OCS NOA OMSA Talking Points

Issues

The Safe Port Act (the basis for the NOA rule) required *foreign* vessels to report arrival on the OCS, not US vessels. This was pointed out in the OMSA docket comments on the NPRM. Additionally both the Safe Port Act of 2006 and the preamble to this regulation state “This new final rule is designed to be consistent with the NOA requirements of § 160.206 for vessels bound for, or departing from, ports, or places in the United States.” Yet, § 160.206 states a crew or supply boat is “exempt from requirements in this subpart”. This OCS NOA requirement as being applied to US vessels is therefore not consistent, as required.

Applicability – In § 146.402, Definitions it says “Arrives on the OCS means when a vessel enters any OCS block area to commence operations for which it has submitted a Notice of Arrival under § 146.405(b)(2).” So if you never submit an NOA then you never arrive on the OCS and therefore are not required to submit an NOA.

Tugs, OSVs, and crewboats are not required to carry a computer with satellite internet service, or have a port agent, or a 24-hour dispatcher ashore. So they can’t send an electronic NOA (eNOAD) or an updated NOA. A regulation that cannot be reasonably obeyed should not be published.

Workboats rarely know 24-hours in advance when/where they are going. They do not operate on a schedule, they respond to the needs of the customer (the MODU or platform operator) which are known to radically change on short notice. In the rare event that advance notice is given, they still would not be able to send a complete NOA as they would not have data on cargo and passengers until shortly before leaving the port.

Workboats are expected to deliver cargo and workers on a “just in time” basis. Having to sit around waiting for a 24-hour clock will cripple the offshore petroleum sector. If US vessels are not exempted from the NOA requirements, the time of the notice must be significantly shortened from the current 24-hour minimum.

US vessel crewmembers all hold TWIC’s, most hold MMC’s and all have had complete background checks, so are low risks. Foreign vessel crews have no TWIC’s/no background check, so are higher risk.

Moving between OCS block areas is not “arrival on the OCS” it is movement *within* the OCS, so a US vessel shouldn’t report these operations. The regulation does not clearly require this report, yet the preamble (and recent FAQ) states it is required. Further, the requirement for US vessels to report when moving between block areas on the OCS makes no sense from a security perspective since the voyage from the port to the OCS and from the OCS to port does not require reporting. We are not suggesting that these trips should also be required; rather we note the questionable value of the current implementation. Further more commercial fishing vessels, charter fishing vessels, and pleasure boats are operating on the OCS compared to the vessels performing OCS activities. Having vessels conducting OCS activities give an NOA but not any others leads us to question the actual MDA value of NOA’s vice expanded carriage of AIS.

There are 1700 OSVs certificated in MISLE, the NVMC may not be able to handle NOAs from that many OSVs and a similar number of crewboats/tugs.

The outreach to industry and the time to implement was inadequate for a totally new and technically challenging requirement. The USCG needs to provide training on use of the eNOAD software. The eNOAD Info Path submission option must be in place for the many smaller vessels without constant internet service before enforcement begins.

The cost of compliance is significantly higher than the NPRM indicated. Outfitting 1 vessel with necessary equipment to comply, the cost for install kit is $37,000 plus tax including hardware, backup with antennae and remote diagnostics, plus a minimum cost of $900/month usage fee (which can be much higher on those vessels requiring high numbers of NOA data entry). So, for example, a fleet of 50 FSVs which already operate on extremely thin margins, the cost would be $1,850,000 upfront, plus $540,000 **per annum minimum** usage fees. This is the cheapest alternative on the market with substantially less bandwidth/capability than VSAT units and with less reliability. These costs do not include the "ownership cost" of replacement parts and/or units which is estimated to be an additional 25% per annum of the initial capital cost of the system, or $462,500/annum. The alternative of utilizing "clearing agents" for NOAs at $140/submission then this will cost the same fleet of 50 FSVs $3,780,000/**annum**. As such, we assert that this does have a significant

economic impact on a substantial number of small entities and the regulation must be withdrawn. Similarly based on this economic impact we assert the "Unfunded Mandates Reform Act" provisions were also triggered despite the regulation preamble claim to the contrary.

AIS is significantly less costly to the industry to implement, provides real time data, and provides more comprehensive MDA data than the eNOAD and should be the route to compliance vice manual NOA submissions.

The nature of the rule and our industry will require that most, if not all, NOA's to be filed at sea. The inherent dangers of our industry, inclement weather, storms, reduced visibility, maintaining proper lookouts, etc. will be increased many times over if a crew member is pulled from their normal, daily duties in order to complete the information required to file an NOA in a timely fashion. Night navigation requires that there are no lights visible forward of the navigation lights. In a crew boat environment, NOA's filed at night will require that they be done in the wheelhouse, or that the lookout will either have to man the bridge while the Captain goes below to file the NOA or the deckhand will have to file the NOA below. This is going to create a shorthanded and less safe situation.

The regulation is confusing and needs clarification and republication. The regulation text does not specify vessel block to block reporting, yet the preamble does. As currently interpreted, it is particularly harmful to US flagged vessels engaged in the daily transportation of goods and services on the OCS in support of E&P activities on the OCS that do not have the practical ability to provide 96 to 24 hour notice of arrival.

The current version of the OCS NOA regulation lacks any emergency provisions. For example, a US vessel attempting to respond to the Macondo fire/explosion that was already on the OCS would be in violation since they did not file an eNOA 24-hours in advance of providing rescue or firefighting assistance. Similarly a MODU that moves off station for a hurricane may need to give 96-hour notice to return to the well This needs to be addressed.

POTENTIAL SOLUTIONS

Given the problems with the implementation of the rule by all affected parties (the regulated as well as the regulator), a stay in the effective date for the rule is appropriate and is requested, during which period the Agency works with Industry to address problems with and applicability of the rulemaking.

That this group hold a second conference call the week of February 21 to review the progress in identifying and resolving the impediments to full compliance by both the industry and the USCG.

That the USCG seriously considers greatly reducing the 24-hour advance notice currently required to better match the operational tempo of the industry.

That the USCG seriously consider (1) using AIS/satellite AIS/LRIT technology in place of manual submission of the eNOAD and (2) publishing the expansion of AIS carriage requirements that were part of the same 2009 NPRM as the OCS NOA regulations to most economically, safely, and effectively facilitate the MDA capability of the USCG. AIS/LRIT would provide both safety and security benefits to the marine industry and to the nation at a lower cost than an eNOA.

Given all of the challenges being faced by the oil and gas Industry today as a result of the Macondo blowout and the aftermath of the current regulatory climate being faced by the Industry, absent any commitment to stay the rule and seek improvements, Industry will have no choice but to seek Congressional help to remedy this.

SUMMARY

We appreciate the opportunity to advance security in the Gulf while developing a process that does not create insurmountable obstacles to commerce. As we engage in this process, OMSA is committed to participating in a dialog that will serve our mutual interests in developing rules that advance operational clarity, safety and security.

Currently the offshore industry faces the most uncertain and destabilized market conditions in its history. Given this backdrop, OMSA requests the US Coast Guard to keep its mission to facilitate commerce at the forefront of its reconsideration of this regulation's design and implementation. In this environment, there is very little ability for our members to absorb additional government mandated costs especially when no clear safety or security benefit can be demonstrated.