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Edited By: Capt. Richard A. Block, Sec'y, NMA.

124 North Van Avenue
Houma, LA 70363-5895
Phone: (985) 851-2134
Fax: (985) 879-3911
www.nationalmariners.org
info@nationalmariners.org

Asserting our right "...to petition the Government for redress of grievances."
Amendment I, U.S. Constitution, Dec. 15, 1791

OUTER CONTINENTAL SHELF (OCS) ACTIVITIES

[**Publication History & Purpose:** This report *updates* GCMA Report #R-233 that we published on Feb. 9, 2000 in order to bring a Notice of Proposed Rulemaking (Docket #USCG 1998-3868, 64 FR 68416-68505, Dec. 7, 1999) to the attention of our mariners who served on Offshore Supply Vessels (OSV) and Uninspected Towing Vessels (UTV) in support of the offshore oil and gas industry.]

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EXECUTIVE SUMMARY

Thousands of our limited tonnage merchant mariners work on the outer continental shelf (OCS) on offshore supply vessels, towing vessels, and on construction barges in support of the offshore oil and gas industry as do thousands of oilfield workers who often are not credentialed mariners.

Offshore Supply Vessels (OSV) are *õinspectedõ* by the Coast Guard usually under provisions of 46 CFR Parts 125-134 (Subchapter L) and occasionally under other subchapters such as Subchapter I (Cargo and Miscellaneous Vessels) or Subchapter T (Small Passenger Vessels). Towing vessels remain as *õuninspectedõ* vessels until such time as the Coast Guard completes its rulemaking project with Final Rules ó tentatively known as Subchapter M.

This report is based on two significant events and undertakings:

- **Event #1. Dec. 7, 1999.** The Coast Guard announced a Notice of Proposed Rulemaking (NPRM) that would update regulations affecting all operations on the Outer Continental Shelf (OCS). The greatest impact of this rulemaking would have been on drilling rigs and other oil and gas facilities. We will *not* examine these *facilities* in any depth other than to say that *the absence of updated regulations may have affected the second "event."*

The absence of workplace safety and health regulations in the offshore industry has become obvious. In broad terms, it means that the *proposed regulations* would deliver the promise made by Congress in the Occupational Safety and Health Act of 1970⁽¹⁾ ó to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resourcesí ö by applying new workplace safety and health rules to our merchant mariners. These regulations, if enacted, also would also have applied to oilfield workers including those who died in *Event #2*. When introduced in 1999, our Association recognized that these *proposed* workplace safety and health regulations could significantly affect *all* mariners working on the OCS. Although this was the principal area of concern to our mariners for the past eleven years, *this rulemaking never*

moved beyond the “proposed rule” stage. [⁽¹⁾29 U.S.C. §651(b)]

- **Event #2. April 20, 2010.** The sub-sea well blowout, explosion and sinking of the DEEPWATER HORIZON on April 19, 2010 followed by a massive oil spill into the Gulf of Mexico.

The Coast Guard plays a **peripheral role** in regulating foreign-flag **vessels** engaged in the offshore oil and gas industry including the Drilling rig DEEPWATER HORIZON. The Department of the Interior’s Minerals Management Service (MMS) played a central role in leasing and permitting all drilling and exploration activity on the OCS. In the aftermath of the explosion, the head of the MMS resigned, the agency **regrouped, reorganized and changed its name** to the Bureau of Ocean Energy Management (BOEM) ó a typical bureaucratic maneuver about as obvious and effective as an ostrich’s attempt to avoid danger by sticking its head in the sand.

The Coast Guard took the lead in cleaning up the oil spill in an effort that pulled in resources from all over the country. Previously, as a result of its own shortcomings, the Coast Guard had attempted to regroup, reorganize and change the name of its “**Marine Safety**” program to “**Prevention**.” Thus, the Coast Guard already was under close scrutiny by Congress well before the oil spill. The House Transportation and Infrastructure Committee carefully assembled new legislation well before the rig explosion.⁽¹⁾ The new proposed legislation, **if enacted**, will add an entire new 46 U.S. Code Section 2116 ó **Marine Safety Strategy, Goals, and Performance Assessments** – and make permanent changes in how this part of the Coast Guard conducts its business.⁽¹⁾ [⁽¹⁾H.R. 3619. ⁽²⁾Refer to our Report #R-203-E]

Unfortunately, the DEEPWATER HORIZON disaster leaves **unfinished** one of the most important Marine Safety rulemaking efforts of the past decade where the Coast Guard and its Project Officer, Mr. Jim Magill, made a bona fide attempt to finally introduce the type of workplace safety and health regulations promised by the OSH Act of 1970 that would protect not only our mariners working on the OCS but also to other offshore oil workers.

Even though the original thrust of this rulemaking effort targeted the offshore oil and gas industry on the Outer Continental Shelf (OCS), **all the money, effort, and manpower expended on this project will be wasted if its comprehensive review of OSH regulations is not broadened to apply to all inspected and uninspected vessels regardless of where they operate.**

Our Association learned that the rulemaking was being re-examined in late 2009 ó too late for the eleven men dead and seventeen injured on the DEEPWATER HORIZON ó but not too late for all our mariners who deserve to have the comprehensive workplace safety regulations promised long ago by Congress in the OSH Act of 1970.

**EVENT #1 -OUTER CONTINENTAL SHELF (OCS) ACTIVITIES
NOTICE OF PROPOSED RULEMAKING (NPRM)**

Docket #USCG-1998-3868; Federal Register, Volume 64, Pages 68415 – 68505; December 7, 1999

Our Association’s Interest in the Docket

Outer Continental Shelf (OCS) regulations dating back to 1982 appear in Title 33, **Code of Federal Regulations**, Parts 140-147 (33 CFR 140-147). In 1999, the Coast Guard **proposed** to make changes these regulations⁽¹⁾ but never got moved the NPRM stage.⁽²⁾ [⁽¹⁾Read the full text of this **proposed rule** on <http://www.regulations.gov> and cite the Docket #USCG-1998-3868. ⁽²⁾This rulemaking was “**unpopular**” in the industry and the Coast Guard Marine Safety Directorate never pushed their industry “partners.”]

Most working mariners who serve in the offshore oil industry are not familiar with the **existing** regulations in 33 CFR Parts 140-147. Consequently, this set of existing rules has never had much day-to-day impact upon our working mariners.

The key to understanding the **proposed** rules lies in the definition of an “**OCS Unit**” as including a “**vessel engaged in OCS activities**.” These vessels, according to proposed 33 CFR §140.5 include but are not limited to “pipelay barges, derrick barges, offshore supply vessels, and oceanic research vessels that are on the OCS for purposes of engaging in “OCS Activity” as defined in 33 CFR §140.25.” OCS activity means any activity that occurs on the “Outer Continental Shelf” and is associated with the exploration for, or development or production of minerals. Thus, **it would appear that approximately 250 “uninspected” towing vessels engaged in such activities on the OCS also would be included under the definition of vessels because that definition is not limited to**

vessels specified above. We sought further clarification on how this issue would affect our mariners but never received clarification because the comment period had closed and remained closed for a period of 11 years!

The proposed regulations would appear in these eight parts collectively known as 33 CFR "Subchapter N":

- Part 140, General (applies to all OCS units).
- Part 141, Personnel (applies to all OCS units).
- Part 142, Workplace Safety and Health (applies to all OCS units).
- Part 143, Fixed Facilities.
- Part 144, Floating facilities.
- Part 145, MODU's and MIDU's.
- Part 146, Vessels (other than floating facilities, MODU's, and MIDU's).
- Part 147, Safety zones (applies to particular structures).

Our concern will focus on the definitions in Part 140, then upon non-controversial regulations in Part 142, and concentrate on proposed OSH regulations in Part 146.

Mariner Protections

The Occupational Safety and Health Administration (OSHA) is supposed the lead Federal agency for work place safety and health. The Occupational Safety and Health Act of 1970 applies to millions of shoreside workers including shipyard workers. Starting in 1970, OSHA, an agency of the U.S. Department of Labor, made itself well known ashore by its active enforcement of regulations in many different industries. OSHA, like other government agencies, is pressed for funds.⁽¹⁾ Consequently, OSHA willingly assigned part of its workplace safety responsibilities to the Coast Guard for those mariners who worked on öinspected vesselsö but reserved its responsibilities for mariners and others who worked on öuninspectedö vessels. They did this by signing an interagency agreement called a Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA). [⁽¹⁾Refer to Appendix 1.]

OSHA remained in charge of enforcing work place safety and health regulations on öuninspectedö vessels such as approximately 6,000 uninspected towing vessels, 17,000 uninspected barges, and thousands of commercial fishing vessels.⁽¹⁾ How OSHA ever planned to manage even this limited responsibility always remained unclear since their inspectors do not even have the means of transportation to reach locations where an uninspected vessel might experience a workplace casualty.⁽¹⁾ And, OSHA always had its hands full handling situations ashore so it seldom bothered with the maritime industry unless specifically called upon to do so. [⁽¹⁾Refer to Appendix 1, *American Businesses Kill 14 Workers Every Day.*]

Our Association suspected that OSHA would look into serious marine casualties only when forced to do so. Sure enough, the question arose in a drilling accident on April 9, 1997 when an explosion killed four rig workers on Mallard Bay Drilling Co. Rig 52 an öuninspectedö drilling rig working in the navigable waters of Louisiana. The question of whether OSHA or the Coast Guard regulations applied ultimately reached the U.S. Supreme Court.⁽¹⁾ [⁽¹⁾Refer to our Report #R-300 on the "Mallard Bay" case.]

Although the towing industry successfully dodged the regulatory bullet following the 1993 Bayou Canot accident, the consensus of opinion is that industry leaders would prefer to be regulated by the Coast Guard rather than by OSHA if they had to be regulated at all. Following the Supreme Court's öMallard Bayö decision, in 2004 Congress decided to turn towing vessels into öinspectedö vessels and thereby pull them from under OSHA's jurisdiction. This eventually would take place as soon as the Coast Guard promulgated a final set of regulations governing towing vessels. Although this is a öwork in progressö the regulations are not yet in place.

In the meantime, on Oct. 12, 2006 the uninspected towing vessel **Miss Megan** pushing the uninspected construction barge **Athena 106** struck an underwater natural gas pipeline in West Cote Blanche Bay, LA, with 6 fatalities. The Coast Guard and the local Sheriff were on the scene within hours while OSHA had to wait to complete its investigation until after the wrecks finally were towed to a shipyard.

In spite of its Memorandum of Understanding with OSHA, the Coast Guard does not enforce OSHA regulations on inspected vessels. It is extremely difficult to get OSHA to raise a finger to protect a mariner under the unique set of rules they use. Consequently, until such time as the Coast Guard incorporates OSHA (or OSHA-like) regulations in its own regulations, whether you work on an öinspectedö or an öuninspectedö vessel you can forget about the type of OSHA protections that workers can expect ashore. Our Association points to öhorrible examplesö that exist within the industry for lack of hearing protection⁽¹⁾, asbestos protection⁽²⁾, or protection against hydrogen sulfide gas (H₂S)⁽³⁾. The same is true for potable water⁽⁴⁾ although OSHA was not the culprit. Expecting anything substantial in the way of personal injury reporting, recordkeeping and follow up from the Coast Guard is a

pipe dream.(4) [⁽¹⁾Refer to our Report #R-349. ⁽²⁾Refer to Report #R-445. ⁽³⁾Refer to Report #R-378. ⁽⁴⁾Refer to Report #R-429, Rev. 1. ⁽⁴⁾Refer to report #R-395, Rev. 2]

Eleven years ago, the **proposed** Outer Continental Shelf regulations represented a bright spot in that they finally would provide for a number of OSHA-type protections that would apply to those mariners working in the oil and gas industry on the Outer Continental Shelf as described below in Part 146. We asked repeatedly for 11 years but never found out whether the proposed regulations would apply to towing vessels although we believe they would have encompassed ALL vessels working on the OCS. Our Association reached for the bright spot that might have given additional protection to a sizeable group of our limited tonnage mariners but these **proposed** regulations remained beyond our reach.

Protection for Oilfield Workers

Although our Association's primary concern lies with our 126,000 limited tonnage mariners, **most** regulations in this large rulemaking package dealt with a large area overseen by the Minerals Management Service (MMS), on facilities engaged in the exploration for, or development or production of, minerals on the OCS – facilities like the DEEPWATER HORIZON that experienced 11 fatalities. ***Nevertheless, the subject matter contained in these proposed regulations were areas the Coast Guard understood that it was supposed to regulate.*** This regulatory package was pursued by the Coast Guard with the help and support of other government agencies including OSHA.

The last major revision of OCS regulations had occurred in 1982. In 1982, the offshore industry was not as high tech as it had become by 1999 – and even more so in 2010. Offshore activities were in relatively shallow water near land, where help was readily available during emergency situations. The equipment regulations required only basic equipment, primarily for lifesaving appliances and hand-held portable fire extinguishers. Since 1982, the requirements in 33 CFR Parts 140-147 did not keep pace with the changing offshore technology or the safety problems it creates as OCS activities extended to deeper water (10,000 feet) and move much farther offshore. Over a decade ago, this **proposed rulemaking** was intended to revisit all current OCS regulations in Parts 140-147 to take advantage of past experiences and new improvements to make the OCS a safer workplace. ***We can only await the final report on the DEEPWATER HORIZON explosion and fire to determine whether any of the proposed rules would have averted or mitigated this disaster.***

Frustration

Since our limited tonnage mariners have so few protections in the workplace, our Association believed we were on the right track in pushing for these OSHA-type regulations. However, as the years passed and the OCS regulations became hopelessly outdated, it appeared as if the Coast Guard lost control over its ability to effectively regulate the offshore oil industry and its own internal functions in its "Marine Safety" program. However, it was the Minerals Management Service that caught the brunt of Congress's wrath when the DEEPWATER HORIZON exploded.

EVENT #1 – THE PROMISE OF WORKPLACE SAFETY THAT WAS DENIED TO OUR MARINERS

Definitions from Proposed 33 CFR Part 140

33 CFR §140.25. **How are terms used in this subchapter defined?**

(a) Quotation marks around terms in this section mean that those terms are defined in this section.

(b) As used in this subchapter –

Accommodation module means a module with one or more "accommodation space" that is individually contracted for and may be used on one or more "facility". The term does not include "temporary accommodation module" and "accommodation module that is part of a drilling/workover rig package." Accommodation module that is part of a drilling/workover rig package means a module with one or more "accommodation space" that is individually contracted for, that may be used on one or more "fixed facility" or "floating facility" and that is used as part of a "drilling/workover rig package." The term does not include "accommodation module" and "temporary accommodation module."

Accommodation space means living quarters, including sleeping, mess, medical treatment, recreational, toilet, washing, shower, and office spaces, and corridors serving living quarters.

Act means the Outer Continental Shelf Lands Act of 1953 (43 USC 1331 et seq.), as amended.

Approval series means the first six digits of a number assigned by the Coast Guard to approved equipment. Where approval is based on a subpart of 46 CFR chapter I, subchapter Q, the approval series corresponds to the number of the subpart. A listing of approved equipment, including all of the approval series, is published periodically by the Coast Guard in Equipment Lists (COMDTINST M16714.3 series), available from Commandant (G-MSE), 2100 Second Street SW., U.S. Coast Guard, Washington, DC 20593-0001.

Approved means approved by the "Commandant." See 33 CFR 140.35.

Attending vessel means a "vessel" that is moored close to and readily accessible from an "OCS unit" for the purpose of providing power, fuel, or other services to the operation being conducted on the unit.

Bloodborne pathogens means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

Commandant means Commandant of the Coast Guard or that individual's authorized representative.

Development means those activities that take place following discovery of "minerals" in paying quantities, including, but not limited to, geophysical activity, drilling, and "facility" construction, and that are for the purpose of ultimately producing the "minerals" discovered.

District Commander means an officer who commands a Coast Guard District described in part 3 of this chapter or that individual's authorized representative.

Drilling/workover rig package means a modular group of moveable components, including tanks, accommodation modules, and equipment for hoisting, rotating, pumping, and power generation, that is designed for engaging in drilling and workover operations supporting "exploration" or exploitation of "mineral" resources from a "facility", "MODU", or "MIDU."

Exploration means the process of searching for "minerals," including, but not limited to

- (1) Geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of the "minerals;" and
- (2) Any drilling, whether on or off of known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after the discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production.

Facility means

- (1) An installation or other device that is fixed or floating, is permanently or temporarily attached to the subsoil or seabed of the "Outer Continental Shelf," and is erected for the purpose of "exploration," "development," or "production" of resources from the subsoil or seabed, or
- (2) An installation or other device (other than a "vessel") that is erected for the purpose of transporting those resources. The term includes "fixed facilities" and "floating facilities." The term does not include "mobile offshore drilling units," "mobile inland drilling units," "vessels," pipelines, or deepwater ports (as the term "deepwater port" is defined in 33 USC 1502).

Fixed facility means a bottom founded "facility" permanently attached to the seabed or subsoil of the "OCS." The term includes, but is not limited to, artificial islands, platforms, guyed towers, and articulated gravity platforms.

Floating facility means a buoyant "facility" that is securely and substantially moored so that it cannot be moved without a special effort. The term includes, but is not limited to

- (1) "Tension leg platforms," "floating production systems," "floating production storage and off loading systems," and "spar buoys" that are site-specific and not intended for periodic relocation and
- (2) Permanently moored semi-submersibles or shipshape hulls. The term does not include "mobile offshore drilling units," "mobile inland drilling units," and "vessels."

Floating production system or FPS means a "floating facility" that produces hydrocarbons from the well and processes them on board but does not store them within its hull or directly offload them to another vessel.

Floating production storage and offloading system or FPSO means a "floating facility" that produces hydrocarbons from the well, processes them on board, stores the processed products within its hull, and has the capability to offload them directly to another vessel.

Foreign, as used in the terms foreign floating facility, foreign MODU, and foreign vessel, means a "floating facility," "MODU", or "vessel" that is registered, documented, or certificated under the laws of a nation other than the United States.

Free-fall launching means the method of launching a survival craft whereby the craft, with its full complement of persons and equipment on board, is released and allowed to fall into the sea without any restraining apparatus.

Fuel cell means an electrochemical device that uses a continuous flow of fuel and oxidant to convert a chemical into electrical energy via an isothermal process.

Hazardous material means a substance or material that, under normal conditions of use or in an emergency, poses a physical hazard or a health risk to persons in the workplace.

Helicopter fuel containment area means the area around a helicopter fuel storage tank, fuel transfer pump, and fuel hose reel that is designed to contain fuel in the event of a leak or spill.

Immersion suit means an insulated, buoyant suit approved under 46 CFR part 160, subpart 160.171, worn to prevent shock upon entering cold water and to lessen the chances of incurring hypothermia.

Inflatable means having non-rigid chambers that are capable of being inflated with a gas but that are normally uninflated until ready for use.

Investigating officer means an individual assigned by the "Commandant," a "District Commander," or an "Officer in Charge, Marine Inspection," to conduct an investigation of an accident, casualty, or other incident.

Lifejacket means a flotation device approved under Sec. 143.845 as a life preserver or lifejacket.

Lifesaving equipment means a device, such as a "survival craft," "lifejacket," "ring life buoy," "rescue boat," "immersion suit," or first aid kit, designed to protect persons or enhance their chance of survival and includes the component parts of the device and its accessories, such as launching equipment and oars.

Major conversion, of a "fixed facility" or a "floating facility," means a conversion of the "facility" that, as determined by the "Commandant,"

- (1) Substantially changes the dimensions of the "facility;"
- (2) If a "fixed facility," substantially changes the water depth capability of the "facility;"
- (3) If a "floating facility," substantially changes the carrying capacity of the "facility;"
- (4) Changes the type of "facility;"
- (5) Substantially prolongs the life of the "facility;" or
- (6) Otherwise so changes the "facility" that it is essentially a new "facility."

Manned facility means a "facility" on which at least one person occupies an "accommodation space" for more than 30 accumulative days in any successive 12-month period.

Marine evacuation system means an appliance designed to rapidly transfer a large number of people from an embarkation station by means of a passage to a floating platform for subsequent transfer to a "survival craft."

Marine inspector means an individual designated as such by an "Officer in Charge, Marine Inspection," to perform inspections of OCS units to determine whether or not the requirements of Coast Guard regulations or laws administered by the Coast Guard are met.

Minerals includes oil, gas, sulfur, geopressured-geothermal and associated resources, and all other "minerals" that are authorized by an Act of Congress to be produced from public lands, as the term "public lands" is defined in section 103 of the Federal Lands Policy and Management Act of 1976 (43 USC 1702(e)).

Mobile inland drilling unit or MIDU means a "vessel," other than a "mobile offshore drilling unit" or a public vessel of the United States, that is capable of engaging in drilling operations for "exploration" or exploitation of subsea resources and is designed and intended for use in U.S. State waters, rivers, inland lakes, bays, or sounds.

Mobile offshore drilling unit or MODU means a "vessel," other than a "mobile inland drilling unit" or public vessel of the United States, that is capable of engaging in drilling operations for "exploration" or exploitation of subsea resources.

Naturally occurring radioactive material or NORM means a nuclide that is radioactive in its natural physical state (i.e., not man-made) and that may occur during an "OCS activity" not expressly designed to produce radiation.

Novel lifesaving appliance or arrangement means one that has new features not fully covered by this subchapter but providing an equal or higher standard of safety.

OCS activity means any activity that occurs on the "Outer Continental Shelf" and is associated with the "exploration" for, or "development" or "production" of, "minerals."

OCS unit means a "fixed facility," "floating facility," "MODU," "MIDU," or "vessel" engaged in "OCS activities."

Officer in Charge, Marine Inspection, or OCMI means an individual who commands a Marine Inspection Zone described in part 3 of this chapter and who is immediately responsible for the performance of duties with respect to inspections, enforcement, and administration of regulations governing "OCS units."

On-load/off-load release mechanism means a release mechanism that is designed to release a lifeboat when the load is

off the hook, but not release the lifeboat when the hook is under load unless the safety mechanism is purposely overridden.

Operator means

- (1) For a "vessel," a charterer by demise or other person who is responsible for the operation, manning, and supplying of the "vessel;" or
- (2) For a "facility, "MODU," or "MIDU," the operator as defined in 30 CFR §250.2(gg).

Outer Continental Shelf or OCS means all submerged lands lying seaward and outside of the area of lands beneath navigable waters (as the term "lands beneath navigable waters" is defined in section 2(a) of the Submerged Lands Act (43 USC 1301(a)) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Owner means a person holding title to or, in the absence of title, other evidence of ownership of an "OCS unit." However, the term does not include a person who holds evidence of ownership primarily to protect a security interest in, and who does not participate in the management or operation of, the "OCS unit."

Paint locker means an enclosed space that is used primarily for the storage of paint and paint accessories but may be used for the storage of other flammable or combustible liquids, gases, or solids.

Person means an individual, association, partnership, consortium, joint venture, government entity, or private, public, or municipal firm or corporation.

Person in charge means the master or other individual designated as such by the "owner" or "operator" under Secs. 143.100 or 146.100 of this chapter or 46 CFR §109.107.

Personnel means individuals who are employed by lease holders, permit holders, "operators," "owners," contractors, or subcontractors and who are on an "OCS unit" by reason of their employment.

Personnel transfer net means a net or device used for the transfer of "personnel" between "OCS units."

Platform hydrocarbon source means a wellhead or process equipment and pipeline risers that contain produced hydrocarbons.

Primary means of escape means a fixed stairway, or fixed ladder, of steel or equivalent construction, used in evacuating a "facility."

Production means those activities that take place after the successful completion by the removal of "minerals," including, but not limited to, the removal, field operations, transfer of "minerals" to shore by pipeline, operation monitoring, and well workover activities.

Radiation includes alpha particles, beta particles, gamma rays, X-rays, neutrons, high-speed electrons, high-speed protons, and other atomic particles. The term does not include sound or radio waves or visible, infrared, or ultra-violet light.

Rebuilt means having had substantial alteration or reconstruction of the hull or principal structural component.

Registered architect means an individual who meets the statutory registration requirements through established Board Rules and Regulations of the State in which the individual has sought registration.

Rescue boat means a boat intended for use in rescuing persons from the water and to marshal "survival craft."

Ring life buoy means a ring-shaped flotation device intended to be thrown from an "OCS unit" to rescue personnel from the water.

Secondary means of escape means a "marine evacuation system," a portable flexible ladder, a knotted man rope, or a similar device determined by the "Officer in Charge, Marine Inspection," to provide a means for evacuating a "facility" that is equivalent to or better than these devices.

Service space means a space used for a galley, pantry containing cooking appliances, storeroom, or workshop other than those in industrial areas and trunks to those spaces.

Sleeping space means a space provided with bunks for sleeping.

Spar buoy means a "floating facility" that is held in place by a permanent mooring system, has a center of gravity below its center of buoyancy, and has a deep and narrow underwater shape designed to reduce vessel motions and excursions.

Standby vessel means a "vessel" meeting the requirements of part 146, subpart F, of this chapter and specifically designated in an Emergency Evacuation Plan under part 143, subpart D, Sec. 144.205(b), or Sec. 145.115 of this chapter to rapidly evacuate "personnel" in an emergency.

Survival capsule means a lifeboat whose waterplane shape is a circle or an ellipse.

Survival craft means a craft capable of sustaining the lives of persons in distress after abandoning an OCS unit. The term includes lifeboats, life rafts, life floats, and "survival capsules" but does not include rescue boats, unless the

"rescue boats" are also approved as lifeboats.

Systems fire protection means structural fire protection items and other items from the Life Safety Code, National Fire Protection Association (NFPA) 101.

Temporary accommodation module means a module with one or more "accommodation spaces" that is individually contracted for, that may be used on one or more "facilities" and that is intended for use on a "facility" for short periods of time, not to exceed 12 months. The term does not include "accommodation modules" and "accommodation modules that are part of drilling/workover rig packages."

Tension leg platform or TLP means a "floating facility" that is held in place by tendons that facilitate a large buoyancy force to be used to provide reduced vessel motions and excursions.

Unmanned facility means a "facility" that is not a "manned facility" even though an "attending vessel" may continuously service it.

U.S., as used in the terms U.S. floating facility, U.S. MODU, or U.S. vessel, means a "floating facility," "MODU," or "vessel" that is registered, documented, or certificated under the laws of the United States or that is not registered, documented, or certificated under the laws of any nation.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

Selected Regulations from Proposed 33 CFR Part 146

[NMA Comment: Nothing in 33 CFR Part 142 should upset owners or officers on an "inspected" vessel. However, there is a great deal in this part that might upset owners or officers of "uninspected" vessels.]

Subpart A – General

33 CFR §146.1 What does this part apply to?

This part applies to vessels engaged in OCS activities, other than floating facilities, MODUs, and MIDUs. Vessels under this part include, but are not limited to, standby vessels, attending vessels, offshore supply vessels, pipelay vessels, derrick ships, diving support vessels, and oceanographic research vessels.

33 CFR §146.5 Where can I find the definition of a term used in this part?

See Sec. 140.25 of this chapter for the definition of a term used in this part.

33 CFR §146.10 Where can I get a copy of a publication referenced in this part?

You can get a copy of a publication referenced in this part from the sources listed in Sec. 140.30 of this chapter.

[NMA Editorial note: These publications recognize civilian standards that are "incorporated by reference" into Federal regulations saving the government time and effort of developing and updating its own sets of standards.]

33 CFR §146.15 Where can I find the workplace safety and health requirements?

See part 142 of this chapter for requirements on workplace safety and health. *[NMA Editorial note: 33 CFR §142.3(a) states that: "Subparts A through D of this part apply to all persons who work on an OCS Unit. An OCS unit means a "fixed facility," "floating facility," "MODU," "MIDU," or "vessel" engaged in "OCS activities." Therefore, the sections from Part 142, Subparts A through D apply to all persons working on "vessels" engaged in Outer Continental Shelf activities. We list these subparts below after the rest of Part 146. This represents the most impressive changes for our mariners in this proposed rule.]*

Subpart B – Operations

33 CFR §146.100 Who designates the person in charge of a vessel engaged in OCS activities?

- (a) Each vessel engaged in OCS activities must have an individual on the vessel who is designated under paragraph (b) of this section as the person in charge of the vessel.
- (b) The owner or operator, or their agent, must designate the person in charge by title. They must designate, by title and in order of succession, enough individuals so that one individual on the vessel is acting as the person in charge.
- (c) The owner and operator must ensure that the name of the individual acting as the person in charge is made available upon request by Coast Guard personnel.

33 CFR §146.105 What notice is required when a foreign vessel arrives on the OCS?

- (a) Fourteen days before a foreign vessel arrives on the OCS or as soon after that as practicable, the owner or operator of the vessel must notify the District Commander for the area where the vessel will operate of the following:
 - (1) The vessel's name and country of registry.
 - (2) The name and address of the vessel's owner and the owner's local representative, if any.
 - (3) Whether the vessel has a classification society certificate or a previous letter of compliance issued by the Coast Guard.
 - (4) The date that operations are expected to begin and end.
 - (5) The location where, and date when, the vessel will be available and ready for inspection by the Coast Guard.
- (b) Information under paragraph (a) of this section may be provided by telephone or may be submitted together with, and need not repeat, information submitted in applications and notices under the aids to navigation requirements in part 67 of this chapter.

33 CFR §146.110 How must the Coast Guard be notified of casualties involving U.S. vessels and how must they be reported?

The requirements for notifying the Coast Guard of a casualty and the reporting of marine casualties are listed in 46 CFR part 4. The owner or operator must ensure that the Coast Guard is

- (a) Notified of each event listed in 46 CFR 4.05-1(a)(1) through (a)(6), and
- (b) Notified of an occurrence causing property damage in excess of \$100,000, this damage including the cost of labor and material to restore the property to its condition before the occurrence, but not including the cost of salvage, cleaning, gas-freeing, drydocking, or demurrage.

33 CFR §146.115 When is a notice of casualty required for a **foreign vessel** and what must it contain?

- (a) Immediately after aiding the injured and or stabilizing the situation, the owner, operator, or master of a foreign vessel engaged in OCS activities must ensure that the Coast Guard is notified of each event listed in 46 CFR 4.05-1.
- (b) The notice under paragraph (a) of this section must contain the following:
 - (1) The name of the vessel involved.
 - (2) The name of the owner, operator, or master of the vessel.
 - (3) The nature and circumstances of the event.
 - (4) The nature and extent of the injury and damage resulting from the event.

33 CFR §146.120 When must a written report of casualty be submitted for a foreign vessel and what must it contain?

- (a) In addition to the notice of a casualty under Sec. 146.115, the owner, operator, or master of a foreign vessel engaged in OCS activities must submit, within 10 days after the notice of casualty, a written report of the event to the OCMI. The report may be on Form CG-2692 (Report of Marine Accident, Injury, or Death) supplemented as necessary by appended Form CG-2692B (Report of Required Chemical Drug and Alcohol Testing Following a Serious Marine Accident) or in narrative form if it contains all of the applicable information requested in Form CG-2692 and Form CG-2692B. Copies of Form CG-2692 and Form CG-2692B are available from the OCMI.
- (b) The written report must also contain information relating to alcohol and drug involvement as specified in 46 CFR 4.05-12.
- (c) If filed immediately after the occurrence, the written report required by paragraph (a) of this section, satisfies the notice required by Sec. 146.115.

33 CFR §146.125 How must emergency equipment be maintained?

All lifesaving, fire-fighting, and other emergency equipment required by this subchapter, must be maintained in good working condition and ready for immediate use when the vessel is in use.

33 CFR §146.130 How must excess emergency equipment be maintained and inspected?

All emergency equipment that is in addition to the equipment required by this subchapter must be maintained and inspected as prescribed in this subchapter for that item of equipment.

33 CFR §146.135 How must operational testing of emergency equipment be conducted?

When emergency equipment must be operated as part of a drill or inspection, the equipment must be operated according to the operating instructions of the equipment's manufacturer.

33 CFR §146.140 What are the load line requirements of vessels?

- (a) Each U.S. or foreign vessel subject to the load line requirements in 46 CFR chapter I, subchapter E, arriving at or proceeding to sea from any port or place within the United States, must comply with the requirements in 46 CFR chapter I, subchapter E when engaged in OCS activities.
- (b) Load line certificates and load line exemption certificates issued or accepted under 46 CFR chapter I, subchapter E, are accepted as evidence of compliance with paragraph (a) of this section.

Subpart C – Lifesaving

33 CFR §146.200 What are the requirements for lifesaving equipment and immersion suits on a U.S. vessel?

Each U.S. vessel must comply with the requirements for lifesaving equipment and immersion suits applicable to that category of vessel under 46 CFR chapter I.

33 CFR §146.205 What are the requirements for **lifesaving equipment on a foreign vessel**?

Each foreign vessel must comply with one of the following:

- (a) The lifesaving equipment requirements applicable to that category of vessel under 46 CFR chapter I.
- (b) The lifesaving equipment standards of the vessel's nation, if the Commandant has determined that the standards provide a level of safety equivalent to, or greater than, that provided under the lifesaving equipment requirements applicable to that category of vessel under 46 CFR chapter I. Send your request for a determination along with technical data supporting the performance of the equipment to the Commandant (G-MSE-4), U.S. Coast Guard, 2100 Second Street SW., Washington DC 20593-0001.
- (c) The lifesaving equipment requirements of the International Convention for the Safety of Life at Sea, 1974, as amended, (SOLAS) applicable to the vessel, if the vessel meets all other SOLAS requirements applicable to that vessel.

33 CFR §146.210 What are the requirements for immersion suits on a foreign vessel?

- (a) Each foreign vessel that is operated North of 32 degrees North latitude must comply with the immersion-suit requirements for U.S. vessels under Sec. 146.200, except as under paragraph (b) of this section.
- (b) You may use an immersion suit, exposure suit, or other similar suit approved by the vessel's nation instead of immersion suit under Sec. 146.200. The suit must be accepted by the Commandant as providing thermal protection equal to, or greater than, the thermal protection provided by an immersion suit approved under approval series 160.171 or an anti-exposure suit approved under approval series 160.153. Send your request for acceptance of a suit along with technical data supporting the thermal performance of the suit to the Commandant (G-MSE-4) at the address in Sec. 146.205(b).

Subpart D – Fire Fighting and Fire Protection

33 CFR §146.300 What are the requirements for fire-fighting and fire-protection equipment on a U.S. vessel?

Each U.S. vessel must comply with the requirements for fire-fighting and fire-protection equipment applicable to that category of vessel under 46 CFR chapter I.

33 CFR §146.305 What are the requirements for fire-fighting and **fire-protection equipment on a foreign vessel**?

Each foreign vessel must comply with one of the following:

- (a) The requirements for fire-fighting and fire-protection equipment applicable to that category of vessel under 46 CFR chapter I.
- (b) The standards for fire-fighting and fire-protection equipment of the vessel's nation, if the Commandant determines that the standards provide a level of safety equivalent to, or greater than, that provided under the requirements for fire-fighting and fire-protection equipment applicable to that category of vessel under 46 CFR chapter I. Send your request for a determination along with technical data that supports the request to the Commandant (G-MSE-4), U.S. Coast Guard, 2100 Second Street SW., Washington DC 20593-0001.
- (c) The requirements for fire-fighting and fire-protection equipment applicable to the vessel under the 1975 SOLAS

Convention, as amended, if the vessel meets all other SOLAS requirements applicable to that vessel.

Subpart E—Design, Equipment, and Inspection

33 CFR §146.400 What are the design, equipment, and inspection requirements for a U.S. vessel?

Each U.S. vessel must comply with the design, equipment, and inspection requirements applicable to that category of vessel under the following subchapters of 46 CFR chapter I:

- (a) Subchapter D— Tank Vessels.
- (b) Subchapter F— Marine Engineering.
- (c) Subchapter H— Passenger Vessels.
- (d) Subchapter I— Cargo and Miscellaneous Vessels.
- (e) Subchapter J— Electrical Engineering.
- (f) Subchapter L— Offshore Supply Vessels.
- (g) Subchapter P— Manning of Vessels.
- (h) Subchapter T— Small Passenger Vessels.
- (i) Subchapter U— Oceanographic Research Vessels.

33 CFR §146.405 What are the design, equipment, and inspection requirements for a foreign vessel?

Each foreign vessel must comply with one of the following:

- (a) The design, equipment, and inspection requirements in Sec. 146.400 applicable to U.S. vessels in similar service.
- (b) The design, equipment, and inspection standards of the vessel's nation, if the Commandant has determined that the standards provide a level of safety generally equivalent to, or greater than, that provided by the design, equipment, and inspection standards applicable to that category of vessel under 46 CFR chapter I. You must send requests for a determination by the Commandant to the Commandant, U.S. Coast Guard, 2100 Second Street SW., Washington DC 20593-0001, along with technical data that supports the request.

33 CFR §146.410 What are the requirements for lights and warning devices?

All vessels must meet the requirements for lights and warning devices in the International Regulations for Preventing Collisions at Sea 1972 (33 CFR part 81) or under local rules provided for in Rule 1 of those regulations.

33 CFR §146.415 What vessels must have a Certificate of Inspection?

When engaged in OCS activities, the owner or operator of a U.S. vessel must have on board a valid Certificate of Inspection under 46 CFR chapter I.

33 CFR §146.420 What vessels must have a letter of compliance?

- (a) When engaged in OCS activities, the owner or operator of a foreign vessel must have on board a valid letter of compliance under this section.
- (b) If the OCMI determines that the vessel meets the design and equipment requirements of Sec. 146.405, the OCMI issues a letter of compliance for the vessel. The OCMI may require that the vessel be inspected as part of this determination.
- (c) A letter of compliance issued under this section is valid for 2 years or until the vessel departs the OCS, whichever comes first.

33 CFR §146.425 What if a foreign vessel fails to comply with a letter of compliance?

The OCMI may suspend or revoke the letter of compliance if the OCMI determines that the owner or operator of a foreign vessel

- (a) Is not in compliance with the requirements for its letter of compliance under Sec. 146.420; or
- (b) Is not operating according to the operations requirements in subpart B of this part.

33 CFR §146.430 When must a foreign vessel be reinspected?

The OCMI reinspects each foreign vessel between 10 and 14 months after the issue date of the vessel's letter of compliance to determine whether the vessel meets the requirements of this subpart.

Subpart F – Standby Vessels

33 CFR §146.500 What does this subpart apply to?

- (a) This subpart applies only to standby vessels specifically designated in an Emergency Evacuation Plan (EEP) under part 143, subpart D, Sec. 144.205, or Sec. 145.115 of this chapter to rapidly evacuate personnel in the event of an emergency on a facility, MODU, or MIDU.
- (b) The requirements in this subpart are in addition to those in subparts B through E of this part. If a requirement in this subpart differs from one in another subpart, the requirement in this subpart must be complied with on standby vessels.

[NMA Comment: The proposed rules would stiffen requirements for standby boats. In the past, the most important requirement for a standby boat was that it be able to remain afloat. Some were barely able to meet this requirement.]

33 CFR §146.505 What are the requirements for certification of a standby vessel?

Your vessel may operate as a standby vessel if:

- (a) It is a U.S. vessel; and
- (b) It has a valid Certificate of Inspection issued in compliance with 46 CFR chapter I, subchapters H, I, K, T, or L.

33 CFR §146.510 What are the operational requirements for a standby vessel?

The owner or operator must ensure that:

- (a) A standby vessel does not carry or store goods, supplies, and equipment on the deck or other location that may hinder the vessel's ability to render assistance to the facility, MODU, or MIDU that the vessel is designated under the Emergency Evacuation Plan to assist; and
- (b) A standby vessel does not carry or store any hazardous material as defined in 49 CFR 171.8.

33 CFR §146.515 What are the design and equipment requirements for a standby vessel?

The owner or operator ensures that each standby vessel meets the following:

- (a) Comply with the design and equipment requirements under 46 CFR chapter I, subchapters H, I, K, T, or L applicable to the category of vessel.
- (b) Be capable of carrying and providing shelter for 100 percent of the number of persons on the most populated facility, MODU, or MIDU that the vessel is designated under the Emergency Evacuation Plan to assist. Crew spaces may be used to meet the requirements of this paragraph.
- (c) Have aircraft-type reclining seats for 10 percent of the number of persons on the most populated facility, MODU, or MIDU that the standby vessel is designated to assist. You may use crew spaces to meet the requirements of this paragraph.

33 CFR §146.520 What are the additional equipment requirements for a standby vessel?

(a) In addition to the equipment requirements under Sec. 146.515, you must have at least the following equipment:

- (1) Multiple propellers or propulsion devices.
- (2) Two searchlights.
- (3) For vessels certificated under 46 CFR chapter I, subchapter H, one line throwing appliance that meets the requirements in 46 CFR 75.45.
- (4) For vessels certified under 46 CFR chapter I, subchapters I, K, L, or T, one line throwing appliance that meets the requirements of 46 CFR 94.45.
- (5) A Stokes or comparable litter.
- (6) One blanket for each person on the most populated facility, MODU, or MIDU that the vessel is designated to assist.
- (7) A means for safely retrieving persons, including injured or helpless persons, from the water. The means of retrieval must be demonstrated to the satisfaction of the OCMI.
- (8) A scramble net that can be rigged on either side of the vessel.
- (9) A minimum of four Coast Guard approved ring life buoys, each equipped with 30 meters (100 feet) of line.
- (10) An immersion suit approved by the Coast Guard under approval series 160.171, or an anti-exposure suit approved under approval series 160.153, for each member of the standby vessel's crew when the vessel operates

North of 32 degrees North latitude.

- (11) Two boat hooks.
 - (12) A fire monitor with a minimum flow rate of at least 1,893 liters (500 gallons) per minute.
 - (13) One two-way radio capable of voice communication with the facility, MODU, or MIDU and with helicopters or other rescue aircraft, rescue boats, and the shore-side support personnel.
 - (14) Floodlights to illuminate the personnel and boat retrieval area, the scramble net when deployed, and the water around the personnel retrieval and scramble net deployment areas.
 - (15) A copy of "The Ship's Medicine Chest and Medical Aid at Sea", DHHS Publication No. (PHS) 84-2024, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or a copy of the "American Red Cross First Aid Manual," available from Little Brown and Company, 3 Center Plaza, Boston, MA 02108.
 - (16) An industrial first aid kit sized for 50 percent of the number of persons on the most populated facility, MODU, or MIDU that the vessel is designated to assist.
 - (17) Coast Guard approved life preservers for 50 percent of the number of persons on the most populated facility, MODU, or MIDU that the vessel is designated to assist.
- (b) The OCMI must approve the equipment required by paragraph (a) of this section.

33 CFR §146.525 What are the manning requirements for a standby vessel?

Standby vessels must be crewed in accordance with their Certificate of Inspection for 24-hour operation. The OCMI may require the crew to be augmented, as necessary, to provide for maneuvering the vessel, for lookouts, for rigging and operating retrieval equipment, and for caring for survivors.

Selected Regulations from Proposed 33 CFR Part 142 – Workplace Safety and Health

[NMA Comment: These are the “missing” regulations that the Coast Guard should have been enforcing on the OCS after the OSH Act was passed in 1970. The first comprehensive set of regulations for OCS activities appeared in 33 CFR Subchapter N in 1982. The 1999 rulemaking project recognized that OSH-type regulations must be added.]

33 CFR §142.1 What is the purpose of this part?

The purpose of this part is to promote workplace safety and health by establishing requirements relating to personnel, workplace activities and conditions, and equipment on all Outer Continental Shelf (OCS) units.

33 CFR §142.3 Who does this part apply to?

- (a) Subparts A through D of this part apply to all persons who work on an OCS unit. *[NMA Editorial note: OCS units include "vessels" engaged in activities on the Outer Continental Shelf.]*
- (b) Subpart E of this part applies to all persons who work on a fixed or floating facility.

33 CFR §142.5 Where can I find the definition of a term used in this part?

- (a) See Sec. 140.25 of this chapter for the definition of a term used in this part, other than the terms in paragraph (b).
- (b) As used in this subpartô

Certified Industrial Hygienist means an industrial hygienist who is certified by the American Board of Industrial Hygiene.

Certified Marine Chemist means a marine chemist who is certified by the National Fire Protection Association.

Confined space means a space that may contain a dangerous atmosphere, including a spaceô

- (1) That has poor natural ventilation, such as a space with limited openings; or
- (2) That is not designed for continuous occupancy by personnel.

Dangerous atmosphere means an atmosphere that may expose personnel to the risk of death, incapacitation, injury, or acute illness or may impair their ability to escape from the atmosphere unaided.

Hot work means work that produces heat or fire, such as riveting, welding, burning, or the use of powder-actuated fastening tools. Work that produces sparks, such as grinding, drilling, or abrasive blasting, is hot work if considered so by a Certified Marine Chemist.

Offshore Competent Person means an individual certified under Sec. 142.372 as trained and experienced in matters relating to confined-space entry.

33 CFR §142.10 Where can I get a copy of a publication referenced in this part?

You may get a copy of a publication referenced in this part from the sources listed in Sec. 140.30 of this chapter. *[NMA Editorial note: These publications usually recognize civilian standards that are "incorporated by reference" into Federal regulations to save the government the time and effort of developing and updating its own sets of standards.]*

33 CFR §142.15 Who must ensure compliance with the requirements of this part?

- (a) Each holder of a lease or permit under the Act must ensure that all places of employment within the lease area or within the area covered by the permit on the OCS are:
 - (1) Maintained in compliance with workplace safety and health regulations of this part; and
 - (2) Free from recognized hazards.
- (b) Persons responsible for actual operations, including owners, operators, contractors, and subcontractors, must ensure that those operations subject to their control are:
 - (1) Conducted in compliance with workplace safety and health regulations of this part; and
 - (2) Free from recognized hazards.
- (c) The term "recognized hazards", as used in this section, means conditions that are:
 - (1) Generally known among persons in the affected industry as causing or likely to cause death or serious physical harm to persons exposed to those conditions; and
 - (2) Routinely controlled in the affected industry.

33 CFR §142.20 What workplace-safety information and training must I provide?

Each holder of a lease or permit under the Act must ensure that all personnel are provided with information and training on recognized hazards in their workplace, including, but not limited to, electrical, mechanical, and chemical hazards.

33 CFR §142.25 What emergency response training is required?

Personnel must be trained in emergency response and cleanup, including

- (a) The actions they are expected to perform and the limitations on those actions;
- (b) The hazards associated with each emergency;
- (c) Their responsibilities for the safety of others involved in the emergency response; and
- (d) The selection and use of proper personal protection equipment.

33 CFR §142.30 Who controls access to medical monitoring and exposure records?

If medical monitoring is performed or exposure records maintained by an employer, the owner, operator, or person in charge must establish procedures for access to these records by personnel.

33 CFR §142.35 To whom can I report a possible workplace safety or health violation?

Any person may notify the OCMI of

- (a) A possible violation of a regulation in this part; or
- (b) A hazardous or unsafe working condition on any OCS unit.

[NMA Editorial note: "Person" means an individual, association, partnership, consortium, joint venture, government entity, or private, public, or municipal firm or corporation. You are an individual; NMA is an Association.]

33 CFR §142.40 After learning of a possible violation, what does the OCMI do?

After reviewing the information received under Sec. 142.35 and conducting any necessary investigation, the OCMI notifies the owner or operator of any deficiency or hazard and initiates enforcement measures as the circumstances warrant. *[NMA Editorial note: Refer to our Report #R-429, Rev. 1 on Coast Guard "investigations."]*

33 CFR §142.45 If I report a violation, will the Coast Guard keep my identity confidential?

The identity of any person providing information under Sec. 142.35 is not made available, without the permission of that person, to anyone other than those officers and employees of the Department of Transportation who have a need for the information in the performance of their official duties. [NMA Editorial note: Refer to 46 U.S. Code §3315. Also see existing 33 CFR 142.7.]

Subpart B – Personal Protective Equipment

33 CFR §142.100 What is the purpose of this subpart?

The purpose of this subpart is to prescribe requirements concerning personal protective equipment on an OCS unit.

33 CFR §142.110 Who is responsible for ensuring that personnel use or wear protective equipment and are trained in its use?

- (a) Each holder of a lease or permit under the Act must ensure that all personnel who are required by this subpart to use or wear personal protective equipment do so when within the lease area or the area covered by the permit.
- (b) Persons responsible for actual operations must ensure
 - (1) That all personnel engaged in the operation are trained in the proper use, limitations, and maintenance of the personal protective equipment specified by this subpart;
 - (2) That the equipment is maintained and used or worn as required by this subpart.
 - (3) That the equipment is made available and on hand for all personnel engaged in the operation.

Eye and Face

33 CFR §142.115 When must I wear eye and face protection?

While you are engaged in or are observing welding, grinding, machining, chipping, handling hazardous materials, or acetylene burning or cutting, you must wear eye and face protectors that

- (a) Comply with the requirements specified for the operation in Figure 8 of ANSI Z87.1-1989;
- (b) Are maintained in good condition; and
- (c) Are marked with the information required for that type of protector by ANSI Z87.1-1989.

33 CFR §142.120 Where must eyewash equipment be located?

Portable or fixed eyewash equipment providing emergency relief must be immediately available near the drill floor, mudrooms, and other areas where there is a reasonable probability that eye injury may occur.

Head

33 CFR §142.125 Who must wear head protection and how must it be marked?

While you are working in one of the following areas, you must wear a head protector that meets the specifications of, and marked with the information required in, ANSI Z89.1-1997 for that type of protector and for the hazard involved:

- (a) Where there is a hazard of falling objects.
- (b) Where there may be contact with electrical conductors.

Feet

33 CFR §142.130 What shoes must I wear?

- (a) While you are working in an area, or are engaged in activities, where there is a reasonable probability for foot injury to occur, you must wear footwear meeting the specifications of ANSI Z41-1991, except when environmental conditions exist that present a hazard greater than that against which the footwear is designed to protect.
- (b) Each pair of footwear must be marked with the information specified by ANSI Z41-1991 for the type of footwear.

Hearing

[NMA Editorial Note: Refer to our reports #R-349; #R-349-A; and #R-350, Issue “Q”. Also refer to proposed 33 CFR §142.235. This will be a welcome addition to protect mariners' hearing.]

33 CFR §142.135 When must I wear hearing protectors? What standards must they meet?

- (a) If you are working in an area where the noise level is greater than 87 db(A), you must wear hearing protectors capable of reducing the level to 87 db(A) or less. The noise level must be measured as a time-weighted-average

(TWA) over 12 hours using a sound level meter and an A-weighted filter or an equivalent device.

(b) The hearing protectors must have been performance-tested in accordance with ANSI S3.19 or ANSI S12.6-1997.

Clothing

33 CFR §142.140 When must I wear protective clothing?

While you are within an area where there are flying particles, molten metal, radiant energy, heavy dust, or hazardous materials, you must wear clothing and gloves providing protection against the hazard involved.

Electrical

33 CFR §142.145 **What training must I have?**

To prevent electrical shock, personnel must be trained in electrical, safety-related work practices in the area of the work they perform, including the use of electrical personal protective equipment appropriate to protect against potential electrical hazards.

Respiratory

33 CFR §142.150 When must I wear respiratory protection equipment?

While you are within an atmosphere specified under ANSI Z88.2-1992 as requiring the use of respiratory protection equipment, you must wear the type of respiratory protection equipment specified in ANSI Z88.2 ó 1992 for that atmosphere.

33 CFR §142.151 What training must I have before I use respiratory protection equipment?

Before you enter an atmosphere specified under ANSI Z88.2-1992 as requiring the use of respiratory protection equipment, you must be trainedô

- (a) In the procedures stated in section 7 of ANSI Z88.2-1992 concerning the proper selection of a respirator and individual fit testing;
- (b) In the matters in section 8 of ANSI Z88.2-1992 concerning proper use of the equipment; and
- (c) In the generally recognized short and long term harmful effects of exposure to the atmosphere involved.

33 CFR §142.152 To what standard must respiratory protection equipment be approved, used, and maintained?

- (a) All respiratory protection equipment must be approved, used, tested, and maintained in accordance with ANSI Z88.2-1992.
- (b) The fit-testing standards in section 8 of ANSI Z88.2-1992 may be met also through the use of either qualitative or quantitative fit-testing under NIOSH "Guide to Industrial Respiratory Protection" (publication no. 87-116) or AIHA "Respiratory Protection ó A Manual and Guideline" 163-PC-91.

Fall Arrest

[NMA Editorial note: Refer to USCG Safety Alert, Nov. 5, 2003 as discussed in NMA Newsletter #19, Dec. 2003, p.10, "Safety Alert: Personal Protective Equipment on Towing Vessels. Mariners must depend upon hiring an attorney to protect their financial interests when OSHA rules are violated.]

33 CFR §142.155 When must I use a personal fall arrest system?

Except when moving from one location to another, you must wear a personal fall arrest system whenô

- (a) Engaged in an activity where there is a hazard of falling 1.8 meters (6 feet) or more; or
- (b) Working less than 1.8 meters (6 feet) aboveô
 - (1) Equipment with irregular surfaces;
 - (2) Exposed moving components; or
 - (3) Electrically energized cables or connectors.

33 CFR §142.156 What training do I need?

Before you use a personal fall arrest system, you must be trained in the proper use of the system as described in ANSI Z359.1-1992.

33 CFR §142.157 What standards must a personal fall arrest system meet?

- (a) Each personal fall arrest system must meet the standards for performance, design, marking, and qualification

testing in ANSI Z359.1-1992.

- (b) A person who has extensive knowledge, training, and experience with personal fall arrest systems must inspect and maintain each system in accordance with ANSI Z359.1-1992.

33 CFR §142.158 May I use a personal fall arrest system to hoist material?

No. You may not use a personal fall arrest system to hoist material. The system and its components are only for personal fall protection purposes.

33 CFR §142.159 When may I re-use a personal fall arrest system that has previously been used to arrest a fall?

Once a personal fall arrest system has been subjected to impact loading, such as by arresting a fall, the system must be removed from service. It may not be used again until all components of the system have been inspected by a person who has extensive knowledge, training, and experience in personal fall arrest systems and found undamaged and suitable for re-use.

33 CFR §142.160 When is a fall arrest system not needed?

You do not need to use a fall arrest system when you are

- (a) Using a personnel net; or
- (b) Protected from a fall by guardrails or fencing under Sec. 143.1230 of this chapter.

Personnel Nets

33 CFR §142.165 What standards must personnel nets meet?

- (a) Each personnel net must meet the standards for performance, design, marking, and qualification testing in ANSI A10.11-1989.
- (b) A person who has extensive knowledge, training, and experience in personnel nets must inspect and maintain each system in accordance with ANSI A10.11-1989.

Work Vests

33 CFR §142.170 Must I wear a work vest or lifejacket when working over water?

If you are working in a location where, in the event of a fall, you would likely fall into the water, you must wear one of the following:

- (a) A work vest that meets the requirements of Sec. 143.875 of this chapter.
- (b) A lifejacket that meets the requirements of Sec. 143.845 of this chapter.
- (c) A personal fall arrest system that meets the requirements of Sec. 142.157.

Radiation

33 CFR §142.175 When must I wear a personal radiation monitoring device?

If you enter an area where you may receive 25 percent of the allowable whole-body total dose of 1.25 REM per calendar quarter, you must wear an appropriate personal radiation monitoring device, such as a film badge, film ring, pocket chamber, or pocket dosimeter.

33 CFR §142.176 For how long must dosimetry records be kept?

The owner, operator, or person in charge must ensure that the dosimetry records of each person on the facility who is required to wear a monitoring device under Sec. 142.175 are retained for 30 years from that person's last day of employment and made available for inspection.

33 CFR §142.177 When must I conduct a radiation survey?

The owner, operator, or person in charge must ensure that a radiation survey is performed as necessary to comply with Secs. 142.175 and 142.178. The survey must evaluate the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

When appropriate, this evaluation must include a physical survey of the location of materials and equipment and measurements of levels of radiation or concentrations of radioactive material present.

33 CFR §142.178 When must I post signs to warn about radiation?

If a work area may contain radiation emissions of 5 or more millirems per hour, radiation caution signs, labels, and signals as described in 29 CFR 1910.1096(e) must be posted. *[NMA Editorial note: OSHA regulations on workplace safety appear in Title 29 CFR.]*

33 CFR §142.179 What about naturally occurring radioactive material?

For operations that introduce naturally occurring radioactive material (NORM), the owner or operator must establish a program that includes procedures for:

- (a) Controlling the generation of airborne dust containing NORM;
- (b) Limiting the exposure of personnel to airborne dust containing NORM;
- (c) Managing equipment contaminated with NORM; and
- (d) Disposing of waste contaminated with NORM.

Airborne Substances

33 CFR §142.180 What are the permissible exposure limits for airborne substances?

Exposure of personnel to any airborne substance, other than a substance under Sec. 142.181, must be limited to the permissible exposure limit cited in the material safety data sheet for that substance.

33 CFR §142.181 What are the permissible exposure limits for asbestos⁽¹⁾ and inorganic lead?

- (a) Exposure of personnel to asbestos must not exceed the 8-hour time-weighted average of 0.1 fiber per cubic centimeter of air or the 30-minute excursion limit of 1.0 fiber per cubic centimeter of air.
- (b) Exposure of personnel to inorganic lead must not exceed the 8-hour time-weighted average of 0.05 milligrams of lead per cubic meter of air. *[⁽¹⁾Refer to NMA Reports #R-445 and #R-350, Issue "U"]*

33 CFR §142.182 If an area exceeds the exposure limits, must I restrict entry to certain personnel?

You must not enter, or allow others to enter, an area containing an airborne substance in quantities that exceed the permissible exposure limits in Secs. 142.180 or 142.181, unless you are wearing the personal protective equipment appropriate for the substance and are trained in the proper use of the equipment. *[NMA Editorial note: Consult the material safety data sheet (MSDS) for the substance that is contaminating the air. The use of MSDS is part of the OSHA Hazard Communication program requirements covered extensively in OSHA regulations at 29 CFR §1910.1200. The purpose of the program is to ensure that the hazards of all chemicals produced or imported are evaluated and that information concerning their hazards is transmitted to employers and employees. This transmittal of information is accomplished by comprehensive hazard communications programs which include container labeling and other forms of warning, material safety data sheets, and employee training.]*

33 CFR §142.183 How may I keep exposure to a level within the permissible exposure limits?

To keep exposure to airborne substances to a level within the permissible exposure limits in Secs. 142.180 and 142.181, engineering controls, administrative controls, personnel protective equipment, or a combination of these may be used.

Infectious Material

33 CFR §142.185 What must I do to avoid exposure to infectious material?

- (a) Before you perform, or are required to perform, a duty that may expose you to a blood-borne pathogen or other potentially infectious material, you must be trained in the procedures and equipment necessary to avoid the exposure.
- (b) Each OCS unit must have a written program that describes the training, procedures, and equipment to prevent exposure to blood-borne pathogens.

Subpart C– General Workplace Conditions

33 CFR §142.200 What is the purpose of this subpart?

The purpose of this subpart is to prescribe requirements relating to general working conditions on OCS units.

33 CFR §142.205 What must I do to help prevent tripping and slipping?

- (a) All working surfaces, including staging and platform surfaces, and all walkways, including ramps and

stairways, must be kept clear of

- (1) Tripping hazards, such as material, portable tools, equipment, and other items not in use; and
 - (2) Slipping hazards, such as spilt substances.
- (b) On the drill floor, footwear and flooring designed to reduce slipping may be used instead of keeping the floor clear of drilling fluid, such as fluid spilt when pulling wet strings of drill pipe.

33 CFR §142.207 How do I manage deck obstructions to avoid interfering with survival craft?

You must keep deck areas where survival craft and rescue boats are stowed free of obstructions that might interfere with the boarding and launching of the craft.

33 CFR §142.210 How must I guard a deck opening?

On a deck that is accessible to personnel, each temporary opening in the deck must be covered or guarded so that a person's foot can not pass through the opening, or the area around the opening made inaccessible to personnel. For requirements for the protection of permanent openings, see the guards and rail requirements in Sec. 143.1230 of this chapter.

Electrical Work

33 CFR §142.215 **What safe practices must I use?**

- (a) Before you begin work that might expose you to an electrical charge, you must turn off the electricity, unless doing so is not feasible.
- (b) When you turn off equipment, you must follow the lockout or tagging procedures in Sec. 142.220 or 142.225.

Lockout

33 CFR §142.220 How must I **disable equipment before I work on it?**

If the equipment does not need to be powered during the work and it has a lockout or other device to prevent the equipment from being turned on unintentionally, you must activate that lockout or device.

Tagout

33 CFR §142.225 How must I warn others not to restore power to equipment I am working on?

- (a) Before doing work on equipment that is disconnected from the power source, you must place a tag at the location where the power is disconnected. If there is a control panel for the equipment in line between the equipment and the location where the power is disconnected, you also must place a tag on the control panel.
- (b) Each tag or sign must have words stating
 - (1) That equipment is being worked on;
 - (2) That power must not be restored or the equipment activated;
 - (3) The name of the person who placed the tag; and
 - (4) The name of the person who authorized the tag.

33 CFR §142.230 **Who may remove a tag** indicating that power must not be restored?

To remove a tag under Sec. 142.225, you must have the permission of

- (a) The person who placed the tag;
- (b) That person's immediate supervisor; or
- (c) The relief person of either.

Noise

33 CFR §142.235 What are the **requirements for a noise level survey?**

- (a) A survey to determine the maximum noise level during normal operations must be conducted in each accommodation space, working space, or other space routinely used by personnel. The survey must be conducted in accordance with ANSI S1.13-1995 and S1.36-1990 or with IMO Resolution A.468(XII), and the survey results kept on the OCS unit.
- (b) A new survey must be conducted when the space is substantially modified or when equipment producing a high level of noise is added or replaced in the space.
- (c) The initial survey for an OCS unit constructed before [effective date of final rule] must be completed by [date

one year after effective date of final rule.].

33 CFR §142.240 What signs must I post in **spaces with high-noise levels**?

- (a) If the noise level throughout a space is determined to exceed 87 db(A), you must post a sign with the legend "NOISE HAZARD $\hat{\circ}$ HEARING PROTECTORS REQUIRED" at eye level at each entrance to the space. You must measure the noise level as a time-weighted-average (TWA) over 12 hours using a sound level meter and an A-weighted filter or an equivalent device.
- (b) If the noise level is determined to exceed 87 db(A) only in a portion of a space, you may post the sign within that portion in a location visible from each direction of access.

Machine Guards

33 CFR §142.245 What are the requirements for machine guards?

- (a) Except as provided in Sec. 142.250, you must guard all exposed rotary, reciprocating, or other hazardous parts of a machine to protect the operator and other personnel in the area from hazards, such as those created by rotating parts, flying chips, and sparks. Guards include, but are not limited to, barrier guards, covers, rails, two $\hat{\circ}$ hand tripping devices, and electronic safety devices.
- (b) You must attach the guard to the machine; or, if having the guard attached to the machine would itself create a hazard, you must affix the guard elsewhere.

33 CFR §142.250 When is a guard not required?

A guard is not required if it would restrict or prevent the operation of the machine and a warning sign is conspicuously displayed in accordance with Sec. 142.285.

Equipment Use and Maintenance

33 CFR §142.255 What are the general requirements?

- (a) All equipment, including machinery, cranes, derricks, and portable power tools must be used in a safe manner and in accordance with the manufacturer's recommended practice, unless otherwise stated in this subchapter.
- (b) All machinery and equipment must be maintained in proper working order, unless removed from service.

Slings

33 CFR §142.260 What are the requirements for slings?

- (a) Slings must be used, inspected, repaired, and tested according to the manufacturer's recommendations.
- (b) Slings must be inspected visually before each use.
- (c) Unsafe, damaged, or defective slings must be removed from service immediately and either tagged out or destroyed.
- (d) Slings must be marked with information showing their size, grade, and rated capacity.

Personnel Transfer Nets

33 CFR §142.265 How must they be used and maintained?

- (a) Personnel transfer nets must be used and maintained in accordance with API RP 54. *[NMA Editorial note: American Petroleum Institute Standard RP 54 is one of the many publications "incorporated by reference in 33 CFR §140.30 in this rulemaking.]*
- (b) The load on a personnel transfer net must not exceed the manufacturer's specifications.

33 CFR §142.270 How must they be constructed?

- (a) Personnel transfer nets must be constructed of new material that resists deterioration by ultraviolet light or sea water.
- (b) All lines and other component parts of the nets must have a minimum tensile strength of at least six times the manufacturer's maximum rated load for each line or other component part.

33 CFR §142.275 Must I inspect every net before each use? **What do I do with a damaged net?**

- (a) A personnel transfer net must be inspected visually before each use.
- (b) If a load bearing part of the net, such as a pick up line, load line, or lifting ring, is frayed, damaged, worn, or corroded, the net must be withdrawn immediately from service and discarded.

(c) If a non-load-bearing part is frayed, damaged, worn, or corroded, the part must be replaced before the net is used again. The replacement part must be equivalent to the original in strength, material, and method of construction.

33 CFR §142.280 What are the lifting procedures for personnel transfer nets?

When a crane is being used with a personnel transfer net to transfer personnel over water, personnel must wear a Coast Guard approved personal floatation device. The crane operator must not lift or lower personnel directly over an OSC unit or attending vessel, except to clear or land personnel.

Warning Signs

33 CFR §142.285 What are the warning sign requirements?

- (a) This section applies to all warning signs added or replaced after [the effective date of the final rule]. The requirements for the use of tags for disabled equipment are in Secs. 142.225 and 142.230.
- (b) Signs must be used to alert personnel and identify specific hazards that might lead to accidental injury.
- (c) Signs warning personnel of immediate danger and the need for special precaution must use the color red.
- (d) Signs warning personnel against potential hazards or cautioning against an unsafe practice must use the color yellow.
- (e) A sign must be removed when the hazard it warns of is eliminated.
- (f) Signs need not be used where tags, guarding, or other means of protection are used.

Subpart D – Confined-Space Entry

General

33 CFR §142.300 What is the purpose of this subpart?

The purpose of this subpart is to reduce the likelihood of personnel inadvertently entering a confined space containing a hazardous atmosphere that can cause death or serious injury. [*NMA Editorial Note: Refer to NMA Report #R-450 on confined space fatalities.*]

33 CFR §142.305 **What does an Offshore Competent Person do?**

Under the supervision of the person in charge, an Offshore Competent Person identifies confined spaces, tests the atmosphere in those spaces, calibrates equipment used to test the atmosphere, posts permits, records the results of calibrations and tests, and performs the other functions assigned to an Offshore Competent Person under this subpart.

33 CFR §142.306 What do the **Certified Industrial Hygienist** and the **Certified Marine Chemist** do?

Under the supervision of the person in charge, the Certified Industrial Hygienist and the Certified Marine Chemist may perform any of the functions under this subpart assigned to

- (a) To them, by name; or
- (b) To an Offshore Competent Person.

Entry Requirements for Personnel

33 CFR §142.310 **When may I enter and work within a confined space?**

You may enter and work within a confined space if

- (a) You are certified to enter confined spaces under Sec. 142.362;
- (b) You see a permit or certificate and, if required, a log under Sec. 142.335 posted at the entrance to the space;
- (c) You are wearing or using the personnel protection equipment required in the program under Sec. 142.375 or noted on the permit, certificate, or log;
- (d) You follow the requirements noted on the permit or certificate and on the log while in the space; and
- (e) You follow the procedures for working within confined spaces as provided in your training under Sec. 142.360 and in the program under Sec. 142.375.

33 CFR §142.311 When must I leave a confined space?

You must leave a confined space immediately when

- (a) You experience a symptom that you believe indicates that you should leave the space; or
- (b) You notice the conditions in the space have changed.

33 CFR §142.312 What do I do if there is no permit or certificate posted?

If there is no permit or certificate posted at the entrance to a confined space or if the permit or certificate posted has expired, you may not enter the space until the proper documents under Sec. 142.335 are posted.

Steps Required Before Personnel May Enter the Space

33 CFR §142.315 **What steps must be taken before personnel may enter a confined space?**

Before personnel may enter a confined space, the following steps must be taken:

- (a) The space must be prepared, and the non-atmospheric hazards in the space controlled, under Sec. 142.320.
- (b) The equipment used to test the atmosphere in the space must be calibrated under Sec. 142.325.
- (c) The atmosphere in the space must be tested under Sec. 142.330 from the outside of the space.
- (d) The atmosphere in the space must be tested under Sec. 142.332 from inside of the space.
- (e) A permit or certificate and, if required, a log under Sec. 142.335 must be posted at the entrance to the space.

Preparing a Space for Entry

33 CFR §142.320 What must be done within the space to prepare it for the entry of personnel?

Before personnel may enter a confined space, the following must be done to prepare the space:

- (a) The space must be isolated from gas, liquid, mechanical, and electrical hazards by positive means, such as by locking out, disconnecting pipes, double blocking and bleeding, blocking moving mechanical parts, disconnecting power supply lines, and relieving trapped pressure and tension on springs.
- (b) The space must be ventilated before and during entry at a sufficient volume and flow rate to establish and maintain an atmosphere that meets the "Safe for Workers" designation under Sec. 142.331(a). If the space can not be ventilated to meet that designation, a Certified Industrial Hygienist or a Certified Marine Chemist must certify that the atmosphere in the space meets the "Enter with Restrictions" designation under Sec. 142.331(b) and specify the restrictions, such as the use of personnel protection equipment, necessary for entry.
- (c) The discharge areas for the ventilation system must be tested to ensure that there is no buildup of toxic or flammable vapors.
- (d) Liquid residues of hazardous materials must be removed as thoroughly as practicable.
- (e) Workplace hazards within the space, such as trip and fall hazards and excessive heat and noise, and problems with access to and from the space must be identified and controlled.
- (f) Signs prohibiting sources of ignition or warning of other hazards within the space must be posted at the entrances to the space.
- (g) Rescue equipment must be pre-positioned and readied for use, as specified in the program under Sec. 142.375.

Calibrating Atmospheric Testing Instruments

33 CFR §142.325 When and how must instruments used in testing be calibrated?

- (a) Before use in an atmospheric test under this subpart, each instrument to be used must be calibrated on the day of use. The instrument must be re-calibrated during the test when indicated by the instrument's reading.
- (b) The instrument must be tested by using a known concentration of test gas in a manner consistent with the manufacturer's recommendations under the conditions in which the instrument will be used.

33 CFR §142.326 Who must calibrate the testing instruments?

The individual under Secs. 142.330 and 142.332 who will test the atmosphere from outside and within the confined space must calibrate the testing instruments to be used in that test.

33 CFR §142.327 What records of the calibration of testing instruments must be kept?

- (a) The owner, operator, or person in charge must keep a record of the calibrations under Sec. 142.325.
- (b) The records must be kept on the OCS unit for at least 3 months and made available to the Coast Guard upon request.
- (c) Also, the calibration must be recorded on the permit or certificate under Sec. 142.335.

Testing the Atmosphere

33 CFR §142.330 **What atmospheric test must be conducted from outside of the confined space?**

- (a) The atmosphere within a confined space must first be tested from outside of the space. The test must be conducted as specified in the program under Sec. 142.375 and include sampling at varying heights within the space.
- (b) ~~The Offshore Competent Person may test only for oxygen, flammable gas, benzene, and hydrogen sulfide.~~
- (c) If the Offshore Competent Person determines that the atmosphere, or the nature of the work to be conducted, indicate that toxins other than benzene or hydrogen sulfide may be present, a Certified Marine Chemist or Certified Industrial Hygienist must test the space.

33 CFR §142.331 What atmospheric conditions are necessary for entry?

- (a) If the outside test is conducted by the Offshore Competent Person under Sec. 142.330(b), the atmosphere must meet the "Safe for Workers" designation under NFPA 306, chapter 2, section 2-3.1, before entry may be authorized. [*NMA Editorial note: The National Fire Protection Association standard NFPA 306 is one of the many publications "incorporated by reference" in 33 CFR §140.30 in this rulemaking.*]
- (b) If the outside test is conducted by a Certified Marine Chemist or Certified Industrial Hygienist under Sec. 142.330(c), the atmosphere must meet the "Safe for Workers" designation under NFPA 306, chapter 2, section 2-3.1, or "Enter with Restrictions" designation under NFPA 306, chapter 2, section 2-3.3, before entry may be authorized.

33 CFR §142.332 What tests and examinations must be conducted from inside of the confined space?

- (a) Once the test conducted from outside of the space under Sec. 142.330 indicates that the atmosphere in the space meets the requirements of Sec. 142.331, the space must be tested from the inside.
- (b) This test must be conducted by the same individual who conducted the outside test under Sec. 142.330.
- (c) The individual conducting the test must: (1) Physically enter the space and again test the atmosphere to verify that it meets the appropriate NFPA designation under Sec. 142.331; and (2) Visually examine all areas of the space and identify and control potential fire or other hazards within the space, such as liquid residues capable of regenerating vapors to hazardous levels.

Permits, Certificates, and Logs

33 CFR §142.335 What type of document must be posted at the entrance to the space?

- (a) When tests under Secs. 142.330 and 142.332 show that the atmosphere in the confined space meets the appropriate NFPA designation under Sec. 142.331 and when the space is prepared under Sec. 142.320, the individual who conducted the tests must post, at each entrance to the space, a permit under paragraph (b) or a certificate under paragraph (c).
- (b) If the tests under Secs. 142.330 and 142.332 were conducted by an Offshore Competent Person or a Certified Industrial Hygienist, the document to be posted is a copy of the Offshore Confined-space Entry Permit (Coast Guard Form CSE) in appendix A of this subpart,⁽¹⁾ with the information on the document relating to the space filled out. [⁽¹⁾*NMA Editorial note: We did not reproduce the confined space entry form that appears at 64 FR 68466.*]
- (c) If the tests under Secs. 142.330 and 142.332 were conducted by a Certified Marine Chemist, the document to be posted is a Marine Chemist's certificate under NFPA 306, with the information on the document relating to the space filled out.
- (d) If the permit or certificate is more than 24 hours old, a log must be posted next to the permit or certificate. The log must identify the space and contain the following:
 - (1) The name of the OCS unit.
 - (2) The time, date, results of each subsequent test under Sec. 142.340 and the name of person conducting the test.
 - (3) A description of the operations performed by personnel in the space since the previous test, such as cleaning and hot work.
 - (4) Additional instructions, as needed.
- (e) The documents posted under this section must remain posted until the work to be done in the space is finished or the permit or certificate expires, whichever occurs first.

33 CFR §142.336 What happens when a permit or certificate expires or is no longer posted?

- (a) When the permit or certificate expires or is removed under Sec. 142.335(e), the owner, operator, or person in charge must keep a copy of the document and corresponding log for 3 months.

(b) These documents must be made available to the Coast Guard upon request.

Subsequent Testing

33 CFR §142.340 What is required to maintain the certificate or permit?

- (a) The atmosphere in the space must be re-tested and the space re-examined at least once every 24 hours. More frequent testing and examining may be necessary depending upon factors, such as potential hazards, temperature and cleanliness of the space, type of work being done in the space, and frequency of work breaks.
- (b) The Offshore Competent Person must repeat the tests and examinations under Sec. 142.330 and Sec. 142.332, including physically entering the space to verify that conditions have not changed.
- (c) An Offshore Competent Person may conduct the tests and examinations under this section, even if the permit or certificate was issued by a Certified Marine Chemist or a Certified Industrial Hygienist.
- (d) If the original document posted is a Certified Marine Chemist's certificate and the certificate states that certain tests need not be repeated, those tests are not required.
- (e) The results of tests under this section must be recorded on the log posted under Sec. 142.335 at each entrance to the space.

When Conditions in the Space Change

33 CFR §142.345 What if conditions change while I'm in the space?

- (a) You must leave the space when conditions that could affect the atmosphere change, such as a failure of the ventilation or the introduction of hazardous substances into the space.
- (b) Before you may re-enter the space, it must be re-tested under Secs. 142.330 and 142.332 and a new permit or certificate posted under Sec. 142.335.

Restrictions on Equipment and Work

33 CFR 142.350 **What are the restrictions on equipment used in a confined space?**

- (a) All equipment in the confined space capable of generating a static electricity discharge must be bonded.
- (b) All fans in the space must have non-sparking blades.
- (c) All lighting and electrical equipment in the space must be explosion proof.

33 CFR §142.351 When may I **perform hot work within a confined space?**

- (a) If you perform hot work in one of the following areas, you may do so only to the extent authorized by a Certified Marine Chemist under the provisions of NFPA 306:
 - (1) In a fuel or cargo tank.
 - (2) On the boundary of a fuel or cargo tank.
 - (3) On the boundary of spaces adjacent to a tank carrying a Grade A, B, or C flammable liquid.
 - (4) On pipelines, heating coils, pumps, fittings, or other appurtenances connected to fuel or cargo tanks.
- (b) If a Certified Marine Chemist is not available, a person authorized by the OCMI may conduct the necessary tests and inspections in accordance with NFPA 306 and authorize the hot work.
- (c) Hot work conducted in spaces other than those listed in paragraph (a) of this section may be regulated by the Mineral Management Service under 30 CFR 250.52 and must meet those requirements as applicable. *[NMA editorial note: The Mineral Management Service (MMS) now known as the Bureau of Offshore Energy Management (BOEM) is part of the U.S. Department of the Interior. Its regulations appear at Title 30 CFR.]*

33 CFR §142.352 **What is required to maintain the Marine Chemist's Certificate for hot work?**

- (a) If hot work under Sec. 142.351(a) does not begin within 24 hours after the Marine Chemist's Certificate is issued, the Offshore Competent Person must maintain the Certificate under NFPA 306, paragraph 2-6.
- (b) The results of the tests and inspections under paragraph (a) of this section must be recorded on the log under Sec. 142.335(d).

Testing and Protective Equipment

33 CFR §142.355 What equipment must be provided?

- (a) The owner or operator must ensure that all equipment needed to protect personnel in a confined space and to determine and control the hazards within and affecting the confined space is provided.

- (b) The equipment may vary depending on the particular space and may include
- (1) Testing and monitoring instruments;
 - (2) Ventilating equipment;
 - (3) Communications equipment;
 - (4) Personal protective equipment;
 - (5) Lighting equipment;
 - (6) Barriers and shields;
 - (7) Equipment to provide access to and from the space, such as a ladder;
 - (8) Rescue equipment; and
 - (9) Emergency medical equipment.

Personnel Training

33 CFR §142.360 What training must I have?

The person in charge must ensure that all personnel who enter confined spaces are trained how to

- (a) Safely perform all duties required by this subpart, by the program under Sec. 142.375, and by a permit or certificate under Sec. 142.335;
- (b) Recognize a confined space and how it can produce a dangerous atmosphere;
- (c) Anticipate the hazards of entering and working within a confined space;
- (d) Determine what personal protective equipment is needed and how to use it;
- (e) Recognize the physical signs of exposure to a dangerous atmosphere;
- (f) Control hazards in the space; and
- (g) Know when to evacuate the space.

33 CFR §142.361 When must I receive the training?

- (a) You must receive the training under Sec. 142.360 before you are allowed to enter a confined space.
- (b) If the operations or duties that you were trained for under Sec. 142.360 change, you must be trained in the areas under Sec. 142.360 that relate to your new operations or duties.

33 CFR §142.362 How can I show that I have been trained?

- (a) Before you may enter a confined space, you must have a certificate under this section.
- (b) When you successfully complete the training under Sec. 142.360, the owner, operator, or person in charge must issue a certificate to you certifying that you successfully completed the training.
- (c) The certificate must contain your name, the name and title of the person who issued the certificate under paragraph (b) of this section, and the date of the certification.
- (d) The certificate must be kept on the OCS unit and made available for inspection by the Coast Guard.

Rescue Team

33 CFR §142.365 How are rescue operations conducted?

- (a) The owner, operator, or person in charge must ensure that a team is established to rescue personnel from confined spaces and provide emergency medical attention.
- (b) The rescue team must be located on the OCS unit and be available for emergency response while personnel are in a confined space.
- (c) The team must follow the rescue and medical procedures in the confined-space entry program under Sec. 142.375.
- (d) In determining the qualifications of the team and the equipment they will need, the owner, operator, or person in charge must consider the type of confined spaces that will be encountered, the nature of the particular hazards in those spaces, and the type of work to be conducted in them.

33 CFR §142.366 What additional training is required for rescue team members?

- (a) The owner, operator, and person in charge must ensure that, in addition to the training under Sec. 142.360, each member of the rescue team is trained to use the personal protective, rescue, and medical equipment needed to perform their functions as part of the team.
- (b) Each member must have a current Emergency Response Certificate and a Cardio-Pulmonary Resuscitation (CPR) for the Professional Rescuers Certificate from the American Red Cross or the equivalent certificates.

- (c) At least one member must have a current registration with the National Registry of Emergency Medical Technicians (EMT) at the EMT-Intermediate level.
- (d) Members must practice their functions as part of the team at least once every 12 months, unless the team performs an actual rescue during that 12-month period. The practice must use mannequins, rescue equipment, and a confined space to closely approximate an actual rescue.

Offshore Competent Person

33 CFR §142.370 What education, training, and experience must an Offshore Competent Person have?

An Offshore Competent Person must have the following education, training, and experience:

- (a) Have completed the following courses at an accredited college or university:
 - (1) Two semesters or three quarters of general chemistry.
 - (2) Two semesters or three quarters of organic chemistry with laboratory training.
 - (3) One course in analytical methods with laboratory training.
 - (4) One course in industrial hygiene sampling and analysis involving hands-on use of testing instruments.
- (b) Have completed a course or seminar on confined-space entry with hands-on calibration and the use of testing instruments and scenarios that simulate confined spaces that will be encountered.
- (c) Have at least 3 years of experience in the offshore oil and gas industry, with at least 2 years of active involvement in an offshore safety program.
- (d) Have, within the past 6 months, conducted a confined-space entry test offshore or received training in conducting such a test.

33 CFR §142.371 What abilities and knowledge must an Offshore Competent Person have?

- (a) An Offshore Competent Person must be able to
 - (1) Interpret and apply the confined-space entry program under Sec. 142.375, the regulations in this subpart, and the standards in NFPA 306;
 - (2) Recognize the confined spaces on the facility or unit;
 - (3) Identify the particular hazards and their sources associated with each confined space on the facility or unit and with the work conducted within that space;
 - (4) Select and apply the appropriate engineering or administrative controls, such as ventilation equipment, lock out procedures, safe work practices, and personal protective equipment;
 - (5) Select, calibrate, use, and maintain the testing instruments for confined-space entry;
 - (6) Interpret the results of tests under this subpart;
 - (7) Determine when a Certified Marine Chemist or Certified Industrial Hygienist is needed;
 - (8) Complete a permit and log under Sec. 142.335;
 - (9) Monitor the work authorized by the permit and conditions in the space while that work is going on; and
 - (10) Maintain the records required by this subpart.
- (b) The Offshore Competent Person also must have a knowledge of
 - (1) The configuration of the OCS unit, including its structure, pipe systems, arrangement of spaces, and nomenclature; and
 - (2) The operations on the OCS unit and how they affect safe confined-space entry.

33 CFR §142.372 Who certifies the Offshore Competent Person, what must the certificate contain, and where must it be kept?

- (a) If a person meets the requirements of Secs. 142.370 and 142.371, the owner or operator may certify that person as an Offshore Competent Person.
- (b) The certification must be in writing and contain the name of the person being certified, the name and title of the person who issued the certificate under paragraph (a) of this section, and the date of the certification. It also must state that the person being certified meets the requirements of Secs. 142.370 and 142.371.
- (c) The certification must be kept on the OCS unit where the person is working and made available for inspection by the Coast Guard.

33 CFR §142.373 What **refresher training** must the Offshore Competent Person have?

The Offshore Competent Person must have annual refresher training that reviews confined-space entry procedures

and precautions, provides hands-on experience with new instrumentation, and identifies new regulations and standards concerning confined-space entry and exposure levels.

Program for Confined-Space Entry

33 CFR §142.375 What type of confined-space entry program is required?

- (a) The owner and operator must ensure that a written program is maintained on the OCS unit that explains how tests, training, rescues, and other matters related to confined-space entry are to be carried out. The program is intended to supplement the requirements in this subpart and must not conflict with these requirements.
- (b) The program must contain at least the following:
 - (1) A list of all confined spaces on the OCS unit and the hazards associated with each space.
 - (2) A description of duties and training requirements of
 - (i) The person in charge;
 - (ii) The Offshore Competent Person;
 - (iii) Personnel who work within confined spaces; and
 - (iv) The rescue team.
 - (3) A description of all personal protective equipment required for confined-space entry and how and when it is to be used.
 - (4) A description of atmospheric testing instruments by type, model, and capabilities.
 - (5) The procedure for calibrating atmospheric testing instruments and interpreting and recording the results of the calibrations.
 - (6) The procedures for conducting atmospheric tests under Secs. 142.330, 142.332, 142.340, and 142.352.
 - (7) The procedures and signals used to evacuate a space.
 - (8) A description of the methods used to prevent unauthorized entry.
 - (9) The procedure to follow if a permit, certificate, or log under Sec. 142.335 is missing.
 - (10) The procedures for conducting rescue operations and the methods for keeping the rescue team ready to respond.
 - (11) A list of the medical services that must be available during confined-space entry.

LETTER TO PRESIDENT BARACK OBAMA

May 17, 2010

President Barack H. Obama
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Subject: Gulf of Mexico Oil Spill and Stalled Safety Initiatives on the OCS

Reference: Our File GCM-278

Dear President Obama,

This letter is in response to your well-directed comments of May 14, 2010 in which you condemned the "ridiculous spectacle" of oil executives shifting blame in the Congressional hearings and denounced the "cozy relationship" between companies and the federal government. In this letter, we dwell on our experiences with the U.S. Coast Guard regarding safety initiatives on the Outer Continental Shelf that remain stalled after 10 years..

Our Association speaks on behalf of the safety, health and welfare of approximately 126,000 limited tonnage mariners who work on oilfield vessels, tugs, towboats, and small passenger vessels not only on the Outer Continental Shelf but throughout the nation. Many of our mariners along with hundreds of fishermen, are engaged in attempting to clean up the filthy mess left by British Petroleum in the Gulf of Mexico.

Please forgive us if we appear to be hugely skeptical of both the oil companies and the Coast Guard. With our years of experience with the Coast Guard, we are considerably less gullible than the general public.

We do not intend to speculate on the cause of the well blow out that continues to disgorge millions of gallons of crude oil into the Gulf of Mexico. The CBS Report aired on "60 Minutes" on Sunday May 16th. is probably as close to the truth as we will ever get.

However, our Association has good reason to be extremely skeptical of the joint *investigation* that will take place, and we believe that you, as President and head of the Executive Branch, should be equally skeptical of the Coast Guard's ability to investigate *anything* after reading (or recalling) the Department of Homeland Security Inspector General's report in 2008⁽¹⁾ closely followed by the revelations of the inept response and investigation of the COSCO BUSAN oil spill that further emphasized the shortcomings the DHS report disclosed. These shortcomings in Coast Guard investigations were first reported as early as 1994⁽²⁾ and confirmed in 1996⁽³⁾ by two government reports. As we approach the second anniversary of the large oil spill that closed the Mississippi River, the Coast Guard still has not completed its review of that extremely well documented event. [⁽¹⁾DHS Report #OIG-08-51, reprinted as our Report #R-429-M [Enclosure #1]. ⁽²⁾Reprinted as our Report #R-429-A [Enclosure #2]. ⁽³⁾Reprinted as our Report #R-429-B [Enclosure #3].

The Outer Continental Shelf (OCS)

According to 43 U.S. Code §1347(c), regulations applying to *unregulated hazardous working conditions*, "...the Secretary of the Department in which the Coast Guard is operating (i.e., DHS) shall promulgate regulations or standards applying to *unregulated hazardous working conditions* related to activities on the Outer Continental Shelf when he determines such regulations or standards are necessary. The Secretary may from time to time modify any regulations, interim or final, dealing with hazardous working conditions on the outer Continental Shelf."

With eleven fatalities in this latest incident, we question why high-ranking Coast Guard officials allowed one important rulemaking package to languish for an entire decade. The *existing* Outer Continental Shelf (OCS) regulations are almost 30 years old⁽¹⁾ and serve as one excellent *example* of the *cozy relationship* that exists between the Coast Guard and industry. [⁽¹⁾33 CFR Subchapter N, Parts 140-147, March 4, 1982.]

In 1999, the Coast Guard proposed a regulatory package to update OCS regulations.⁽¹⁾ Our Association was interested in this package because the rulemaking defined *OCS Units* to include *vessels* working on the OCS. There are about a thousand such vessels manned by our mariners. This regulation would have provided our mariners as well as oilfield workers significant protections comparable to OSHA occupational safety and health regulations that protect workers ashore. Since many of our mariners serve on *oilfield vessels*, our interest in this rulemaking began with letters to the Docket beginning in February 2000 – ten years ago. We believe this rulemaking stalled for an entire decade because industry found it unpopular and had sufficient political clout to prevent it from moving forward. In allowing this to happen, the protections of thousands of offshore workers including our mariners were placed at risk. [⁽¹⁾ Docket #USCG-1998-3868; 64 FR 68415-68505, Dec. 7, 1999.]

The proposed rule would have brought *OSHA-type safety and health regulations* not only to oil and gas drilling and production units but also to *vessels* operating on the OCS. But, it never happened because industry in collusion with very senior Coast Guard officers did not want it to happen! Neither our mariners nor the workers on offshore oil facilities are protected by labor unions and, consequently, were deprived of a voice. We pointed out to Congressional oversight committees in the past that our mariners are inadequately represented on several Coast Guard advisory committees.

Benefits Evaluation of the Proposed Rule (Please Note quotations)

According to the MMS FY95 report to Congress, *a noticeable increase of accidents and injuries has occurred to personnel engaged in OCS activities* due to the rapid increase of oil exploration and production over the last 20 years. The proposed rule would provide benefits through implementing workplace safety and health, lifesaving and fire-fighting equipment, and structural fire protection requirements. Also, the proposed rule would require the owner or operator of a foreign vessel or foreign floating facility engaged in OCS activities to comply with requirements similar to those imposed on U.S. OCS units. ÷

Most accidents on the OCS occur during drilling or production. Trends show that the two main causes of incidents are equipment failure and human error. The proposed rule would provide benefits by reducing the number of accidents or decreasing the severity of injury to personnel. We did not include the valuation of property damage from blowouts, fires, and explosions as a potential benefit due to insufficient data to support accurate assumptions. Some of the proposed measures that will reduce the likelihood of deaths and injuries include *improved workplace safety and health requirements*, structural fire protection, and additional lifesaving, fire-fighting, and fire-protection equipment. ÷

The explosion of the DEEPWATER HORIZON claimed eleven (11) lives and, according to current reports, was caused by *equipment failure* of a blowout preventer (BOP) as well as *human error*.

oTo determine potential benefits, we examined both the Coast Guard⁽²⁾ and Mineral Management databases for accidents involving personnel on OCS units and identified the trends. This data is summarized in Table 3 in this preamble.⁽¹⁾ [⁽¹⁾Quoted from 64 FR 68440, Dec. 7, 1999. ⁽²⁾Our Association has reported serious problems with the way personal injuries are reported to the Coast Guard. We brought this information to the attention of Congressional oversight committees in our Report #R-350, Rev. 5, Issue "Y" [Enclosure #4].

The Purpose of the Rulemaking

oThe Coast Guard is [supposed to be]⁽¹⁾ the lead Federal agency for workplace safety and health, other than for matters generally related to drilling and production that are regulated by the MMS, on facilities ***and vessels*** engaged in the exploration for, or development or production of, minerals on the OCS. The ***last major revision of our current OCS regulations occurred in 1982***. In 1982, the offshore industry was not as high tech as today's operations. Offshore activities were in relatively shallow water near land, where help was readily available during emergency situations. The equipment regulations required only basic equipment, primarily for lifesaving appliances and hand-held portable fire extinguishers. Since 1982, the requirements in 33 CFR chapter I, ***Subchapter N, have not kept pace with the changing offshore technology or the safety problems*** it creates as OCS activities extend to deeper water (7,500 feet) and move farther offshore (127 miles). This proposed rule is intended to revisit all of our current OCS regulations in Subchapter N to take advantage of past experiences and new improvements to make the OCS a safer workplace.ö [Quoted from 64 FR 68417, Dec. 7, 1999. ⁽¹⁾We inserted this wording that represents our opinion.]

Casualty Reporting

oFour comments suggested that the Coast Guard, MMS, and Occupational Safety and Health Administration (OSHA) develop a single casualty reporting form to be submitted to all of these agencies. The comments stated that the three agencies' current casualty reporting requirements are redundant and that the duplication of reporting should be eliminated.

o**We agree.**⁽¹⁾ We have developed and propose a new consolidated form. Information about the proposed form is located at the end of the discussion of proposed changes. [Quoted from 64 FR 68418, Dec. 7, 1999. ⁽¹⁾We = the Coast Guard!]

Existing Regulations Are Inadequate

oOne comment stated that the current regulations in 33 CFR parts 140-147 were inadequate in the following areas: design and equipment; operations; ***workplace safety and health, including confined-space entry; and accident reporting***. We agree⁽¹⁾ and ***propose many new workplace safety and health regulations*** that are similar to recently developed OSHA regulations.ö [Quoted from 64 FR 68418, Dec. 7, 1999. ⁽¹⁾We = the Coast Guard!]

oTwo comments suggest that the Coast Guard consult with OSHA to update the 1979 MOU to clearly confirm that redundant jurisdiction and regulatory enforcement on the OCS does not exist. One comment contends that ***if the Coast Guard is unwilling to comprehensively address OCS issues, then it would be appropriate for it to formally withdraw from exercising regulatory jurisdiction over occupational safety and health issues on the OCS, leaving such activities to OSHA***ö [Quoted from 64 FR 68418, Dec. 7, 1999.]

Instead of addressing workplace safety and health issues, it appears that the Coast Guard at the highest levels within the Marine Safety Directorate simply ***sandbagged*** the issue and allowed its entire 1999 Notice of Proposed Rulemaking to wither on the vine for the next ten years. Regardless of the considerable time and professional talent invested in preparing the entire regulatory package, this rulemaking has yet to see the light of day. Every question about the progress of this rulemaking that we presented to each National Offshore Safety Advisory Committee (NOSAC) meeting we attended went unanswered for 10 years.

We believe that this rulemaking package was prepared professionally, conscientiously, and to exacting standards. ***Nevertheless, the rulemaking was unpopular with the offshore oil industry that was given free reign for years and allowed to do pretty much whatever it decided to do free of Coast Guard restraint***. Since our mariners as well as oilfield workers were discouraged from joining labor unions by a virtually unlimited outpouring of money from industry, we were effectively deprived of a voice in Washington. We were left to deal with the Coast Guard that proved to us that it had no intention of enforcing many basic workplace protections promised by Congress in the Occupational Safety and Health Act of 1970.

This Rule Was Supposed to Apply to Our Mariners

öThe workplace safety and health regulations in part 142 apply to personnel engaged in operation on the OCS, whether onboard a foreign OCS unit or a U.S. OCS unit⁽¹⁾ The proposed revisions to part 142 will add many new workplace safety and health items which should increase the level of safety for U.S. citizens employed on foreign units engaged in OCS activities.ö [⁽¹⁾An “OCS Unit” by definition at proposed 33 CFR §140.35 would have included “vessels engaged in OSC Activities” which explains our Association’s primary interest in this rulemaking. ⁽²⁾ Quoted from 64 FR 68418, Dec. 7, 1999.]

Lifesaving Issues

öOne comment stated that the Coast Guard should adopt an underlying principal that lifesaving equipment should be capable of keeping 100 percent of the personnel on a facility out of the water in case of abandonment or evacuation. We agree⁽¹⁾ Current regulations for fixed facilities require life floats⁽¹⁾ for 100 percent of facility personnel. This is not adequate to protect personnel in the event of a blowout nor is it the best available and safest technology for this purpose. See proposed Section 143.826 for the survival craft requirements for fixed facilities. This would align fixed facility requirements with similar regulations for MODU's and floating facilities. [⁽¹⁾The NTSB as well as our Association oppose the continued approval and use of “life floats.” Our reasons are fully stated in our Report #R-354, Rev. 4 [Enclosure #5]. The Coast Guard Headquarters continues to bow to industry pressures.]

Delaying this Rulemaking Withheld Safety & Health Protections Mandated by Congress for 10 Years

öOne comment encouraged the Coast Guard to include in this regulatory effort any new requirements developed by OSHA for onshore locations that may apply offshore. We continually review new OSHA regulations⁽²⁾ to determine applicability to the OCS. Many workplace safety and health regulations included in this proposed rule are similar to recent regulations developed by OSHA for onshore locations.ö [⁽¹⁾Quoted from 64 FR 68419, Dec. 7, 1999. ⁽²⁾ “We” means the Coast Guard]

An Unfulfilled Promise by Congress to Mariners The Occupational Safety and Health Act of 1970

- (a) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.
- (b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, **to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources** ö
 - (1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;
 - (2) by providing that **employers and employees have separate but dependent responsibilities and rights** with respect to achieving safe and healthful working conditions;
 - (3) by authorizing the Secretary of Labor to set **mandatory occupational safety and health standards applicable to businesses affecting interstate commerce**, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under this chapter;
 - (4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;
 - (5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;
 - (6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;
 - (7) by providing medical criteria which will **assure insofar as practicable that no employee will suffer**

diminished health, functional capacity, or life expectancy as a result of his work experience;

- (8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;
- (9) by providing for the development and promulgation of occupational safety and health standards;
- (10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;
- (11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this chapter, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;
- (12) by providing for ***appropriate reporting procedures with respect to occupational safety and health*** which procedures will help achieve the objectives of this chapter and accurately describe the nature of the occupational safety and health problem;
- (13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

The Big Lie

If the Coast Guard continually reviews new OSHA regulations to determine applicability to the OCS ***it is remarkable that the Coast Guard currently enforces so few of OSHA regulations.*** In probing this issue as we have done for the past 10 years, we recently received a letter from the Acting Chief of the Office of Design and Engineering Standards on Feb. 26, 2010 [***Enclosure #12***] that stated in part: "However, ***we do not prepare our inspectors to enforce OSHA regulations, or any other agency's regulations,*** on uninspected vessels. Neither the Towing Vessel Center of Expertise nor the Offshore Operations Center of Expertise has been ***contacted by industry*** with concerns regarding asbestos;⁽¹⁾ however, our office has forwarded your letters and Gulf Coast Mariner's Report #R-205⁽²⁾ to ensure they are aware of the potential concerns. [⁽¹⁾*Our letter cited three major continuing areas of regulatory neglect: 1)Hearing protection 2)Provision of adequate potable water, and 3)Asbestos protection. (2)Refer to our Report #R-205 [Enclosure #6].*

As Chief Executive, we believe you should be concerned that two Executive Branch agencies, the Coast Guard and OSHA, are unable to work together to adequately protect offshore workers' safety and health! Although our Association submitted a number of reports⁽¹⁾ to Congress, and especially to the House Transportation and Infrastructure Committee and testified before them on three occasions, their role is oversight. They are not staffed or equipped to manage the Coast Guard. We believe, Mr. President, that it is time to rein in the Coast Guard and make it enforce the laws and regulations for the benefit of the people of the United States and not for "special interests" that it has become much too close to over the years. [⁽¹⁾*Currently, 25 reports, some updated several times.*]

The Coast Guard recently established a number of "centers of expertise" where, hopefully, the parade of officers moving up through the ranks will learn at least the basics about the different sectors of the maritime industry that they are expected to regulate. However, working mariners who encounter real problems every day are being ignored. We previously testified to Congress⁽¹⁾ on the disaster the Coast Guard "experts" made of the mariner credentialing process and arbitrarily ruined the careers of so many of our mariners. But safety and health issues ruin more than careers. [⁽¹⁾*Refer to our Reports #R-428-D [Enclosure #7] and R-428-D, Rev.1 [Enclosure #8].*

The Coast Guard's failure to protect our mariners from the same type of safety and health hazards that face onshore workers has gone on since 1970, a ***period of forty years.*** The Coast Guard clearly receives their marching orders from the industry and appear to have little interest protecting the maritime industry's workers or Congressional oversight. Even though Congress "did the right thing" in 2004 and got to the bottom of our Association's potable water complaints, the Coast Guard has not yet raised a finger to implement Congress's instructions. We often cite the lack of effective leadership at the highest levels of the Coast Guard.

Taxpayers Pay for All That Wasted Effort

Our Association carefully studied the 1999 proposed rulemaking on Outer Continental Shelf Activities and made several comments on it. As a result of our attendance at NOSAC and other Coast Guard Advisory Committee meetings for the past decade, we came to know and respect the Project Officer for this rulemaking, Mr. James Magill. We believe that Mr. Magill, with his engineering background and years of experience in the maritime industry as well as his conscientious approach, was without question, ***the person best suited at Coast Guard***

Headquarters to prepare this rulemaking package. This was his project, and he worked on it diligently for years. Yet its progress of this rulemaking was crippled by senior Coast Guard officials who failed to provide this important rulemaking the necessary priority. In our view, the changes Mr. Magill proposed in the rule were changes that needed to be made. However, ten years have passed and at the point Mr. Magill is planning to retire. Headquarters decided to re-consider and re-work the rulemaking proposals. We believe that by reactivating this project last Fall and assigning someone with limited background, knowledge, and skill to handle this complex project is just part of the Coast Guard's partnership with industry officials to defeat and downgrade this rulemaking to the detriment of the workers it was meant to protect. We respectfully request that you consider the impact of the proposed improvements to workplace safety the Coast Guard could have provided in respect for the eleven lives of the workers lost in the Gulf rig explosion.

Our Association provided the following background material and later attended a meeting to discuss some technical aspects of this stalled rulemaking that was convened last November by **ABSG Consulting, Inc. – a government contractor.** We wrote them as follows:

Our Association's Complaints Protection of Mariners in the Workplace

Almost 40 years ago, Congress declared the purpose of the Occupational Safety and Health Act of 1970 (29 U.S. Code 651) to provide for the general welfare, to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources. While the Act placed most of the burden on the Secretary of Labor, the **Coast Guard was supposed to look after the health, safety, and welfare of our mariners.**

We believe the **Coast Guard failed to provide a safe workplace for most of our "limited tonnage" mariners including those working in Outer Continental Shelf (OCS) activities.** In 2008, the Department of Homeland Security Inspector General's Office reported on the dismal state of Coast Guard casualty investigations in Report #OIG-08-51 confirming a trend that had been confirmed fourteen years earlier.

Additional Concerns Since Our Letters

While the Department of Labor provided **regulations** for many land based operations, in at least two areas the Coast Guard provided only guidance in the form of NVICs that do not have the force of law. I refer specifically to NVIC 12-82 (**Hearing**) and NVIC 6-87 (**Asbestos**). I understand that the Coast Guard recently decided to review its NVICs hopefully for the shortcomings mentioned below.

Our Association believes that the scope of coverage of maritime workplace issues needs to be upgraded from guidance to a more formal and enforceable **regulatory protection** in order to better protect our working mariners as spelled out in our Reports listed below. We believe that in several cases, this can best be accomplished by considering the possibility of using Incorporation by Reference of existing OSHA regulations applicable to conditions aboard ships including vessels on which our limited tonnage mariners live and work.

In 2004, Congress passed Section 416 of the Coast Guard and Maritime Transportation Act of 2004 relative to providing clean and safe potable water aboard vessels. However, the Coast Guard hasn't done anything substantial to move forward and create new regulations to carry out Congressional directions. We find this inertia to be totally unacceptable. As late as a year ago, the Coast Guard and Maritime Transportation Subcommittee indicated that it was considering convening a hearing on this matter. We notified our mariners who were part of our original complaint to be prepared to testify.

We know of a very recent case where a shipyard painted the potable water tank of a towing vessel with a two-part epoxy solution but forgot to mix the two parts. Consequently, the tank coating never cured or dried leaving the **drinking, cooking, and bathing water on the vessel contaminated with a chemical substance** that smelled like acetone. The mariners who work for the company reportedly never bothered to have the sample they provided tested by an approved laboratory. There may be serious health considerations involved.

We want our mariners shipboard potable water supplies to be at least as well protected as those provided to the Coast Guard's military and civilian employees. Nevertheless, we expect a reasonable, workable solution not one that invokes excessively technical regulations our mariners and vessel owners may not be able to read and understand.

Our Association will be pushing these three additional issues because they are all extremely important to the health, welfare, and safety of our mariners. **We believe the Coast Guard has not been sufficiently concerned with these issues and with the safety, health, and welfare of our "limited tonnage" mariners in the past.** We expect to

see some concrete action taken on these issues.

öWe brought these issues to the attention of Mrs. Mayte Medina, Chief, Maritime Personnel Qualification Division (CG-5221) in early October 2009. These issues are summarized in our Report #R-350, Rev. 5, as **Issue “Q”** Protecting Mariner Hearing., **Issue “U”** Protecting Our Mariners from Asbestos, .and **Issue “R”** Provide Safe and Adequate Potable Water.ö [Enclosure #4] I will attach a copy of this report as well as our Report #R-349, #R-445 and #R-395, Rev. 2 [Enclosures #9, 10 & 11 respectively] that discuss these issues in greater detail and ask that these issues be considered in regard to any future changes in Subchapter N.ö

Towing Vessels

“In our previous letters, we expressed considerable concern about the safety of our mariners working on board towing vessels in OCS activities. In September 2004, Congress added towing vessels to the list of öinspectedö vessels. The Coast Guard is engaged in the process of preparing a Notice of Proposed Rulemaking (NPRM) on these vessels. However, since the NPRM has yet to be published after six years, *we have no idea whether these proposed regulations will reflect our concerns on the OSHA issues stated above. We believe the Coast Guard has failed to provide a comparable degree of safety in the offshore workplace as OSHA has done on shore.* We believe the issue needs to be confronted now even though it is admittedly 40 years late.ö

In closing, our Association believes that the Coast Guard’s failure to apply and enforce workplace safety regulations for the past 40 years has adversely affected our mariners throughout the United States including those who serve on vessels working in the waters of the Outer Continental Shelf.

Very truly yours,
s/Richard A. Block, B.A., M.S.
Master #1186377, Issue #9
Secretary, National Mariners Association

Enclosures:

- ★ Enclosure #1 = Our Report #R-429-M
 - ★ Enclosure #2 = Our Report #R-429-A
 - ★ Enclosure #3 = Our Report #R-429-B
 - ★ Enclosure #4 = Our Report #R-350, Revision 5
 - ★ Enclosure #5 = Our Report #R-354, Revision 4
 - ★ Enclosure #6 = Our Report #R-205
 - ★ Enclosure #7 = Our Report #R-428-D
 - ★ Enclosure #8 = Our Report #R-428-D, Revision 1
 - ★ Enclosure #9 = Our Report #R-349
 - ★ Enclosure #10 = Our Report #R-445
 - ★ Enclosure #11 = Our Report #R-395, Revision 2
 - Enclosure #12 = Coast Guard (CG-521) letter of Feb. 26, 2010
- ★ = To save paper, Enclosures 1 thru 11 are on disk. However, each of these reports also is available on our website www.nationalmariners.org under “Research Reports. We enclose a copy of “Index R” that is a list of all 229 of our reports.

EVENT #2 – FOREIGN VESSEL OPERATIONS IN U.S. EXCLUSIVE ECONOMIC ZONE
Hearing, U.S. House of Representatives, Committee on Transportation and Infrastructure, June 16, 2010
Rep. James L. Oberstar, Chairman — Rep. John Mica, Ranking Republican Member

[NMA Editorial Note: Footnotes in the original document are reproduced here as endnotes.]

[NMA Comment: A Congressional hearing was held on June 16, 2010. The Congressmen attending this hearing received the following briefing material. An investigation into the causes of the DEEPWATER HORIZON explosion appointed by President Obama is currently underway.]

SUMMARY OF SUBJECT MATTER

TO: Subcommittee on Coast Guard and Maritime Transportation
FROM: Subcommittee on Coast Guard and Maritime Transportation staff
SUBJECT: Hearing on öForeign Vessel Operations in the U.S. Exclusive Economic Zoneö

PURPOSE OF THE HEARING

The Subcommittee on Coast Guard and Maritime Transportation will convene on Thursday, June 17, 2010, at 2:00 p.m., in room 2167 of the Rayburn House Office Building to receive testimony regarding the extent of commercial activity conducted by foreign vessels engaged in the U.S. Exclusive Economic Zone (EEZ). The Subcommittee will also examine the overlapping jurisdictions of flag states and coastal states when foreign-flagged vessels and drilling units are operating in a coastal state's EEZ.

BACKGROUND

The U.S. Coast Guard has indicated that as of June 15, 2010, there were 37 U.S.-flagged and 57 foreign-flagged mobile offshore drilling units (MODU) engaged in activity on the outer Continental Shelf (OCS). The Coast Guard also reported that there are 38 U.S.-flagged and one foreign-flagged floating facilities (platforms) engaged in OCS activities. The Coast Guard has indicated that it is difficult to provide an accurate count of foreign-flagged vessels operating on the OCS and within the U.S. EEZ because, unlike foreign-flagged MODUs and floating facilities, which are subject to an annual Coast Guard inspection requirement, foreign vessels are currently not required by regulation to give notice of their arrival on the OCS because the Coast Guard has failed to finalize a rulemaking required under the SAFE Port Act (P.L. 109-347). Nonetheless, the Coast Guard estimates that there are 1,307 U.S.-flagged and 67 foreign-flagged support vessels operating on the OCS (the Coast Guard's estimates of foreign-flagged vessels operating on the OCS drawn from data compiled by the Offshore Marine Service Association).

According to the Congressional Research Service (CRS), based on data available from Rigzone, there are 275 drill rigs categorized as being associated with operations in U.S. waters (this is a broad count, and appears to include rigs that are actually drilling, as well as others in various statuses such as ready stacked, cold stacked, undergoing inspection, under construction, and retired).⁽¹⁾

Of this number, CRS reports that 243 are (or were) operating in the Gulf of Mexico, four are offshore of Alaska, and 28 are (or were) offshore of other U.S. locations. CRS was able to determine the flag of 125 of the drill rigs associated with Gulf of Mexico activity; of these, approximately 80 drill rigs are (or were) U.S.-flagged, and, for the foreign-flagged drill rigs, the predominant foreign flags were Panama (14 rigs), Liberia (14 rigs), Marshall Islands (13 rigs), and Vanuatu (five rigs).

According to data provided to the Subcommittee by ODS-Petrodata which does not reflect all classes of vessels (and does not include smaller OSVs, construction vessels, or crew boats, for example) as of June 14, 2010, there were 442 offshore service and supply vessels deployed in the Gulf of Mexico. Of these vessels, 390 are U.S.-flagged, and other predominant foreign flags are Vanuatu (20 vessels), Norway (10 vessels), the Bahamas (six vessels), and Panama (three vessels). The ODS-Petrodata lists nearly 20 flag states, including Malta, the Isle of Man, Marshall Islands, Mexico, the Netherlands, the Norwegian International Ship Register, and Singapore, but, except for the countries listed previously, each have only one or two vessels under their registry operating in the Gulf of Mexico.

The U.S. Coast Guard is in the process of developing a rule requiring foreign-flagged vessels to report their arrival on the U.S. OCS. However, the United States does not currently appear to have a comprehensive or centralized data set on the scope of foreign vessel activity on the OCS.

I. The United Nations Convention on the Law of the Sea²

The doctrine of freedom of the seas governed the world's oceans from the seventeenth century until the mid-twentieth century. This principle had limited nations' rights to assert jurisdiction over more than just a narrow band of sea around their coasts. However, in the 20th century, coastal states became concerned about the depletion of their fish stocks by foreign fishing fleets and about the discharge of pollution from ships. Coastal states began to assert claims over the enormous variety of resources such as oil, gas, and minerals that could be exploited from the seabed near their coastlines.

The United States unilaterally extended its jurisdiction to natural resources on its OCS in 1945. Other countries soon followed the U.S. lead in making various claims to sovereignty over waters extending 12 or even 200 miles offshore.

In 1982, the United Nations Convention on the Law of the Sea (UNCLOS) was adopted,⁽³⁾ which came into force in 1994. Adoption of UNCLOS established international law governing territorial claims to the oceans extending beyond national coastlines. The United States is not a party to UNCLOS.

A. The Territorial Sea

UNCLOS defines the territorial sea as that expanse of ocean extending 12 nautical miles from baselines, which are also established under UNCLOS. UNCLOS specifies that each coastal state may exert sovereignty over its territorial sea, the air above the territorial sea, and over the seabed and subsoil extending below the territorial sea. Generally, the national law of a coastal state applies to all vessels and other operations within the territorial sea with certain exceptions. One notable exception is the coastal states' obligation to allow the ships of all nations "innocent passage" through their territorial seas, which is defined as passage of a foreign ship that is not prejudicial to the "peace, good order or security" of the coastal state. Another exception is the prohibition in UNCLOS against the extension to foreign ships traveling in a coastal states' territorial sea of the laws the coastal state applies to ships flying its flag regarding ship design, construction, and manning.

B. The Contiguous Zone

Under UNCLOS, a coastal states' contiguous zone is measured from the baselines to a distance out 24 nautical miles. Coastal states may exercise the control in the contiguous zone necessary to prevent violations of their customs, immigration, or pollution laws. An example of a permitted coastal state activity in the contiguous zone would be an operation to apprehend smugglers.

C. Exclusive Economic Zone

The EEZ is defined by UNCLOS to be an area of ocean extending out to 200 miles from the baselines. A coastal states' EEZ is subject to the legal framework established in UNCLOS. Under UNCLOS, a coastal state retains sovereign rights to explore, exploit, conserve, and manage the natural resources of its EEZ.

D. The United States and UNCLOS

Importantly, UNCLOS does not allow states to make reservations or exceptions to any of UNCLOS' provisions. Therefore, any state that becomes a party to UNCLOS must agree to be bound by every UNCLOS provision.

The United States, among other industrialized countries, expressed reservations over Part XI of UNCLOS, which deals with "The Area." The Area is defined by UNCLOS as that part of the ocean that lies beyond the jurisdiction of any state. UNCLOS provides that the resources found in "The Area" are the "common heritage of mankind" and that no state may claim sovereign rights over any portion of "The Area." Further, UNCLOS provides that activities carried out in "The Area" shall be for the benefit of all mankind, taking into account the needs and interests of developing nations.

The Reagan administration expressed reservations about technology transfers and access to the resources in "The Area" by American business interests. However, the Reagan administration's Ocean Policy Statement in 1983 announced that the United States would act in accordance with the rest of the provisions of UNCLOS.⁽⁴⁾

In 1994, the United Nations attempted to address the concerns of the United States and others by adopting an Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 addressing the technology sharing and other issues. By 1996, when the Agreement on Part XI entered into force, every major industrial nation except the United States had ratified the agreement. Despite high-level support from military, political, and business leaders, the full Senate failed to take up UNCLOS twice in the 110th Congress and the United States is still not a party to UNCLOS.⁵

II. Exploration, Development, and Production of Minerals on the Outer Continental Shelf (OCS)

A. Outer Continental Shelf Lands Act

Under the Outer Continental Shelf Lands Act (OCSLA), the OCS is defined to include "all submerged lands lying seaward and outside of an area of lands beneath navigable waters . . . and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control" (43 U.S.C. § 1331). OCSLA extends the "Constitution and laws and civil and political jurisdiction of the United States" to the "subsoil and seabed of the Outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources there from, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the Outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State" (though mineral leases are governed by the provisions of OCSLA) (43 U.S.C. § 1333).⁶

B. Notice of Arrival on the OCS

Under 33 C.F.R. §160.201-215, the Coast Guard requires all vessels intending to call on a U.S. port to notify the Coast Guard of the intended visit at least 96 hours prior to the vessel's arrival. The current notice of arrival requirements generally apply to:

- All commercial vessels greater than 300 gross tons that intend to arrive at a port or place in the United States;
- All foreign vessels that intend to arrive at a port or place in the United States (regardless of size); and
- All vessels that intend to arrive at a port or place in the United States that are carrying Certain Dangerous Cargo in accordance with 33 C.F.R. § 160.204.

In 2006, section 109 of the SAFE Port Act required the Coast Guard to update and finalize a rulemaking within 180 days to expand the notice of arrival regulations to foreign vessels on the OCS. On June 22, 2009, the Coast Guard issued a Notice of Proposed Rulemaking (NPRM) to establish notice of arrival requirements for MODUs and other vessels planning to engage in OCS activities. The comment period for the NPRM ended September 21, 2009, but the final rule has not yet been issued.

This rulemaking specifically proposes that owners or operators of U.S.-flagged and foreign- flagged floating facilities, MODUs, and vessels engaging in OCS activities, with the exception of those U.S. units traveling directly from U.S. ports or places, notify the National Vessel Movement Center (NVMC) at least 96 hours before their intended arrival on the OCS. If voyage time to the OCS is less than 96 hours, then this rulemaking proposes shorter notice requirements. U.S. flag units arriving on the OCS directly from a U.S. port or place will not be required to submit the safety and security information proposed in this rule because the Coast Guard has greater maritime domain awareness over vessels coming from a U.S. port (as they will have previously submitted similar safety and security information items under 33 C.F.R. §§160.202(a) and 160.206, unless exempted under 160.203), and as such they are deemed to represent a comparatively lower safety and security risk.⁽⁷⁾

Presently, a MODU intending to engage in OCS activities is required to notify the District Commander in the area in which the unit will operate 14 days before its arrival; this requirement is partially intended to enable the Coast Guard to schedule the MODU for the examination it is required to undergo to receive the Certificate of Compliance that it requires to engage in OCS activities⁽⁸⁾ This regulation was the result a final rule entitled OCS Activities developed in response to enactment of OCSLA.⁽⁹⁾

C. Employment of Americans on the OCS

OCSLA required that within six months after September 18, 1978, the Secretary of the Department in which the Coast Guard is operating shall issue regulations which require that any vessel, rig, platform, or other vehicle or structure . . . which is used at any time after the one-year period beginning on the effective date of such regulations for activities pursuant to this subchapter, be manned or crewed . . . by citizens of the United States or aliens lawfully admitted to the United States for permanent residence (43 U.S.C. 1356). However, OCSLA provided that this requirement does not apply to any vessel, rig, platform, or other vehicle or structure if:⁽⁶⁾

- (A) specific contractual provisions or national registry manning requirements in effect on September 18, 1978, provide to the contrary;
- (B) there are not a sufficient number of citizens of the United States, or aliens lawfully admitted to the United States for permanent residence, qualified and available for such work; or
- (C) the President makes a specific finding, with respect to the particular vessel, rig, platform, or other vehicle or structure, that application would not be consistent with the national interest. (43 U.S.C. § 1356(c)).

Additionally, the requirement that U.S. citizens and permanent residents be employed on vessels, rigs, platforms, or other vehicles or structures on the OCS do not apply to any vessel, rig, platform, or other vehicle or structure, over 50 percent of which is owned by citizens of a foreign nation or with respect to which the citizens of a foreign nation have the right effectively to control, except to the extent and to the degree that the President determines that the government of such foreign nation or any of its political subdivisions has implemented, by statute, regulation, policy, or practice, a national manning requirement for equipment engaged in the exploration, development, or production of oil and gas in its offshore areas (43 U.S.C. § 1356(c)(2)).

The regulations implementing these provisions are found in 33 C.F.R. Part 141. Pursuant to 33 C.F.R. § 141.20, requests for exemptions from the requirements pertaining to the employment of U.S. citizens or permanent residents on vessels and facilities engaged in OCS activities must be in writing and must specify the grounds under which the exemption is sought.

The regulations specify that after receiving an exemption request specifically on the grounds that there are not a

sufficient number of U.S. citizens or permanent residents to perform required labor, the Coast Guard seeks information from the Department of Labor concerning whether there are citizens of the United States or resident aliens qualified and available for work and if information is provided that citizens of the United States or resident aliens are qualified and available, the employer may be required to seek their employment before the request is approved (33 C.F.R. § 141.20). If the Coast Guard does not make a determination on a request for an exemption based on lack of a sufficient number of U.S. citizens and resident aliens available for work within 30 days of the receipt of the request or advise the entity making the request that the Coast Guard requires additional time to consider the request, the request is considered approved for a period of 90 days from the end of the 30 day period (33 C.F.R. § 141.20).

In Navigation and Vessel Inspection Circular (NVIC) 7-84, issued on August 7, 1984, the Coast Guard provides additional details on the procedures it follows when considering exemption requests. This NVIC specifies that an owner/operator who believes his/her vessel, rig, platform, or other vehicle or structure engaged in commerce on the OCS is eligible for an exemption from the employment requirements created by OCSLA for any reason provided under statute must submit the necessary information to the Commandant . . . in order for a determination to be made and that no unit will be granted an exemption until it has been demonstrated to the Commandant's satisfaction that the unit is indeed eligible for exemption from the citizenship requirements.⁽¹⁰⁾ Requests for exemptions must be submitted at least 30 days prior to the start of a project on the OCS and are not considered complete unless they include:

- a detailed job description, with list of qualifications, for each position requiring a waiver;
- A list of experience factors if there is a seniority relationship among positions for which the exemption is sought (e.g., a position description for a senior position would be expected to require more experience from candidates than a description for a more junior position); and
- documented proof of attempts to find employees through normal private sources including advertisements in widely circulated newspapers for at least three days.⁽¹¹⁾

Additionally, those seeking the exemption must include by position, a summation of numbers of applications received, numbers of interviews granted, numbers hired, and reasons workers not qualified [sic.] as well as a description of a training program maintained by the owner/operator that shows their intended efforts to train U.S. citizens for employment on the Shelf.⁽¹²⁾

If an exemption is granted, it is valid for one year and must be reapplied for if continued exemption is sought; if a reapplication is submitted, the reapplication must include new evidence of the effort over the past year to identify U.S. workers through advertisement.

The NVIC notes that the Labor Department estimates that once initial information is provided to them it will take approximately 60 days for DOL to process the exemption request. Therefore, in order to assure a timely response, it is recommended that requests be submitted at least 90 days in advance of a project start up date.⁽¹³⁾

The chart below summarizes the number of firms and positions for which exemptions were granted in the specified years.

Exemptions to Requirements Pertaining to the Employment of U.S. Citizens and Resident Aliens on the OCS

Year	Number of exemption requests granted	Number of positions covered by granted exemption requests
2008	24	2,625
2009	20	2,177
2010	10	944
TOTAL	52	6,690

Source: U.S. Coast Guard

III. Vessel Registration

A vessel is subject to the laws of the country in which it is registered or flagged. UNCLOS requires each flag state to exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

⁽¹⁴⁾ A flag state exercises control over ships flying its flag through its national laws and requirements, which should

conform to appropriate international conventions.

A. The U.S. Flag

To flag a vessel in the United States (i.e., to receive a certificate of documentation from the United States), a vessel must be owned by:

- An individual who is a citizen of the United States.
- An association, trust, joint venture, or other entity if:
 - Each of its members is a citizen of the United States; and
 - It is capable of holding title to a vessel under the laws of the United States or a state.
- A partnership if:
 - Each general partner is a citizen of the United States; and
 - The controlling interest in the partnership is owned by citizens of the United States.
- A corporation if:
 - It is incorporated under the laws of the United States or a State;
 - Its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States; and
 - No more of its directors are non-citizens than a minority of the number necessary to constitute a quorum (46 U.S.C. §12103).

Further, if a vessel flies the U.S. flag, the vessel must be crewed by Americans. Thus, under 46 U.S.C. §8103, only a citizen of the United States may serve as a master, chief engineer, radio officer, or officer in charge of a deck watch or engineering watch on a documented vessel (meaning a vessel registered in the United States.) (46 U.S.C. §8103(a)). Further, this title provides that each unlicensed seaman must be a citizen of the United States, an alien lawfully admitted to the United States for permanent residence, or a foreign national who is enrolled in the United States Merchant Marine Academy (46 U.S.C. § 8103(b)(1)). Additionally, not more than 25 percent of the total number of unlicensed seamen on the vessel may be aliens lawfully admitted to the United States for permanent residence (46 U.S.C. § 8103(b)(1)(B)).

However, pursuant to title 46, the Coast Guard may waive these citizenship requirements for crew members on U.S.-flagged vessels except the requirement applying to the master of the documented vessel with respect to an offshore supply vessel or other similarly engaged vessel of less than 1,600 gross tons, a mobile offshore drilling unit or other vessel engaged in support of exploration, exploitation, or production of offshore mineral energy resources operating beyond the water above the outer Continental Shelf . . ., and any other vessel if the Secretary determines, after an investigation, that qualified seamen who are citizens of the United States are not available (46 U.S.C. §8103).

A vessel **does not** have to be built in the United States to be flagged in the United States. In fact, according to the Maritime Administration (MARAD), as of March 1, all 94 of the vessels flagged in the United States and engaging in the foreign trade were built overseas.

A vessel that is flagged in the United States can seek a registry endorsement, which authorizes the vessel to engage in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef (46 U.S.C. §12111). Importantly, if a vessel seeking the registry endorsement is owned by a trust, the beneficiaries of the trust are not required to be citizens of the United States if the trust meets the following requirements:

- each trustee is a citizen of the United States; and
- the application for documentation of the vessel includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a citizen of the United States, or involving any other person that is not a citizen of the United States, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States (46 U.S.C. § 12111).

B. The Jones Act

All foreign-flagged vessels are prohibited from carrying domestic commerce. Further, vessels that merely fly the U.S. flag and hold a registry endorsement are **not** therefore also eligible to engage in domestic commerce (i.e., to carry merchandise between two points in the United States). If a vessel registered in the United States wants to carry

merchandise between two points in the United States, the vessel must also obtain what is known as the coastwise endorsement demonstrating its compliance with the requirements of chapter 55 of title 46, popularly known as the Jones Act.

The United States has a long history of cabotage protection, or the protection of domestic shipping between points in the United States. In 1817, Congress passed *An Act Concerning the Navigation of the United States*, which required that only vessels flagged in the United States could carry domestic commerce; at that time, only ships built in the United States could register in the United States.

The tradition of cabotage protection is currently enshrined in the Jones Act, section 27 of the Merchant Marine Act of 1920, which states that "a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via a foreign port unless the vessel is built in the United States, crewed by Americans, and owned by Americans (46 U.S.C. §55102; see also 46 U.S.C. Part 121).

Further explanation of what constitutes a coastwise movement is provided in 19 C.F.R. §4.80(b), which states that [a] coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws (coastwise point) is unladen at another coastwise point, regardless of the origin or ultimate destination of the merchandise. However, merchandise is not transported coastwise if at an intermediate port or place other than a coastwise point (that is at a foreign port or place, or at a port or place in a territory or possession of the United States not subject to the coastwise laws), it is manufactured or processed into a new and different product, and the new and different product thereafter is transported to a coastwise point.

Thus, in summary, vessels that merely fly the U.S. flag and engage in foreign commerce must be owned and crewed by Americans. Vessels flagged in the United States that want to engage in the U.S. domestic commerce must be owned and crewed by Americans and must also be built (and rebuilt) in the United States. Evidence that a vessel meets the requirements of the Jones Act and is therefore eligible to carry U.S. domestic commerce is attested through the issuance to the vessel of the coastwise endorsement.

Importantly, when OCSLA extended the "Constitution and laws and civil and political jurisdiction of the United States" to the "subsoil and seabed of the Outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed," this included an extension of the Jones Act. Therefore, structures and facilities attached temporarily or permanently to the sea floor are treated as points in the United States and vessels traveling between such points or between such points and U.S. ports are subject to the requirements of the Jones Act. However, vessels (including MODUs) that operate on the OCS (including by becoming temporarily or permanently attached to the U.S. OCS) are **not** subject to the Jones Act so long as they do not transport merchandise or valueless material between two U.S. points.

C. Open Registries

Some countries operate so-called "open registries" or "flags of convenience" to entice ship owners to their registries with incentives, such as low registration fees and taxes, low operating costs, and permissive regulatory regimes. Such registries may subject ship owners to less stringent financial reporting requirements than other registries require, permit ship owners to easily transfer their ships into and out of their registries, and generally do not require that ship owners employ individuals who are nationals of the registry state. Additionally, open registries often allow ship owners to have their ships inspected by classification societies in-lieu of a government inspection; classification societies are organizations that perform surveys and certify compliance with international conventions.

The difference in crewing costs between the employment of U.S.-citizen mariners and mariners from some other countries can be substantial. For example, according to the MARAD, as of 2005, the annual cost to crew a 20-year-old bulk carrier under an open register was less than \$700,000 per year. Crewing costs for the same ship employing U.S. mariners were more than \$3 million per year. This is due to the higher wages U.S. mariners earn and the costs associated with providing healthcare and pension benefits to U.S. mariners.

Other operating costs may be lower under open registries as well. U.S.-flag operators typically incur higher insurance premium costs due to the increased risk of litigation in the United States. Further, open registries generally allow the vessels flying their flags to obtain vessel repairs in any country; by contrast, if a U.S.-flagged vessel is repaired in a foreign shipyard rather than a U.S. shipyard, the operator is charged a 50 percent ad valorem customs duty on these foreign repairs.

According to MARAD, there were 12 nations operating open registries in 2005. The largest were Panama,

Liberia, the Bahamas, Malta, and Cyprus. About half of the world's fleet is registered under open registries.

In response to the lower operating cost associated with open registries, some nations have developed so-called "international" or "second" registries. International registries offer ship owners the advantage of registering their ships in industrially advanced nations while operating under tax and regulatory environments similar those of open registries.

Norway, for example, operates an international registry known as the Norwegian International Ship Register (NIS). The NIS is open to both Norwegian and foreign "self-propelled passenger and cargo ships and hovercraft, as well as drilling platforms and other movable installations," so long as a foreign-owned ship is operated by a Norwegian company. 15 Ships registered under the NIS are subject to Norwegian Maritime Law, which conforms to the international standards set forth by the International Maritime Organization (IMO), but are offered some exemptions which offer incentives to register under the NIS. For example, the NIS only requires that ships pay a tonnage tax and does not tax the income made from shipping activities. Additionally, the NIS does not require that crewmembers (except the captain) serving aboard Norwegian ships be Norwegian, nor does it establish a minimum wage for crewmembers.⁽¹⁶⁾

Certain restrictions, however, do apply to the activities in which NIS-registered vessels may engage. Similar to the provisions set forth in the Jones Act, NIS-registered vessels may not transport "cargo or passengers between Norwegian ports or engage in regular scheduled passenger transport between Norwegian and foreign ports" (note that "oil and gas installations on the Norwegian continental shelf are regarded as Norwegian ports"). The NIS has been successful in retaining and attracting Norwegian-owned as well as foreign-owned ships to fly the Norwegian flag. Further, in 2007, Norwegian tax law was changed to offer further incentives, such as the tax-exemption on income generated by shipping activities as discussed above.⁽¹⁷⁾ Between 2007 and 2008, Norway saw a 27 percent increase in the gross tonnage of Norwegian-owned vessels registered in the NIS and an overall increase of 4.8 percent in the gross tonnage of all ships registered in the NIS.⁽¹⁸⁾

France and Denmark have also established second registries. MARAD reports that in 2005, 17 percent of the world fleet operated under international registries.

IV. Rights and Duties of Flag and Port States

UNCLOS states that "[s]hips have the nationality of the state [flag state] whose flag they are entitled to fly." As such, a ship must comply with the laws of its flag state and relevant international laws. Flag states exercise jurisdiction over ships under their registries in areas of administrative, technical, and social matters. Specifically, flag states are required to take measures to ensure that ships under their registries are:

1. Constructed, equipped, and seaworthy to ensure safety at sea;
2. Manned and managed with respect to labor conditions and crew training taking into account international codes and conventions;
3. Surveyed by qualified surveyors of ships;
4. Operated in the charge of qualified masters and that officers and crews are qualified for the type, size, machinery and equipment of the ship; and
5. Operated by masters, officers and crew members who observe international regulations regarding safety of life at sea; the prevention of collisions; the prevention, reduction and control of marine pollution; and communications at sea.

Any state that believes a ship is operating without proper jurisdiction or control by its flag state may report the facts to the flag state. Flag states are required to investigate these reports and take appropriate action. In addition, every flag state is required to investigate marine casualties on the high seas involving ships under its register that result in: loss of life, serious injuries to citizens of another state, or serious damage to ships or installations of another state or to the marine environment.

A. Coast Guard Inspections of U.S.-flagged Vessels

The Coast Guard is responsible for inspecting all aspects of vessels flagged in the United States, including carrying out the tests and surveys necessary to issue the statutory certificate which certifies that the vessel complies with U.S. law and all of the applicable requirements of international conventions. In the United States, this statutory certificate is known as the Certificate of Inspection (COI).

A COI describes the vessel to which it has been issued, the route(s) that the vessel may travel, the minimum manning requirements for the vessel, the survival and rescue craft carried by the vessel, the minimum fire

extinguishing equipment and lifejackets required to be carried by the vessel, the maximum number of passengers and total persons that may be carried by the vessel, the number of passengers the vessel may carry in overnight accommodation spaces, and the COI's period of validity (46 C.F.R. §176.103). Issuance of this certificate is dependent upon the satisfactory completion by the vessel of an inspection for certification and a vessel's retention of its COI depends upon the continued maintenance of the vessel in a safe operating condition in accordance with the requirements of the COI.

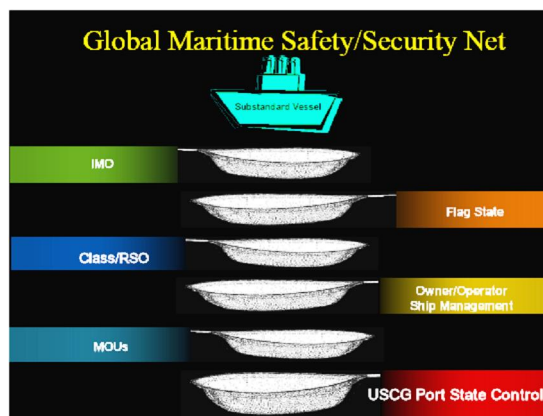
To obtain a COI, a U.S. vessel's owner must submit a completed "Application for Inspection of U.S. Vessel" to the Coast Guard Officer-in-Charge, Marine Inspection (OCMI) of the marine inspection zone in which the inspection is to be conducted. Pursuant to 46 C.F.R. §176.105, an application of initial inspection for a vessel being newly constructed or converted must be submitted prior to the start of the construction or conversion. The construction, arrangement, and equipment of each vessel must then be approved by the local OCMI before an initial COI is issued.

Approval of a COI will be based on the information, specifications, drawings, and calculations available to the OCMI, and on the successful completion of an initial inspection for certification (46 C.F.R. §176.105(c)).

B. Coast Guard Port State Control Inspections and Certificates of Compliance

When a foreign-flagged vessel calls on a U.S. port, the Coast Guard does not generally perform flag state level inspections (as are done on U.S.-flagged vessels) on the foreign-flagged vessel if the vessel's flag state has an inspection and certification program approximating that of the United States and if the flag state is a party to the International Convention for Safety of Life at Sea to which the United States Government is a party (46 U.S.C. §3303). Under this circumstance, the Coast Guard conducts what is known as a Port State Control (PSC) inspection, which is meant only to verify that the foreign-flagged vessel is operating in compliance with the statutory certificate issued to it by its flag state, is operating in compliance with the requirements of all applicable international conventions, and that crew training on and performance of such routines as lifesaving and firefighting drills meet relevant standards. However, special inspection requirements over and above PSC exam requirements apply to foreign-flagged tank vessels, passenger vessels, and MODUs as described below. PSC exams are not performed on vessels that do not enter the U.S. territorial seas; thus, vessels in the EEZ that never enter the territorial sea are not subject to PSC exams.

The Coast Guard's Marine Safety Manual⁽¹⁹⁾ states that "[p]ort State control is the process by which a nation exercises its authority over foreign vessels when those vessels are in waters subject to its jurisdiction. This authority is derived from several sources both domestic and international. A nation may enact its own laws and regulations imposing requirements on foreign vessels trading in its waters (i.e. the double hull requirements imposed under the Oil Pollution Act of 1990 (OPA 90) (P.L. 101-380), or the navigation safety regulations found in 33 C.F.R. Part 164). In addition, nations that are party to certain international conventions are empowered to verify that vessels of other nations operating within their waters comply with these conventions, and to take action to bring these ships into compliance if they do not." The PSC is one of many "safety nets" to the Global Maritime Safety and Security Net⁽²⁰⁾ as illustrated below:



Source: U.S. Coast Guard Presentation "USCG Port State Control and Qualship 21 Programs"

Through the PSC Program, the Coast Guard targets physical boardings toward those vessels that are most likely to be substandard or out of compliance with their statutory certificates or applicable international law based on

identified risk factors. When a PSC exam reveals questionable equipment, systems, or crew competency issues, the Coast Guard expands the exam as necessary to determine whether a deficiency exists. The inspector may require additional tests, inspections, or crew drills to the extent deemed necessary to determine whether or not a deficiency exists. When deficiencies exist, the Coast Guard documents these deficiencies on a PSC Report of Inspections and/or Deficiencies (Form CG-5437 A/B), and mandates correction of the deficiencies. Depending on the severity of the deficiencies, the Coast Guard may detain⁽²¹⁾ a vessel or curtail vessel operations as appropriate until the deficiencies are corrected.

The Coast Guard has indicated to the Subcommittee that the scope of its PSC exams for all foreign-flagged vessels exceeds current international guidelines for PSC. Further, current Coast Guard PSC exams include inspection and equipment tests and emergency drill requirements far beyond those required by other PSC regimes.

Foreign-flagged tank vessels are prohibited from operating in U.S. waters unless they have a certificate of compliance (COC) [which can also be known as a letter of compliance (LOC)] issued by the Coast Guard. Pursuant to 46 U.S.C. §3711, a COC may be issued only after the vessel has been examined and found to be in compliance with this chapter and regulations prescribed under this chapter and the Coast Guard may accept any part of a certificate, endorsement, or document, issued by the government of a foreign country under a treaty, convention, or other international agreement to which the United States is a party, as a basis for issuing a certificate of compliance. As explained by Congress when enacting this language, “[t]his means that the Secretary does not have to accept foreign certificates as evidence of compliance, but may take additional action to assure compliance with applicable domestic laws and regulations and international treaty provisions.”⁽²²⁾

Similar to tank vessels, and as previously discussed, a MODU must also undergo a detailed examination and receive a COC before it can operate on the OCS. Additional U.S. provisions governing the operation of MODUs on the OCS are discussed in more detail below.

Regarding foreign flagged passenger vessels, U.S. law states: Notwithstanding section 3303 of this title, a foreign vessel carrying a citizen of the United States as a passenger or embarking passengers from a United States port may not depart from a United States port if the Secretary finds that the vessel does not comply with the standards stated in the International Convention for the Safety of Life at Sea to which the United States Government is currently a party (46 U.S.C. §3305).

Pursuant to the authority of section 3305, the Coast Guard conducts rigorous PSC oversight of foreign-flagged passenger ships operating into U.S. ports with U.S. passengers to ensure safety and environmental compliance. For cruise ships, the Coast Guard issues such vessels a control verification examination (CVE) certificate, valid for one year, upon successful completion of a control verification examination. In addition to an annual inspection, the Coast Guard conducts inspections every three months as part of the CVE process. During these exams, Coast Guard inspectors assess key safety features such as fire doors, centralized smoke detection systems, sprinklers, lifeboats, life rafts, watertight doors, and navigation equipment. These reviews also include observation and critique of emergency drills. In addition to these recurring inspections, the Coast Guard conducts an initial plan review of a new cruise vessel prior to construction, conducts shipyard inspections during construction, and conducts an initial inspection upon shipyard delivery prior to embarkation on the cruise vessels of U.S. passengers.

PSC exams are conducted on all other foreign-flagged freight vessels but the Coast Guard does not issue a COC upon completion of a satisfactory exam to such vessels. Instead, only the PSC Report of Inspection and/or Deficiencies is issued to document the completion of a PSC exam on a foreign-flagged freight vessel.

C. Classification Societies

Classification societies are organizations that perform surveys and certify compliance with international conventions. A classification society can also be delegated authority by a flag state to conduct certain required vessel examinations on behalf of the flag state; when operating in this capacity, the classification society is known as a recognized organization (RO).

Under 46 U.S.C. §3316, 46 C.F.R. §§8.130 and 8.230, the Commandant of the Coast Guard may delegate authority to a classification society to issue certain international convention certificates to U.S.-flagged vessels and to review ship construction plans; however, the Coast Guard retains sole authority to issue a vessel’s COI. Further, the Coast Guard has not delegated to any classification society the authority to conduct any part of a PSC exam.

V. U.S. Tax Collections from OCS Operations

The Congressional Research Service provided to the Subcommittee a summary of taxation enforcement issues

arising from foreign-flagged vessels operating in the United States in support of petroleum exploration and production activities.

According to CRS, foreign corporations engaged in a U.S. trade or business are taxed on income that has a sufficient nexus to the United States, i.e., any income that is effectively connected with trade or business conducted in the United States. Foreign corporations are taxed under such circumstances and at a rate and in a manner analogous to the treatment of a U.S. corporation.

In addition, in instances in which a foreign corporation's income is not "effectively connected," there are other taxation provisions that apply. For example, there is a 30 percent withholding tax, applicable to foreign corporations, for fixed or determinable annual or periodic income (for example dividends, interest, rental income, and royalties). Similarly, under tax rules applicable to transportation, a foreign corporation is subject to a four percent withholding tax on its U.S. gross transportation income (calculated as 50 percent of transportation income attributable to international transportation that either begins or ends in the United States). However, in some instances, either pursuant to treaty or the tax code, foreign corporations are not subject to these taxes if, generally, U.S. corporations would enjoy similar advantages under the laws of the country in which the foreign corporation is registered.

The Internal Revenue Service (IRS) has begun to focus on foreign vessels working in the oil and gas industry to assess whether there are instances of non-compliance on the part of such vessels with U.S. tax filing requirements. For example, foreign-flag vessels engaged in providing technical services (seismographic, drilling, repair or construction expertise and equipment) on the OCS should be treating this activity, for U.S. tax purposes, as U.S.-sourced taxable income. Similarly, such work on the OCS would not qualify as international transportation income or fall within international tax treaties governing such activity. In October 2009, the IRS issued a directive on this matter, and has formulated an issue management team to examine IRS's coordination of issues related to tax collections from vessels working on the OCS.

VI. The Deepwater Horizon

The *Deepwater Horizon* is a fifth generation MODU; it is owned by Transocean Ltd. Due to causes and in circumstances still under investigation, the *Deepwater Horizon* suffered an explosion on April 20, 2010 apparently resulting from a blowout in the well it was drilling at the Macondo exploration site in an area of the Gulf of Mexico known as the Mississippi Canyon Block 252 (MC 252). At the time of the explosion, the *Deepwater Horizon* was leased by BP p.l.c. (BP), which owns a majority stake in the MC 252 site and had contracted the rig to drill a prospect well. Following the explosion, the MODU sank on April 22. Eleven individuals who had been working on the *Deepwater Horizon* were killed in this accident.

A. United States Laws and Regulations Pertaining to MODU Operations

MODUs that are flagged in the U.S. must meet the requirements of 46 C.F.R. §107.231 to receive a COI. After receiving the COI, U.S.-flagged MODUs must undergo an annual inspection within the three months before or after each anniversary date of the COI and a periodic inspection. Generally, these examinations are equivalent to the examination leading to the issuance of a COI, but for the second or third anniversary, a MODU may undergo what is known as a periodic rather than an annual exam; period exams are slightly less rigorous than annual exams.⁽²³⁾ In addition, a U.S.-flagged MODU must be drydocked in the presence of a Coast Guard inspector at least once during each 24-month period after it is issued a COI unless it has a special examination exemption under 46 C.F.R. §107.261. MODUs operating on the U.S. OCS are also required to have annual on-site inspections, in accordance with OCLSA (43 U.S.C. §1331, et. seq.).

In addition to complying with the *1989 IMO Code*⁽²⁴⁾ and the laws of its flag state, foreign MODUs operating on the OCS of the United States must comply with certain U.S. regulations. **Subchapter N of Title 33 C.F.R.**, 6 Outer Continental Shelf Activities, and Subchapter I-A of Title 46, Mobile Offshore Drilling Units, contain regulations that apply to all MODUs. Specifically, **Subchapter N** requires operators of foreign-flagged MODUs to comply with the U.S. regulations relating to MODUs contained in 46 C.F.R. I-A.

U.S. regulations provide operators of foreign-flagged MODUs with three options for compliance with U.S. federal regulations. The options require compliance with the design, equipment, and operating standards:

1. Prescribed in 46 C.F.R. Parts 108 (Design and Equipment) and 109 (Operations),⁽²⁵⁾ or
2. Prescribed by the flag state if the standards provide a level of safety that is equivalent to that provided by 46 C.F.R. Parts 108 and 109; or

3. Contained in the IMO's Code for the Construction and Equipment of Mobile Offshore Drilling Units provided by IMO Assembly Resolution A. 414(XI).⁽²⁶⁾

The *Deepwater Horizon* was registered in the Republic of the Marshall Islands (RMI) and was subject to that country's national legislation. The Office of the Maritime Administrator of the RMI publishes *Mobile Offshore Drilling Unit Standards (RMI Standards)*, which contain the RMI's standards for the construction, equipment, arrangement, and operation of MODUs. The *Deepwater Horizon* was operating on the U.S. OCS under Option C; therefore, it was required to operate in compliance with the 1989 IMO Code and the *RMI Standards*.

According to Part VI of the *RMI Standards*, the Coast Guard issued a letter dated August 9, 2002 that recognizes the *RMI Standards* as sufficient to provide a level of safety equivalent to the international and U.S. requirements for operating on the OCS.⁽²⁷⁾

The American Bureau of Shipping (ABS), a classification society, serves as the RO for the Marshall Island; ABS surveyed the *Deepwater Horizon* on behalf of the RMI. According to information provided by the Coast Guard, ABS last surveyed *Deepwater Horizon* in 2006. *Deepwater Horizon* was not due for another full survey until 2011;⁽²⁸⁾ however, ABS reports that it was last aboard the *Deepwater Horizon* to perform an annual (interim) survey in February 2010.

The U.S. Coast Guard is responsible for verifying that a foreign MODU meets the requirements of Option C and any additional requirements under U.S. regulations. To verify compliance, the OCMI in whose zone the MODU will operate may inspect the MODU. Once the Coast Guard determines, through inspection or otherwise, that a MODU meets applicable requirements, the Coast Guard issues a COC.

Coast Guard policy with respect to the issuance of COC is provided in NVIC 3-88, change 1, *Issuance of Letters of Compliance to Foreign Documented Mobile Offshore Drilling Units Operating on the Outer Continental Shelf of the United States (NVIC 3-88)*.⁽²⁹⁾ The guidance in *NVIC 3-88* instructs owners of foreign-flagged MODUs to contact the OCMI in whose zone the MODU will be operating to apply for a COC. The owner must submit the required documentation,⁽³⁰⁾ schedule and pass an inspection, and pay the required fee before the OCMI may issue the COC. COCs are valid for two years (but annual inspections are required) or until the MODU departs the U.S. OCS, whichever occurs first. A MODU may not operate in U.S. waters until it has a valid COC.

Among other things, COCs specify the maximum number of persons permitted aboard the MODU and the minimum number of certified lifeboatmen that must be on the MODU. The OCMI may issue a COC even if an inspection finds certain deficiencies. In such a case, the COC is issued along with a letter providing a reasonable period for correcting specified deficiencies. No COC may be issued for deficiencies involving firefighting or lifesaving equipment.

Part VI of the *RMI Standards* provides a subpart that restates the general requirements for applying for a COC from *NVIC 3-88*. It also provides a subpart, referred to as a supplement, that relates to very specific requirements regarding such matters as crew citizenship, inspections, navigation safety, testing and inspection of pressure vessels, testing and inspection of lifesaving equipment, testing and inspection of fire fighting equipment, provision of hospital spaces and first aid, and electrical wiring in hazardous areas. Part VI also includes a statement that the OCMI may require additional or specialized equipment if uniquely hazardous circumstances not addressed by existing standards are present.

Before the OCMI issues a COC, Coast Guard inspectors ensure that the unit and its equipment are being maintained to the standards of the applicable IMO MODU Code. To ensure such maintenance, Coast Guard inspectors board the MODU and physically inspect the MODU's documents and equipment.⁽³¹⁾ Foreign MODUs must possess a valid IMO MODU Code Certificate issued by the flag state and inspectors examine other required documents to establish their validity.⁽³¹⁾ Coast Guard personnel have informed Subcommittee staff that the inspections they perform aboard foreign MODUs are not materially different than inspections they perform aboard U.S.-flagged MODUs.⁽³²⁾

The Nautical Institute describes dynamic positioning as "a computer control system [that] automatically maintains a vessel's position and heading by using her own propellers and thrusters. Position reference sensors, combined with wind sensors, motion sensors and gyro compasses, provide information to the computer pertaining to the vessel's position and the magnitude and direction of environmental forces affecting its position."

The Coast Guard conducted an initial examination of the *Deepwater Horizon* in 2001 and issued its COC on August 15, 2001. It subsequently underwent annual Coast Guard examinations.

B. Marshall Islands' Requirements for Minimum Safe Manning of Ships

Because the *Deepwater Horizon* was flagged in the Marshall Islands, it was subject to the manning laws imposed by the Marshall Islands. Marine Notice No. 7-038-2, Rev. 12/09 (Manning Notice), issued by the Office of the Maritime Administrator of the Marshall Islands, provides the requirements for minimum safe manning for vessels under the Marshall Islands flag subject to the governing principle that the Master is at all times responsible for the safe operation of his ship.

The Manning Notice provides basic manning requirements for ships (including MODUs) according to their size, type, and level of automation. The Marshall Islands determines minimum deck crew manning by assessing the size of the vessel and the arrangement of crew accommodations and internal communications systems. Engine room manning is determined by the kilowatt power generated by main propulsion and auxiliary machinery.

Reductions from the basic manning levels are permitted for MODUs in accordance with the duration of the MODU's voyage and whether the MODU is considered "on location," performing a "field move," or "underway." The RMI's MODU Standards, MI-293, Part II, defines a "field move" as "[t]he on location repositioning of a unit, up to 20 miles in distance or 8 hours in duration, under the cognizance of an STCW Convention licensed Master or Mate." "On location" is not defined. Further, the Marine Notice permits reductions from prescribed underway manning scales for MODUs if the MODU is a Dynamically Positioned Vessel (DPV)⁽³²⁾ and taking into account the operating status of the MODU. Annex I provides the Marshall Islands' different manning requirements for MODUs.

In written testimony before the House Judiciary Committee on May 27, 2010, Chief Mechanic and Acting Second Engineer, Douglas Brown testified that the manning level aboard the *Deepwater Horizon* had been "decreased significantly" since Mr. Brown had been assigned to the vessel in 2002. In 2002, when he came aboard the *Deepwater Horizon*, the complement of engineering crew aboard the vessel stood at, 1-Chief Engineer, 1-1st Engineer, 1-2nd Engineer, 1-3rd Engineer, and 2-Motormen. According to Mr. Brown, at sometime in 2003, the 1st Engineer's position was eliminated and the engineering crew was reduced to 1-Chief Engineer, 1-2nd Engineer, and 1-Motorman. Later in 2003, a 1st Engineer was added back into the engineering crew but the position only covered one shift.⁽³³⁾ Mr. Brown testified that due to these manning cuts, "we were often days, weeks and even months behind in completing the necessary preventive maintenance (PM) requirements."⁽³⁴⁾

C. The International Management Code for the Safe Operation of Ships and for Pollution Prevention and MODUs Under the Marshall Islands Flag

According to the MODU Standards of the Marshall Islands (MI-283 Rev. 8/02), MODUs under the Marshall Islands flag are required to comply with the *IMO's International Management Code for the Safe Operation of Ships and for Pollution Prevention* (ISM Code).

The ISM Code is contained in Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS). The Preamble of the ISM Code states that the purpose of the ISM code is to establish "an international standard for the safe management and operation of ships and for pollution prevention." The Preamble also states that "[t]he cornerstone of good safety management is commitment from the top. In matters of safety and pollution prevention it is the commitment, competence, attitudes and motivation of individuals at all levels that determines the end result."

There are several key provisions that establish the company's responsibilities contained in the ISM Code. The company's safety management goals should include: providing for safe practices and a safe working environment; establishing safeguards against identified risks; continuous improvement in safety management skills; and compliance with mandatory rules and regulations.

Under the ISM Code, companies should establish a safety management system that includes:

1. Policies regarding safety and environmental protection;
2. Defined levels of authority between shore and shipboard personnel; and
3. Procedures for reporting accidents and non-conformities.

The ISM Code also states that companies should define and document the responsibilities, authorities and the relationships with respect to safety of all persons who manage, perform, and verify work that affects safety and pollution prevention. A designated person or persons ashore (DPA) provides a link between the company and the personnel on board. The DPA should have direct access to the highest levels of the company's management with respect to safety. Companies are responsible for ensuring that resources and support from ashore enable the DPAs to carry out their functions.

The ISM Code provides a clear statement on the authority of the master. Masters are responsible for implementing the company's safety and environmental protection policies, motivating the crews to observe the policies, issuing clear orders, verifying that requirements are met, reviewing the safety management system, and

reporting deficiencies to management ashore. Every safety management system should contain a clear statement that emphasizes the master's authority and that the master has the overriding authority and responsibility to make decisions with respect to safety and pollution prevention.

At the time of the accident on April 20 that eventually destroyed the *Deepwater Horizon*, the MODU was under the command of the Offshore Installation Manager (OIM). The OIM on a Transocean MODU is responsible for managing the employees and resources of the rig to achieve optimum performance and to ensure the well program is carried out in a safe, efficient, and productive manner.

The *Deepwater Horizon* was issued an International Safety Management (ISM) Safety Management Certificate by Det Norske Veritas⁽³⁵⁾ (DNV) on July 11, 2007. The certificate was valid until May 16, 2012.

In written testimony before the House Judiciary Committee on May 27, 2010, former Chief Mechanic and Acting Second Engineer on the *Deepwater Horizon*, Douglas Brown testified that during a pre-tour safety meeting at the start of his shift on April 20 at 12:00 p.m., the day of the explosion, the Driller, a Transocean employee, was explaining the work that would be done. The BP representative interrupted the Driller by saying that there had been a change to the work plan.⁽³⁶⁾

Mr. Brown characterized the exchange between the Driller and the tool pusher, another Transocean employee, and the BP representative as a disagreement with the BP representative's plan. That evening at around 9:50 p.m., the *Deepwater Horizon* disaster began.⁽³⁷⁾

The ISM Code provides that companies should prepare plans and procedures for key shipboard operations. There should also be procedures for reporting and investigating non-conformities, accidents and hazardous situations.⁽³⁸⁾

PREVIOUS COMMITTEE ACTION

On May 19, 2010, the Committee on Transportation and Infrastructure met to examine the circumstances surrounding the ongoing spill of crude oil from the well site in the Gulf of Mexico where the *Deepwater Horizon* had been drilling. Among other issues, the Committee examined the Coast Guard's work with the Minerals Management Service (MMS) and other Federal agencies to implement regulations governing the management of offshore oil production facilities.

In particular, the Committee examined the regulatory framework governing the safety functions of MODUs and governing the preparations made by the owners/operators of MODUs to respond to potential oil spills as well as the liability responsibilities incurred by the owners/operators of MODUs that spill oil. Further, the Committee examined the potential environmental effects resulting from the oil spill and the ongoing response actions, and the long-term cleanup challenges and potential natural resource damages.

On June 9, 2010, the Committee on Transportation and Infrastructure convened to receive testimony regarding the liability requirements for oil spills imposed by the OPA and related statutes on offshore facilities and vessels operating in U.S. waters. The Committee considered the potential impact of the liability claims arising from the loss of the *Deepwater Horizon* MODU in the Gulf of Mexico and the subsequent oil spill from the Macondo well site on the offshore insurance industry.

The Committee also assessed whether the current liability limits for offshore facilities and vessels should be raised and, concomitantly, whether the amount of financial responsibility offshore facilities and vessels are required to demonstrate for liabilities associated with oil spills should also be raised.

WITNESSES

PANEL I

Rear Admiral Kevin Cook, Director of Prevention Policy, United States Coast Guard

Mr. David Matsuda, Acting Administrator, Maritime Administration

PANEL II

Mr. Warren Weaver, Manager of Regulatory Compliance, Transocean Ltd.

Mr. Ken Wells, President, Offshore Marine Service Association

Mr. James H.I. Weakley
President Lake Carriers Association

ANNEX I

REDUCTIONS FROM BASIC MANNING-MOBILE OFFSHORE UNIT (MOU)

SCHEDULE A

Application	On Location/ Field Move	Underway
Self Propelled Mobile Offshore Drilling Unit (MODU)	Offshore Installation Manager Barge Supervisor Two (2) Ballast Control Operators Two (2) Able Seamen MODU One (1) Ordinary Seaman MODU Maintenance Supervisor Assistant Maintenance Supervisor Second Assistant Engineer Two (2) Oiler/Motormen MODU	Master Chief Mate Second Mate Third Mate Three (3) Able Seamen Two (2) Ordinary Seamen Chief Engineer 1st Assistant Engineer 2nd Assistant Engineer 3rd Assistant Engineer Three (3) Oiler/Motormen
For voyages of less than 72 hours but more than 16 hours	Non-Applicable	Master Two (2) Third Mates Three (3) Able Seamen Two (2) Ordinary Seamen Maintenance Supervisor Two (2) Asst. Maint. Sups Two (2) Oiler/Motormen
For voyages 16 hours or less, but more than eight hours	Non-Applicable	Master Two (2) Third Mates Three (3) Able Seamen Two (2) Ordinary Seamen Maintenance Supervisor Asst. Maint. Sup. Two (2) Oiler/Motormen
For voyages of eight hours or less	Non-Applicable	Master Two (2) Third Mates Two (2) Able Seamen Ordinary Seamen Maintenance Supervisor Asst. Maint. Sup. Oiler/Motormen

ENDNOTES

- (1) Rigzone, *Offshore Rig Search*, http://www.rigzone.com/data/advanced_search.asp.
- (2) United Nations, *Oceans and the Law of the Sea: Division of Ocean Affairs and the Law of the Sea*, http://un.org/Depts/los/conventionagreements/convention_historical_perspective.htm4 historical perspective.
- (3) UNCLOS addresses several such issues as the exclusive economic zone, continental shelf, exploitation, technological prospects, universal participation in the convention, pioneer investors, protection of the marine environment, marine scientific research, and the settlement of disputes.
- (4) Written testimony of John D. Negroponte, Deputy Secretary of the U.S. Department of State on Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention before the Senate Foreign Relations Committee (September 27, 2007).
- (5) Seapower, *Odd Man Out: Will U.S. finally accede to the U.N. Convention on the Law of the Sea* (April 2009), <http://www.seapower-digital.com/seapower/200904/?pg=15#pg15>.
- (6) OCSLA defines "exploration" as the "process of searching for minerals, including geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals and any drilling, whether on or off known geological structures, including the drilling of a well" (43 U.S.C. § 1331). The term "development" is defined as "those activities which take place following discovery of minerals in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities," while "production" is defined to mean "those activities which take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and over-work drilling" (43 U.S.C. § 1331).
- (7) *Id.*
- (8) *Notice of Arrival or relocation of MODUs on the OCS*, 33 C.F.R § 146.202.
- (9) *Notice of Arrival on the ODC*, 33 C.F.R. § 146 (2009).
- (10) NVIC No. 7-84 (August 7, 1984), at 7.
- (11) *Id.* at 2-3.
- (12) *Id.* at 3.
- (13) *Id.*
- (14) UNCLOS, Article 94, *Duties of the Flag State*, para. 1.
- (15) GRETTE, *The Norwegian International Ship Register* (February 8, 2010), <http://www.grette.no/en/Co-workers/Cato-Myhre/The->

Norwegian-International-Ship-Register.

- (16) *the Norwegian International Ship Register*, http://www.nis-nor.no/upload/nis_brosjyre.pdf.
- (17) GRETTE, *The Norwegian International Ship Register* (February 8, 2010), <http://www.grette.no/en/Co-workers/Cato-Myhre/The-Norwegian-International-Ship-Register>.
- (18) Statistics Norway, *The Merchant Fleet 2008*(August 11, 2009), http://www.ssb.no/handelsfl_en.
- (19) Marine Safety Manual, Vol. II: Materiel Inspection, Section D: Port State Control, Chapter 1: General Aspects of Port State Control Examinations, Part B Background.
- (20) Powerpoint Presentation Presented by the U.S. Coast Guard, *USCG Port State Control and Qualship 21 Programs Vetting*/Chemical Seminar, Houston, Texas (March 15, 2006), www.intertanko.com/upload/presentations/CDR%20ThornPSC.ppt. 14
- (21) A detention is an intervention action taken by the port state when the condition of the ship or its crew does not correspond substantially with the applicable conventions to ensure that the ship will not sail until it can proceed to sea without presenting a danger to the ship or persons on board, or without presenting an unreasonable threat of harm to the marine environment. Detentions may be carried out under the authority of SOLAS 1974 as amended, Regulation 19; ICLL Article 21; MARPOL Article 5; STCW Article X and Regulation 1/4; ILO 147 Article 4; the Ports and Waterways Safety Act; or a U.S. Customs hold.
- (22) H.R. Rep. No. 98-338 (1983), reprinted in 1983 U.S.C.C.A.N. 924, 964
- (23) 46 C.F.R. §107.269 and 107.270.
- (24) 1989 IMO Code stands for the Construction and Equipment of MODUs.
- (25) 46 C.F.R. Part 108 ó Design and Equipment contains the U.S. regulations for MODUs with respect to construction and arrangement, stability, fire extinguishing systems, life saving equipment, cranes, equipment markings and instructions, and several miscellaneous items. 46 C.F.R. Part 109 ó Operations contains the U.S. regulations for MODUs with respect to tests, drills and inspections, operation of safety equipment, reports, notifications and records, emergency signals, cranes, and several miscellaneous items.
- (26) It should be noted that the IMO Assembly resolution incorporated by reference in Subchapter N is the IMOø 1979 MODU code and not the one that applies to the *Deepwater Horizon*.
- (27) RMI, *Mobile Offshore Drilling Unit Standards* (MI-293)(August 2002), at 17
- (28) U.S. Coast Guard, *U.S. Coast Guard's Maritime Information Exchange: Port State Information Exchange*, <http://psix.uscg.mil/PSIX/PSIXDetails.aspx?VesselID=33177>.
- (29) NVICs provide guidance to U.S. Coast Guard personnel and the regulated community regarding enforcement and compliance with Federal marine safety regulations. NVICs do not have the force of law, but they are important ötoolsö to enable regulated parties to comply with the law. NVICs are issued by the Assistant Commandant for Marine Safety, Security, and Environmental Stewardship and address any of a wide variety of subjects, including: vessel construction features; mariner training and licensing requirements; inspection methods and testing techniques; safety and security procedures; requirements for certain Coast Guard regulatory processes; manning requirements; equipment approval methods; and special hazards. U.S. Coast Guard, *Navigation and Vessel Inspection Circulars (NVIC): Background Information* (May 11, 2010), <http://www.uscg.mil/hq/cg5/nvic/>.
- (30) Required documentation includes: IMO MODU Code Certificate issued by the flag state or an authorized agent. In the case of the *Deepwater Horizon*, ABS, as an authorized agent of the Marshall Islands, issued the IMO MODU Certificate; and International Load Line certificate; Certificate of Financial Responsibility; International Pollution Prevention certificate; and National Pollution Discharge Eliminations System permit when drilling.
- (31) Coast Guard personnel have informed Subcommittee staff that the inspections they perform aboard foreign MODUs are not materially different than inspections they perform aboard U.S.-flagged MODUs.
- (32) The Nautical Institute describes dynamic positioning as öA computer control system [that] automatically maintains a vesselø position and heading by using her own propellers and thrusters. Position reference sensors, combined with wind sensors, motion sensors and gyro compasses, provide information to the computer pertaining to the vesselø position and the magnitude and direction of environmental forces affecting its position.ö
- (33) Statement of Mr. Douglas Harold Brown, Chief Mechanic/Acting Second Engineer of the *Deepwater Horizon* on Legal Liability Issues Surrounding the Gulf Coast Oil Disaster, before the House Judiciary Committee, May 27, 2010
- (34) *Id.*
- (35) Det Norske Veritas is a classification society and a member of the International Association of Classification Societies.
- (36) Statement of Mr. Douglas Harold Brown, Chief Mechanic/Acting Second Engineer of the *Deepwater Horizon* on Legal Liability Issues Surrounding the Gulf Coast Oil Disaster, before the House Judiciary Committee (May 27, 2010).
- (37) *Id.*
- (38) The ISM Code defines a önon-conformityö as an observed situation where objective evidence indicates the non-fulfilment of a specified requirement. A ömajor non-conformity" means an identifiable deviation that poses a serious threat to the safety of personnel or the ship or a serious risk to the environment that requires immediate corrective action and includes the lack of effective and systematic implementation of a requirement of this Code.

Appendix 1 – AMERICAN BUSINESSES KILL 14 WORKERS EVERY DAY

[**Source:** By Tom O'Connor, Executive Director of the National Council for Occupational Safety and Health, the umbrella organization of 20 state and local COSH groups. Article forwarded to us by our webmaster, Capt. J. David Miller and printed in Newsletter #71]

Now ó in the wake of a slew of highly publicized and preventable disasters ó is the time to demand action, before more workers die.

Itø been a very bad couple of months for worker safety: Seven dead in Anacortes, Washington, following the

explosion of the Tesoro refinery. Six dead in Middletown, Connecticut, in the Kleen Energy power plant explosion. Twenty-nine dead in West Virginia's Upper Big Branch mine disaster. And **11 dead in the Gulf of Mexico oil rig collapse (a fact almost completely overlooked in media coverage of the spill's environmental consequences)**.

But behind the headlines on the latest disaster is a far quieter but equally disturbing story of daily carnage. In the same week as the human-created disaster in the Massey mine in West Virginia, local media outlets around the country carried dozens of stories with headlines like "Man Killed in Trench Collapse" or "Fall from Roof Fatal."

The toll of these routine incidents – 14 deaths a day from injuries alone – is obscured because most occur one death at a time.

Month after month, year after year, workers die in trench collapses and falls from roofs. OSHA cites the employer, slaps it with a **modest fine (a median penalty of only \$3,675 per death in 2007)**, and points out that simple methods exist to prevent such tragic loss of life. Yet some employers continue to ignore the hazards and workers continue to lose their lives due to this criminal neglect.

Like the high-profile workplace disasters, the vast majority of deaths on the job are entirely preventable. The problem is not a technical one of chemical concentrations, safe machinery, and ventilation, but a political one – simply put, **our national system for enforcing health and safety regulations in the workplace is broken**.

We know how to prevent trenches from collapsing – by using trench boxes to shore them up. We know how to prevent falls from roofs from becoming fatal – by properly using safety harnesses. We know how to prevent coal mine explosions by minimizing the build-up of coal dust and monitoring methane concentrations. **But employers routinely refuse to use these established precautions, and OSHA does not force them to**.

Why No Enforcement?

First, it's a problem of resources: **OSHA's budget for enforcement is pitifully inadequate, a situation that has worsened since deregulation began in the Reagan era**. In the late 1970s, OSHA had one inspector per 30,000 covered workers; today it's one per 60,000.

Second, obstacles to any new workplace safety rules, put in place by deregulation ideologues in Congress, have effectively brought the OSHA regulatory process to a complete standstill. As the Center for Progressive Reform puts it, **In the nearly 40 years since its enactment, the OSHA Act has been exposed as a virtually useless tool for establishing occupational health and safety standards**. In the last 13 years, OSHA has issued exactly one new health standard establishing the maximum safe exposure to a chemical, and that under the duress of a court order.

Third, **OSHA's promise that all workers have the right to speak up about unsafe or unhealthy conditions without retaliation has proven to be a cruel joke to those who have risked their jobs by calling OSHA. The agency's whistleblower protection program is so ineffective that worker advocates cannot in good conscience advise a non-union worker to file an OSHA complaint if he or she wants to keep the job**.

The Massey mine explosion demonstrated clearly that the combination of de-unionization, lack of enforcement of safety regulations, minimal penalties for violations, and lack of whistleblower protections is lethal. As several current and former Massey workers noted, the mine was a time bomb waiting to explode, but **in a non-union mine, it was keep your mouth shut or lose your job**.

How to Fix It

The solutions to this sorry state of affairs are not complex:

- 1) Congress should amend the OSH Act and the Mine Safety and Health (MSH) Act to **protect whistleblowers and to require serious monetary and criminal penalties for egregious violators** whose willful neglect of safety results in workers' deaths. Under current law, even the most egregious case of employer neglect can result in no more than a misdemeanor, punishable by a maximum six months in jail. Civil penalties also lag far behind those for violations of other federal law. New OSHA chief David Michaels noted in a recent Congressional hearing that when a Delaware refinery worker was killed in a sulfuric acid explosion, OSHA assessed a fine of \$175,000, while the same incident resulted in EPA fines of \$10 million for violations of the Clean Water Act.
- 2) Congress should dramatically **increase the budget for OSHA enforcement**.
- 3) OSHA should fundamentally rework its system for regulating hazards. It should issue a broad "Health and Safety Program Standard" and cite employers under the "General Duty Clause" for unsafe conditions. These measures would require employers to develop worksite-specific health and safety programs and allow OSHA to enforce the employer's duty to provide a safe workplace – without having to navigate the endless bureaucratic obstacles to issuing safety or health standards on a one-by-one basis.

- 4) Congress should *close the loophole in the MSH Act that allows companies like Massey to avoid paying fines by contesting most MSHA citations, effectively shutting down the penalty system.* Massey contested 3,601 citations in 2009, creating a logjam that prevents MSHA from collecting on assessed penalties.
- 5) Congress should enact labor law reform so that workers who want to join a union and speak up about unsafe conditions are able to do so.

Fist-Pounding

But these changes won't come about because Congress simply decides to do so. Despite much fist-pounding by senators at recent hearings on the mine disaster, they will likely soon forget about worker safety and move on to the next crisis.

A bill introduced in 2009 would go a long way toward strengthening OSHA's ability to protect workers. The Protecting America's Workers Act would increase maximum civil and criminal penalties, expand protections for whistleblowers, and extend OSHA protections to public employees, many of whom are now excluded.

Unfortunately, a timid Democratic-controlled Senate Labor Committee appears unwilling to move the bill without Republican support. (Can someone explain to me why it's not a good idea to force Republicans to cast a vote against worker safety after the recent disasters?)

So perhaps we can expect little from Congress unless the labor movement and its allies turn up the heat on our representatives. Now is the time to demand action, before more workers die.