

Subcommittee on Oil-Spill  
Financial Responsibility

---

**Implementing the Federal  
Oil-Spill Financial Responsibility  
Program in State Coastal Waters**

**Issues and Recommendations  
for State/Federal Coordination**

---

Report to the U.S. Outer Continental Shelf  
Policy Committee - October 21, 1998

## **Foreword**

This report of the Subcommittee on Oil-Spill Financial Responsibility (OSFR) responds to a Minerals Management Service (MMS) request for advice from the Outer Continental Shelf (OCS) Policy Committee on how the new Federal regulations on OSFR for offshore facilities should be implemented in State coastal waters. The OSFR regulations implement the Federal Oil Pollution Act (OPA) requirement that persons responsible for certain hydrocarbon exploration, production, and pipeline facilities must demonstrate they can pay for cleanup and damages resulting from facility oil spills.

The OSFR Subcommittee was established by the Policy Committee through a resolution passed at its meeting on April 29, 1998. Policy Committee Chairman James I. Palmer named the members of the Subcommittee by letter dated July 14, 1998. The subcommittee members are the Policy Committee representatives for Alabama, Alaska, Louisiana, Mississippi, and Texas. It is possible that offshore facilities subject to OSFR requirements are located in all of these States and California. California's interests regarding OSFR coordination are not represented here because it has chosen not to participate in the OCS Policy Committee. The subcommittee was chaired by Larry O. Hulsey, the Texas representative to the Policy Committee.

The analysis and recommendations in this report focus on how MMS and the affected States can work cooperatively to ensure that persons responsible for offshore facilities located in State waters fully comply with the OSFR requirements. Often, the suggested approaches to cooperation are State-specific. This results from some of the inherent differences among the States with respect to the organization of individual State bureaucracies and the existence of State OSFR programs.

This is the second OCS Policy Committee report on OPA. The previous report, dated April 3, 1995, included recommendations on the need to amend the original OPA financial responsibility provisions to make it possible to develop a reasonable OSFR regulation. The recommendations in the first report formed the basis for the 1996 amendments to OPA. The OSFR regulations considered in this report implement the 1996 OPA amendments.

## **INTRODUCTION**

The Federal Oil Pollution Act (OPA) requires a person who is responsible for an offshore facility to demonstrate the ability to pay for cleanup and damages resulting from a facility oil spill.<sup>1</sup> The MMS oil-spill financial responsibility (OSFR) regulations<sup>2</sup> implement the OPA requirement.

Generally, the facilities covered by the OSFR regulations are those that are:

- ▶ Used to explore for, produce, or transport crude oil or natural gas condensate;
- ▶ Located in the Outer Continental Shelf (OCS) and certain State coastal waters; and
- ▶ Determined to have a worst-case oil-spill discharge potential of greater than 1,000 barrels.

The responsible party's OSFR evidence may take several forms including insurance and surety bonds. Generally, the amount of OSFR evidence required ranges from \$10 million to \$150 million, depending on facility location and the calculated volume of the facility worst-case oil spill discharge potential.

The MMS ability to ensure compliance with the OSFR program will depend, in part, on its ability to identify the facilities and responsible parties that might be subject to the rule. This is relatively easy in the OCS because MMS monitors the ownership and operation of every facility. However, MMS has limited knowledge of facilities and responsible parties in State waters. Also, the MMS ability to determine whether the general OSFR requirements are appropriate for a particular facility will depend, in part, on the relative risks of facility operations. Again, this is relatively simple in the OCS because MMS has risk and performance data for every facility. However, MMS has little data of this type for facilities located in State waters. Finally, it is important that MMS make available to representatives of a host State any information they wish regarding MMS OSFR activity in State waters.

In recognition of the need to fill some of its coastal facility data gaps and share OSFR program information, MMS sought advice from affected States. Under the auspices of the Outer Continental Shelf Policy Committee, the States agreed to review the application of the MMS OSFR program in State waters, and to offer advice on how MMS and the States can work together to encourage OSFR compliance. Both MMS and the States should benefit if a cooperative relationship is established for OSFR. The MMS will benefit because cooperation should make OSFR program administration more efficient. The States will benefit because cooperation should help insure that offshore facilities located in State waters needing OSFR coverage continue to produce without interruption or penalty.

## **CHARGE TO THE SUBCOMMITTEE**

The Policy Committee resolution that established the OSFR Subcommittee (Appendix A) included very general guidance to "advise and assist" MMS with OSFR program implementation. The possible scope of the subcommittee activity was more precisely defined in the letter from the subcommittee chairman to the members (Appendix B). The letter highlights the need to define the State and Federal OSFR relationships in three topic areas:

- ▶ Identifying State contacts that MMS can work with on OSFR matters;

- ▶ Establishing criteria for determining if an offshore facility located in State waters poses an extraordinary oil-spill risk; and
- ▶ Developing outreach mechanisms to educate the responsible parties for facilities located in State coastal waters about the OSFR program and their compliance responsibilities.

In addition to these three topics, the subcommittee also considered options for encouraging responsible parties with facilities in State waters to comply with the OSFR regulations.

## **ANALYSIS OF OSFR IMPLEMENTATION ISSUES**

With respect to OSFR processing, the subcommittee concluded that differences among the relevant State administrative processes inhibit development of a single set of OSFR implementation recommendations that can be applied in every State. As a result, the subcommittee analysis led to some State-specific approaches to OSFR coordination.

### ***1. State Agency Contacts for OSFR Coordination***

For OSFR coordination purposes, the subcommittee found that the affected States and MMS may need to interact on two fundamentally different levels. One is the policy or administrative level. Possible OSFR policy issues include whether a State should cooperate with MMS on OSFR, the general approaches to cooperation, and the need for or nature of formal cooperating agreements. The other level of OSFR interaction is technical or operational. Included among the technical and operational issues are what specific types of information should be exchanged, and what processes should be used for exchanging the information.

Policy. On matters of policy, the subcommittee concluded that MMS should work with a single point of contact within each State. This conclusion is based, in part, on the subcommittee's review of member States' executive organizations that might be involved in OSFR coordination. In most States, the operational data and technical expertise relevant to OSFR are located in more than one organizational unit. For example, the data on offshore facility locations and characteristics, and the expertise on the potential environmental risks of those facilities are commonly housed within separate executive arms. Given that OSFR policy considerations might involve both, the subcommittee concluded that MMS should confer with a person who can represent all affected State interests. The State's OCS Policy Committee member is such a cross-organization representative, and **the subcommittee recommends that MMS confer with the State representative to the OCS Policy Committee regarding OSFR policy matters, unless the governor identifies another point of contact.**

Operational and Technical. As previously discussed, technical and operational information may be located in different places within each State's executive organization. Because of these inter-State differences, the subcommittee concluded that the MMS points of contact for OSFR may be varied and will necessarily be State-specific. **The subcommittee recommends that MMS confer with the following contacts regarding OSFR operational and**

**technical information needs.**

- ▶ *Alabama.* The State Oil and Gas Board.
- ▶ *Alaska.* The Alaska Department of Environmental Conservation (DEC), Division of Spill Prevention and Response, is the state agency responsible for implementing the Alaska OSFR program. The Alaska Department of Natural Resources (DNR) and the Alaska Oil and Gas Conservation Commission (AOGCC) also may have information that relates to offshore facility changes and facility leases or permits. When specific facility permit data needed to implement the Federal OSFR rules are defined, the Governor's Division of Governmental Coordination may facilitate the initial interagency agreements necessary to set up the State/Federal data responsibilities and program relationships. The Alaska DEC maintains a detailed database of information related to offshore facility owners/operators and their required OSFR for Alaska-regulated operations. This information could be made electronically available to MMS. Other types of data, such as lease information and operational and/or facility hardware changes is available at Alaska the DNR and the AOGCC.
- ▶ *Louisiana.* The Louisiana Oil Spill Coordinator has been charged with the responsibility for providing OSFR-related operational and technical information to MMS. The Coordinator will obtain this information from the various offices/divisions within the Louisiana Department of Natural Resources which are identified below with a brief description of their respective duties that are of interest. The Office of Conservation - Engineering Division issues all permits to drill oil and gas wells; processes changes of operator for oil and gas wells; and issues all work permits to conduct operations of oil and gas wells at the district level. A permit is not required for production equipment, therefore, the State could not provide information regarding hardware changes that might increase the worst-case discharge volumes at facilities within the jurisdictional area. Production data is available and filed on a lease or unit or individual well basis. Finally, the Office of Mineral Resources approves all mineral leases on State-owned lands and State owned water-bottoms and approves all transfers of State-issued mineral leases to other parties.
- ▶ *Mississippi.* The Mississippi Department of Environmental Quality is responsible for issuing geophysical permits and leasing offshore State-owned minerals for oil and gas exploration and development. The Mississippi Secretary of State is responsible for leasing offshore State-owned water bottoms for pipeline placement. The Mississippi Oil and Gas Board is responsible for establishing drilling units and the general requirements of drilling and production operations. The Mississippi Department of Marine Resources is responsible for rendering consistency determinations under the Federal Coastal Zone Management Act.
- ▶ *Texas.* The General Land Office, and the Railroad Commission of Texas.

## ***2. Mechanism for OSFR Coordination***

The subcommittee considered whether it would be advisable for the States and MMS to enter into a formal agreement on OSFR coordination. Given the types and amounts of technical and operational information that could be involved, and the number of State organizational elements that have responsibility for this information, the subcommittee concluded that a formal agreement may be appropriate. A formal agreement could summarize the objectives of OSFR coordination, identify the appropriate administrative contacts, and detail the specific types of data and information that should be shared. Although there may be benefits to a formal OSFR agreement, the subcommittee believes that MMS should establish a separate agreement with each State.

The subcommittee reviewed the agreements that some member States and MMS have already established. Among other things, these agreements address OPA-related topics, such as oil-spill response planning. Most specifically, the agreement between the Texas General Land Office and MMS includes a general provision to cooperate on implementing OSFR. Based on these considerations, **the subcommittee recommends that each State consider whether a formal OSFR agreement with MMS would be appropriate.** Further, if a State wishes to develop a formal agreement, **the subcommittee recommends that MMS take the lead for developing any State/MMS agreement.**

## ***3. MMS and State OSFR Information Needs***

The subcommittee reviewed the types of information that MMS needs to manage the OSFR program, and identified the types of OSFR information that an affected State might use for other purposes. The subcommittee developed no recommendations based on this review, but the discussion that follows should be useful for implementing the recommendations on OSFR contacts and coordination mechanisms.

MMS. The MMS needs two basic types of information that States may have on offshore facilities located in State waters:

- ▶ New facilities that are installed, and modifications to existing facilities that might cause OSFR status to change; and
- ▶ Ownership of new facilities, and changes in ownership at existing facilities that might establish or change the facility responsible party.

As noted earlier, this information may not be available from a single State organization within the State.

State. The subcommittee determined that the OSFR information States will need may vary depending upon State interest and intended use. In general, the affected States may benefit from receiving the following types of information for facilities located in State waters:

- ▶ Which facilities have OSFR;
- ▶ How much OSFR coverage is required;

- ▶ Who maintains the OSFR coverage; and
- ▶ Civil penalties MMS awards for OSFR noncompliance.

Among the uses a State might have for this information is to help structure its emergency response planning activities, and to aid assessments of facility safety or environmental performance.

#### *4. Encouraging OSFR Compliance in State Waters*

The MMS wants to minimize the potential that the OSFR program will interfere with oil and gas operations in State waters. To that end, MMS has asked for advice on how to maximize OSFR compliance so that the number of potentially disruptive enforcement actions against persons who do not comply is minimized. Under OPA, MMS has two options for addressing noncompliance.<sup>3</sup> One is for MMS to assess a civil penalty of up to \$25,000 per day against the responsible party if needed OSFR coverage is not maintained. The other option is for MMS to ask the Attorney General to request that a Federal District Court compel compliance through an order to terminate facility operations or through some other means. Neither option can ensure timely OSFR compliance, and both options could indirectly generate unpredictable economic impacts on the host State.

The subcommittee recognizes and shares the MMS concern that, given the nature of the MMS authority, facilities located in State waters might continue to operate even after MMS initiates an OSFR enforcement action. However, the subcommittee identified no specific measures that MMS could adopt to either reduce the likelihood that enforcement actions will be needed or enhance the effectiveness of the enforcement actions it takes. Likewise, the subcommittee identified no OPA-based authority for a host State to encourage OSFR compliance, either through penalty or other means.

The subcommittee has concluded that State opinions may differ regarding the need to do more to encourage OSFR compliance for facilities located in State waters. Further, differences of opinion among host States may be justified based on a number of factors including the existence of a State OSFR program and the perceived environmental or economic risks attendant to noncompliance. As such, **the subcommittee recommends that each affected State independently consider the need to take action to further encourage compliance with the MMS OSFR regulation.** If a State determines it should take action, the subcommittee believes the State should look for the authority in State law rather than OPA. The subcommittee identified one possible option that a State may have to encourage OSFR compliance. Since the host State must authorize the production of oil and gas from its waters, the State could make the authorization subject to compliance with the MMS OSFR regulations.

## *5. Requiring OSFR under OPA and State Law*

During its review of the issue on encouraging OSFR compliance in State waters (see #4 above), the subcommittee observed that Federal OSFR, and State OSFR where it exists, seem to have the same general purpose--to ensure that parties responsible for spills from offshore facilities are able to pay the costs of cleanup and damages. The subcommittee also observed that a responsible party with an offshore facility covered by a State OSFR program might be required to demonstrate separately under both programs, and that separate demonstrations may be redundant because both address the same potential oil-spill events. The subcommittee questions whether duplicate OSFR coverage is what the Congress intended. Rather, the subcommittee believes that it would be reasonable for a responsible party to make a single OSFR demonstration in an amount equal to the greater of the State or MMS requirement.

The subcommittee could not determine with certainty whether this possible "double coverage" phenomenon might occur because it had incomplete information about substitution allowances that OPA or State laws might provide when both laws apply to an offshore facility. However, the subcommittee concluded that it would be in the public interest to further investigate this issue. In that regard, **the subcommittee recommends that MMS facilitate a legal review to establish whether a single OSFR demonstration may be used to satisfy both OPA and State requirements.** This review should cover the specific cases of Alaska and California because both States have OSFR laws, and both States may host offshore facilities that are subject to OPA OSFR requirements. **The subcommittee further recommends that MMS use the results of this review as a basis for taking action to clarify the extent to which a responsible party's OSFR demonstration may be applied within Federal waters, or across both State and federal waters.**

## *6. OSFR for Facilities that Pose Extraordinary Risks*

The dollar amount of OSFR that a responsible party must demonstrate is generally linked to the volume of the potential worst case oil-spill discharge calculated for the offshore facility. The OSFR regulation includes two volume/dollar "look-up" tables that must be applied to facilities that fit this general case. However, OPA and the OSFR rule also include a provision for requiring a higher OSFR amount or lower worst-case discharge threshold for any facility that poses relatively high risks.<sup>4</sup> The MMS asked for advice on how it should coordinate with States to determine if any of these exceptional offshore facilities are located in State waters.

The subcommittee believes that a State's interest in identifying a particular offshore facility as "exceptional" for OSFR purposes may depend on a variety of factors including the existence of a State OSFR program and the State's assessment of the environmental or economic risks posed by the worst-case spill. This presents a situation similar to the one described above for States to encourage OSFR compliance. Given the potential for justifiable inter-State variability, the subcommittee found that it would be impractical and possibly inappropriate to recommend or suggest development of a single set of criteria to screen for exceptional facilities located in State

waters. However, the OSFR regulation includes no consultation provisions that a State can use to provide information to MMS on exceptional facilities. Therefore, if a State wishes to engage MMS on this issue, **the subcommittee recommends that the State establish an agreement with MMS on how State input regarding decisions on exceptional facilities will be managed.**

## ***7. Outreach to Responsible Parties with Facilities in State Waters***

The MMS estimated that the new OSFR program will affect about 25 offshore facility responsible parties who operate exclusively in State waters. These parties may have no prior experience with MMS or the previous Federal OSFR program. This situation creates expanded communication challenges for MMS. A communication tool commonly used by MMS to distribute detailed information on regulatory compliance is the "Notice to Lessee" (NTL). However, NTL distribution is generally limited to parties that operate facilities on the OCS because MMS can clearly identify all of them. There is no assurance that all the non-OCS parties affected by OSFR will receive the NTL that will be distributed for OSFR. The MMS plans to use the computer Internet to enhance its ability to distribute OSFR information, especially to those who normally do not work with MMS. Based on its review of the MMS OSFR outreach program, the subcommittee offers the following recommendations.

Internet. The subcommittee believes the MMS OSFR web site will be a good means for providing responsible parties for offshore facilities located in State waters with information about complying with the OSFR requirements. In order to enhance the site, **the subcommittee recommends that MMS add:**

- ▶ **the USGS State topographic map indexes to the State geography pages;**
- ▶ **an option for including an oil and gas field name and/or facility name to the facility query screen; and**
- ▶ **a "frequently asked questions" section with a place to make comments or ask additional questions.**

Oil Storage tanks. A fundamental difference between many production facilities located in Gulf coast State waters and those in the OCS is the presence of oil storage tanks. While produced oil is normally not stored on OCS facilities, oil is commonly stored on facilities in State waters. This is an important outreach issue because the storage tank volume may be a major factor in the potential worst-case discharge volume calculation. As such, the volume of a storage tank may dictate the cost of OSFR compliance. In order to clarify for responsible parties the OSFR implications of oil storage tanks, **the subcommittee recommends that MMS advise parties responsible for offshore facilities located in State waters that limiting the usable oil storage capacity may reduce or eliminate the need to demonstrate OSFR.**

Regulations flow chart. During its review of the OSFR regulations, the subcommittee determined that the OSFR compliance process would be easier for affected States and

responsible parties to follow if the process was presented in flow chart fashion. The subcommittee notes that MMS has already prepared a flow chart to aid persons affected by the oil-spill damage claims portion of the OSFR rule. In addition to that chart, **the subcommittee recommends that MMS develop a flow chart outlining the entire OSFR compliance process.**

Industry Trade Associations. Given that MMS cannot insure that all the non-OCS responsible parties will receive information about the OSFR program through an NTL or other means, **the subcommittee recommends that MMS distribute OSFR information to the oil and gas industry trade associations.** These associations can, in turn, distribute the information to members who may be affected by Federal financial responsibility requirements for the first time.

## Notes

---

1. Reference 33 U.S.C. 2716. Passed August 18, 1990; amended October 19, 1996.
2. Final Regulation on Oil Spill Financial Responsibility for Offshore Facilities (30 CFR Part 253). Federal Register, Volume 63, Number 154, page 42699. August 11, 1998.
3. Reference OPA, Section 4303, which states:

"(a) Administrative.--Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 1016 or the regulations issued under that section, or with a denial or detention order issued under subsection (c)(2) of that section, shall be liable to the United States for a civil penalty, not to exceed \$25,000 per day of violation. The amount of the civil penalty shall be assessed by the President by written notice. In determining the amount of the penalty, the President shall take into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior violation, ability to pay, and such other matters as justice may require. The President may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which had been imposed under this paragraph. If any person fails to pay an assessed civil penalty after it has become final, the President may refer the matter to the Attorney General for collection.

(b) Judicial.--In addition to, or in lieu of, assessing a penalty under subsection (a), the President may request the Attorney General to secure such relief as necessary to compel compliance with this section 1016, including a judicial order terminating operations. The district courts of the United States shall have jurisdiction to grant any relief as the public interest and the equities of the case may require."
4. Reference 30 CFR 253.13(b)(3) and (b)(4), which state: "The [MMS] Director may determine that you must demonstrate an amount of OSFR greater than the ... [general] amount based on relative operational, environmental, human health, and other risks ...;" and "[Y]ou must demonstrate OSFR ... for a facility with a potential worst oil-spill discharge of 1,000 bbl or less [emphasis added] if the [MMS] Director notifies you in writing that the demonstration is justified by the risks of the potential oil-spill discharge."

## **Appendix A**

---

### **Resolution of the OCS Policy Committee April 29, 1998**

Resolved that the OCS Policy Committee hereby establish a Subcommittee to advise and assist the Minerals Management Service to implement 30 Code of Federal Regulations Part 253 - Oil-Spill Financial Responsibility for Offshore Facilities.

RESOLVED FURTHER that the Chairman of the OCS Policy Committee is hereby directed to appoint the members of the Subcommittee, and further

RESOLVED that the Subcommittee report back to the full Committee with its recommendations presented at the October 1998 meeting.

## **Appendix B**

---

**Letter from the Chairman of the  
Oil Spill Financial Responsibility Subcommittee  
to the subcommittee members**

## Appendix C

---

### **The Subcommittee on Oil-Spill Financial Responsibility Members**

#### Texas

Larry O. Hulsey (chairman)  
President  
Larry O. Hulsey and Company

#### Alabama

Donald F. Oltz  
Director, Alabama Geological Survey  
Supervisor, Alabama Oil and Gas Board

#### Alaska

Diane E. Mayer  
Director  
Division of Environmental Coordination  
Office of the Governor

#### Louisiana

Jack C. Caldwell	William Marsalis
Secretary	Geological Administrator
Louisiana Department of Natural Resources	Office of Mineral Resources

#### Mississippi

James I. Palmer  
Executive Director  
Mississippi Department of  
Environmental Quality