

FOF Policies Q&A Session w/OOC

24Mar2022

D8 OCS OCMI/Division Staff, CG-OES, CG-CVC, CG-MMC and OCSNCOE personnel participated

A. COIs

Q1. What is the Eighth District OCS Officer in Charge Marine Inspection (D8 OCS OCMI) plan and schedule for the changeover of Form CG-841 – Certificate of Inspection (COI) to the new FOF COI? Will the D8 OCS OCMI issue a new FOF COI to each FOF prior to its next annual inspection or at the conclusion of its next annual inspection?

A. *D8 OCS OCMI anticipates issuance of all FOF COI letters **prior to the end of April.***

Supplemental D8 OCS OCMI actions related to issuance of the FOF COI letters:

D8(m) Policy Letter 03-2000 (CH-1), “Policy on Manning of Non-Self Propelled Floating Outer Continental Shelf (OCS) Facilities” will also need to be cancelled. This policy references the licenses that will no longer be issued per CG-MMC Policy Letter 01-22. In order to cancel that D8 policy, D8 OCS OCMI anticipates issuing a new policy regarding training for offshore workers on FOFs and indicating how CG marine inspectors will verify that they are able to perform their duties and functions under the Emergency Evacuation Plan (EEP). Before signing these policies, the intent is to socialize them with OOC, BSEE, and certain CG offices for comment and recommendations. Once this policy is issued, FOF COI letters and non-vessel determination letters will be sent to operators.

Q2. Will the D8 OCS OCMI require operators to submit a written request for an FOF Determination Letter?

A. *No. D8 OCS OCMI will initiate the FOF determination letter for all non-vessel FOFs. It has already been determined which FOFs are non-vessels. The only production facilities that will remain deemed to be vessels are Turritella, BW Pioneer, and Helix Producer I, as these are foreign vessels and will no longer be considered FOFs per the 33 CFR 140.10 definition.*

Q3. Once a determination is made, can it be reversed later?

A. *Theoretically this could happen, but it is not likely.*

Similar to a permanently moored craft, a vessel determination is based on objective evidence viewed through the lens of a reasonable observer. SCOTUS prescribed criteria determine whether a unit is a considered a vessel. To be deemed a vessel a unit must be practically – not merely theoretically – capable of “conveying things or persons from one place to another.” Furthermore, the United States Court of Appeals, Fifth Circuit’s has directly asserted that TLPs, and Semi-Submersible FOFs are not vessels.

Important note: *The context of the vessel/non-vessel determination for FOFs is for the application of regulations within 33 CFR Subchapter N and those referenced from 33 CFR 143.120 (i.e., inspection activities). MARPOL and/or applicable U.S. pollution regulations in 33 CFR Subchapter O use a different definition of “ship” that will typically include a non-vessel FOF. See the definitions and applicability for the respective pollution cites separately from those related to inspection activities regulated under 33 CFR Subchapter N.*

Q4. What happens if an individual's mariner endorsement expires after March 7th but the facility COI (old COI) has not been changed? Will individuals be "grandfathered"?

A. As noted in CG-MMC Policy Letter 01-22, the CG will continue to renew endorsements that are restricted to FOFs (FOIs). Original endorsements restricted to FOFs (FOIs) will not be issued after this date.

Personnel that wish to renew their non-restricted endorsements may have their time on non-vessel FOFs counted as "closely related service" in accordance with the provisions of 46 CFR 10.227.

Q5. Does the D8 OCS OCMI intend to place an expiration date on each FOF COI, or will the FOF COI remain valid indefinitely?

A. No. The COI letter will be issued for perpetuity and will remain valid as long the unit remains in compliance with applicable design and equipment specifications. It will not include an expiration date.

Note: The letter may be reissued if conditions change on the facility that warrant the issuance of a revised letter (e.g. changes to lifesaving capacity or other equipment specified on the letter).

Q6. Will the D8 OCS OCMI continue to conduct annual inspections scheduled at the operator's request? If so, will the D8 OCS OCMI continue to conduct the annual inspection within a period 3 months before and three months after the anniversary date of the FOF COI or adopt a "once per calendar year" approach? If not, does the D8 OCS OCMI intend to conduct inspections on a predetermined schedule using a risk-based inspection resource allocation method?

A. Yes, the CG will continue to conduct inspections at least once per year. 43 U.S.C. § 1348 mandates a "scheduled onsite inspection, at least once a year... [on] each [OCS] facility in addition to a "periodic onsite inspection without advance notice to the operator."

Given they are yearly inspections, the 90+/- day dictates of 46 U.S.C. do not apply. Accordingly, the intent is to adopt an inspection schedule that ensures yearly attendance at each FOF with revolving unannounced inspections.

Operators do not need to request an inspection, but may propose dates if they would like to do so.

The scope and means of the inspection will be determined by the OCMI on a case-by-case basis. D8 OCS Division intends to continue refining the risk-based approach to inform frequency and scope of inspections, and intend to revise the D8 policy letter on risk-based inspections in the future.

Q7. Will the D8 OCS OCMI discontinue using Form CG-835V to record potential deficiencies and start using the Record of USCG Attendances attached to the FOF COI to record them?

A. Yes, D8 OCS OCMI intent is to discontinue the use of the CG-835V to document deficiencies on FOFs. Neither OCSLA nor 33 Subchapter N specify the form and method of documenting of noncompliance. The record of attendance will be annotated to document inspection findings. We are exploring options for how to thoroughly document deficiencies in more detail than the space allotted on the Record of USCG Attendance. It will likely be in the form of a letter to the operator, and perhaps to BSEE if appropriate.

Note: CG-CVC, D8 OCS Division and the OCSNCOE are in continued internal discussions related to the deficiency documentation method that will aid in tracking and analyzing deficiency trends.

Q8. Will special conditions on existing COIs be automatically rolled over to new FOF COIs or will the operator have to reapply for each special provision? An example of a special condition is included for clarity.

A. No. Given the COI letter will be issued for perpetuity, short-term deviations will be addressed via separate documentation (e.g. EEP supplement, separate letter, etc.) on a case-by-case basis. POB limitations will be governed **primarily by widely separated primary lifesaving capacity**.

Hydrocarbon presence will no longer be used as a **singular determinative factor** for adjusting POB limitations when requested (e.g. during “turnaround” maintenance periods). The cessation of hydrocarbon production could be one consideration, but is not the sole factor to consider and other risk factors and/or mitigations proposed by operators will also be considered.

B. Subsequent Policies

Q9. How will each level of the USCG (e.g., D8 OCS OCMI, CG-CVC, CG-ENG, etc.) identify and potentially change policies relating to FOFs?

A. Each level of the organization can initiate policies and changes to policies within their purview. Several D8 policies are already being looked at for revision (e.g. Risk Based Methodology, Manning, Structural Integrity Management, Post-Hurricane Inspection Requirements, etc.).

Q10. Will the D8 OCS OCMI cancel Policy Letter 03-2000 (CH-1), “Policy on Manning of Non-Self Propelled Floating Outer Continental Shelf (OCS) Facilities”?

A. Yes. The intent is to cancel D8(m) Policy Letter 03-2000 (CH-1) and replace it with a policy that addresses competency assurance via performance assessment (i.e., training-focused) versus prescriptive licensing.

Q11. Will the D8 OCS OCMI cancel Policy Letter 02-16, “Structural Integrity Management (SIM) Program as an Alternative Hull Inspection for Floating Outer Continental Shelf (OCS) Facilities”?

A. Yes. The intent is to replace D8(ocs) Policy Letter 02-16 with a policy that speaks to post-construction structural inspections. COIs will no longer prescribe dry-dock requirements or dictate dry-dock alternatives. COMDTINST 16000.76 requirements for a periodic dry-dock exams, or related alternatives, will no longer be enforced as they lack regulatory backing. COMDTINST 16000.76 is under review for revision.

ISIP and SIM cannot be enforced, but operators will still have to prove that they are maintaining the structural integrity of a floating OCS facility to the CG. This will give the operator some flexibility in how they demonstrate how they maintain structural integrity for CG purposes.

Q12. Will the D8 OCS OCMI cancel Policy Letter 01-14, “Guidance on Post-Hurricane Inspection Requirements for Floating Offshore Production Facilities”?

A. Yes. This is another policy that is slated for review, taking into account existing duplicative BSEE reporting requirements. Any damage to equipment within the CG's purview should still be reported to the CG during operators' post-hurricane inspections.

Q13. Will the D8 OCS OCMI revise or cancel Policy Letter 03-16, "Interim Coast Guard Eighth District Outer Continental Shelf (OCS) Risk-Based Inspection Resource Allocation Methodology"?

A. Yes, D8 OCS OCMI Policy Letter 03-16 is marked for review and revision. Input from industry is welcomed in order to help the CG allocate limited resources to the areas of highest risk.

Q14. Will the D8 OCS OCMI require operators to submit revisions to the Marine Operating Manual (MOM) to the USCG for approval? If so, then under what applicable regulatory authority?

A. No revisions to the Marine Operating Manual are anticipated to be necessary as a result of these policy changes. The CG is currently reviewing the applicability/intent of the Marine Operating Manual as it would pertain to a floating OCS facility. Input is welcomed from industry to ensure that applicable regulations are properly applied.

C. General Questions

Q15. What type of internal training will the 8th District USCG provide inspectors on these policy changes?

A. The primary method of internal instruction and guidance to marine inspectors is through Mission Management System (MMS) work instructions. Additional training on changing policies and procedures can also be facilitated by the OCSNCOE.

Q16. If a company receives a "non-vessel" determination letter from the D8 OCS OCMI, will this allow for a more flexible USCG determination process around alternatives and substitutes (for vessel-based requirements)? For example, if Unit X is a "non-vessel" FOF, will the USCG continue to strictly apply all the vessel-based requirements to the FOF as it does now?

Put another way, does the change for non-vessel determination stating that a vessel COI no longer applies to FOFs also extend to things like COFR, emergency generator, other systems that have a vessel-based intent?

A. 33 CFR 143.120 design and equipment, as well as the provisions for alternatives, substitutions and exemptions still apply and there are currently no plans to deviate. §143.120 allows the application of the vessel regulations of the incorporated/referenced vessel subchapters.

The OCSNCOE has developed an analysis of 46 CFR Subchapters F and J for FOFs, as well as how the individual sections have been historically applied. While the first phase of realigning FOF policies with existing regulations have focused on COI, manning and ISIP, a proposed portion of the next phase would be to take a closer look at clarifying how/what in the child subchapters apply to FOFs.

D. Projects & New Construction

Q17. Is ISIP review/approval by USCG still “required?” If so, then under what applicable regulatory authority? Note: an ISIP or SIM plan is still something industry does, we just need to understand the level of future USCG involvement, if any.

A. The intent is to provide D8 policy updates that state that ISIP “requirements” will no longer be enforced. CG-CVC is currently revising guidance that is intended to allow the operator flexibility in how to demonstrate structural integrity requirements as previously discussed for Question 11.

Q18. If an FOF is determined to be a non-vessel per this policy, will a new project hull be required to obtain a VGP from the EPA prior to sail-out? Note: EPA has been requiring this on recent projects because they rely on the same broad definition of “Vessel” in Section 3 of Title 1, United States Code.

A. This question would need to be referred to the Environmental Protection Agency (EPA).

Q19. Will a Quarters Habitable (QH) letter still be used for new facilities during tow-out and installation, or will these unique operational conditions be addressed in the new Letter of COI?

A. Although in current CG policy under COMDTINST 16000.76, a QH letter may no longer be necessary with the changes related to the new FOF COI, but may be considered on a case-by-case basis if specifically requested by an operator.

Q20. How will the “non-vessel” determination affect new construction projects?

A. The new construction plan submittal process has not changed. CG-ENG Policy Letter 01-13 continues to provide useful guidance regarding alternate design and equipment standards for FOFs. Although they primarily apply to U.S. flag vessel construction projects, the concepts of NVIC 10-82 and NVIC 10-92 have also been applied to oversight of FOF construction projects at the request of several operators and may continue to be considered.

E. Related Policy & Regulation

Q21. Can further explanation be provided on how the USCG determined to take these actions via Policy Letters instead of rulemaking?

A. CG-OES Policy Letter 01-22 and CG-MMC Policy Letter 01-22 were issued to provide guidance and clarity to the field and to industry, as a result of Supreme Court rulings as well as other regulatory and legal interpretations. A rulemaking was not necessary to implement these changes, as the changes bring the CG into alignment with the language in current laws and regulations.

Q22. It is assumed that medical certification per 46 CFR 10, Subpart C will no longer be required. However, further clarification is requested.

*A. Yes, the certificate will no longer be required **unless** an individual **chooses** to renew their credential. The medical certificate is required as part of the credential renewal process.*

Q23. Will Inspection fees still be required? If so, will the fee change to the “any inspected vessel not listed in this Table” fee of \$1030? Since an FOF is not a vessel subject to inspection per 46 USC 3301, can a fee be charged at all?

A. User fees specified in 46 CFR Subpart 2.10 are **not applicable** to non-vessel FOFs.

Q24. Is a Certificate of Financial Responsibility (COFR) required for an FOF that is determined not to be a vessel? Note: these have been required for new projects during tow-out and there is at least one operating FOF that has been “required” by USCG to maintain a COFR because it was determined to be an FPSO, but it is not.

A. Please see the existing financial responsibility FAQ at <https://www.dco.uscg.mil/OCSNCOE/FAQ/General/> or <https://www.dco.uscg.mil/OCSNCOE/FOF/FAQs/>. Coverage requirements during the tow-out/construction phase of a new facility will need to be considered on a case-by-case basis.

Q25. The OES Policy Letter 01-2022 says in Paragraph #2 that “OCMI should use the procedures outlined in this policy letter when determining if an FOF is a vessel for the purpose of applying regulatory requirements”. Taken another way, if an FOF is deemed to be a non-vessel, then would any of the 46 CFR I-A, F, J, and S requirements invoked by 33 CFR 143.120(b) be applicable at all?

A. As previously stated, the parent cite of 33 CFR 143.120 invokes the “child” cites mentioned in the question. That being said, the CG stakeholders in management of OCS activities and FOFs do realize the need to develop clarity when an invoked cite seems to pertain to a specific vessel-related requirement that may not fit or address the design of a floating OCS facility.

Q26. Will the licensing changes affect the sea service reporting requirements associated with the U.S. Department of Transportation Maritime Administration (MARAD)?

A. The CG recommends that MARAD is contacted directly to ensure that the circumstance/scenario is appropriately answered.

Q27. Will the USCG come out with clarifying policy that establishes certain competencies are still needed/required on FOFs? For example, the Stability Letter and MOM are still required and, thus, certain personnel need to be competent in stability and ballasting. Also, trained personnel are still needed to operate lifeboats and to be a member of the fire team. Based on the MMC policy letter, it is our understanding that USCG will no longer issue credentials, therefore, an operator is responsible for managing the marine competencies for their offshore personnel. Industry has already initiated a process to develop a guidance document that will recommend competencies for marine positions on FOFs.

A. Yes. As previously stated in the answer to Question 10, the intent is to cancel D8(m) Policy Letter 03-2000 (CH-1) and replace it with a policy that is intended to address how an operator assures competence of key personnel and how the CG may verify the same.

Voluntarily holding/renewing a merchant mariner credential could be accepted as a way to demonstrate competence in a specific position (e.g. lifeboatmen, ballast control operator), but a performance evaluation (i.e., drill) could be used to ascertain competency at more of an operational level.

Q28. Will the USCG provide an official position/answer with regard to how they think SEMS should address these competencies? Some operators have been told by the USCG that, in the absence of the MMC credential, competencies under USCG jurisdiction (stability, lifeboat operator, firefighting) can be addressed via their SEMS. This requires further clarification from the USCG as SEMS is a Bureau of Safety and Environmental Enforcement (BSEE) requirement, and BSEE regulations are clear that SEMS would not apply to required competencies needed for systems under USCG purview. 30 CFR 250.1900(b) states, "Nothing in this subpart affects safety or other matters under the jurisdiction of the Coast Guard."

A. Continued discussion with BSEE may shape policy revisions, interagency coordination and applicable oversight, but the interagency discussion on this particular matter has just begun.

Q29. Is BSEE/USCG Memorandum of Agreement (MOA) OCS-04 going to be revised to reflect the changes created by these new policies?

A. The CG works with BSEE frequently. There is no definitive answer on MOA revisions, but the CG is currently working with BSEE to identify which MOAs need to be updated and the path forward for the respective updates.

F. Personnel & Licensing

Q30. Can employers/operators stop conducting the separate drug tests for marine crew to meet the provisions in 46 CFR 16 and apply one drug testing standard to all personnel?"

A. Yes, but with a caveat. Certain 46 CFR Part 16 requirements would apply to personnel that retain a merchant mariner credential and for renewal purposes of that credential.

If an individual chooses to retain his or her MMC, that individual is responsible to meet the regulations for renewal of their credential. This includes the requirement found in 46 CFR 10.227(d)(5), which requires that the applicant provides evidence of passing a chemical test for dangerous drugs or of a qualifying exemption from testing in accordance with §16.220. The exemption allowed by §16.220(c) requires evidence that an applicant has passed chemical testing per §16.220(c)(1) covering an annual period or evidence that the applicant is subject to a random testing program per §16.220(c)(2)

Q31. The MMC policy letter says that NMC will continue to renew existing endorsements. If the USCG has determined that this endorsement is not backed by regulation and will not issue original endorsements, under what applicable regulatory authority can they renew existing endorsements?

A. The CG's longstanding policy has been, to the extent possible, not to remove authority from mariners that have been issued a credential. The policy has also been developed to account for the possibility of FOFs that are determined to be a vessels as well as the time associated with COI/manning changes associated with non-vessel FOFs.

Q32. Will mariners who hold MMCs with other valid endorsements (i.e., endorsements that are required in regulation) be granted "recency" for the purposes of MMC renewal if the time they seek to count as recency only involves service as marine crew on FOIs/FOFs?

A. Service on a non-vessel FOF may be considered as “closely related service” to count towards credential renewals. Renewing a credential with closely related service is found in 46 CFR 10.227(e)(1)(iv).

For the first MMC renewal following the issuance of CG-MMC Policy Letter 01-22, applicants may meet the requirements of 46 CFR 10.227(e)(1) with twelve (12) months of service on a non-vessel FOF (46 CFR 10.227 (e)(1)(i)). Subsequent renewals will revert to the three (3) years of closely related service for FOI/FOF-specific endorsements due to the implementation of the new policy.

The March 7, 2022 date in paragraph 5.a of CG-MMC Policy Letter 01-22 specifies the date on which the Coast Guard will no longer issue original MMC officer endorsements that are restricted to service on specific types of FOFs (FOIs).

Q33. With the FOI-only MMC endorsements going away, what are USCG expectations with respect to emergency drills (especially those being witnessed by CG during inspections)?

A. CG marine inspectors will likely require drills during an inspection as a way to evaluate/verify crew ability perform their assigned duties. Drills under 33 CFR Part 146 are still applicable.