [XX] persons
- Life Preservers (Adult): [Insert number: XXX]

- Inflatable Rafts: [Insert number: Xxxxx (X)] with a capacity of XXX persons (25 person life rafts).
- Ring Life Buoys: [Insert number: Xxx (XX)], consisting of [XXX (X)] with lights attached, [XXX (X)] with line attached and [XXX (X)] with smoke signals attached

6. Fire Fighting Equipment ---

- [Insert number: XXX (XX)] fire pumps.
- Fire hoses, portable/semi-portable fire extinguishers and fixed fire suppression systems are to be maintained in the quantities and locations as shown on the facility's fire control plan approved in accordance with 46 CFR 107.305(v).

7. Operating Manual---

The facility is to be operated in compliance with the facility's operating manual, approved in accordance with 46 CFR 107.305(ii) by approval letter Serial: [Insert number: XXX-XXX], issued by my office on [Insert date: MMM DD, YYYY].

8. Emergency Evacuation Plan---

The facility is to maintain all equipment, comply with processes specified within and conduct requisite training to ensure compliance with the Emergency Evacuation Plan (EEP) Serial # that applies to the facility, as reviewed and approved by my office under separate correspondence.

Any deviations to the required conditions listed on this document must be reported immediately to my staff via the contact information listed above.

This document supersedes any previous Floating OCS Facility Certificate of Inspection issued to this facility. The Coast Guard recommends that the recipient retains this document, and its enclosure, and make them available onboard the facility.

Sincerely,

Xxxxx X. Xxxxx
Captain, U.S. Coast Guard
Officer in Charge, Marine Inspections

Encl: (1) Record of USCG Attendances

Record of USCG Attendances

| Purpose of Visit | Remarks | Deficiencies Issued? (# issued) | Attending Marine Inspector | |
|------------------|---------|---------------------------------|----------------------------|-------|
| | | | Unit: | Date: |
| | | | MI's Signature: | |
| | | | Unit: | Date: |
| | | | MI's Signature: | |
| | | | Unit: | Date: |
| | | | MI's Signature: | |
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| | | | MI's Signature: | |

The Coast Guard recommends that the FOF owner/operator retains this document, and make it available onboard the facility.