

**MEMORANDUM OF AGREEMENT
BETWEEN THE
MINERALS MANAGEMENT SERVICE – U.S. DEPARTMENT OF THE INTERIOR
AND THE
U.S. COAST GUARD – U.S. DEPARTMENT OF HOMELAND SECURITY**

MMS/USCG MOA: **OCS-02**

Effective Date: **September 12, 2006**

SUBJECT: CIVIL PENALTIES

A. PURPOSE

The purpose of this Memorandum of Agreement (MOA) between the Minerals Management Service (MMS) and the U.S. Coast Guard (USCG) is to identify responsibilities and provide guidance regarding the pursuit, assessment, and collection of Civil Penalties.

This MOA replaces Section 2 (Civil Penalties) of MOA OCS-01: Agency Responsibilities, dated 30 September 2004. Implementation of this MOA will be in accordance with Section J (Memorandum of Agreements – Development and Implementation) of the Memorandum of Understanding (MOU) between the MMS and USCG dated 30 September 2004. The participating agencies will review their internal procedures and, where appropriate, revise them to accommodate the provisions of this MOA.

B. STATUTORY AUTHORITIES

The USCG and MMS enter this agreement under authority of 14 USC §141 – Coast Guard Cooperation with Other Agencies; 43 USC § 1347, 1348(a) - the Outer Continental Shelf Lands Act (OCSLA), as amended; 33 USC § 2712 (a)(5)(A) - the Oil Pollution Act of 1990 (OPA); and 43 USC §§ 1301-1315 - the Submerged Lands Act (SLA), as amended.

The MMS regulation is 30 CFR § 250.1400 – Subpart N, Outer Continental Shelf (OCS) Civil Penalties, issued pursuant to 43 USC § 1350.

Applicable USCG regulations are found under 33 CFR, Subchapter N -- Outer Continental Shelf Activities, Parts 140-147.

C. JURISDICTION

The MMS is responsible for managing the Nation's mineral resources which include oil, natural gas, and renewable energy development in a safe and environmentally safe manner. Under the OPA, the MMS is also responsible for oil spill planning and preparedness activities for all facilities located in both State and

Federal offshore waters. Jurisdiction includes the area extending seaward of the coastline to the exclusive economic zone of the United States.

The USCG is responsible for protecting the marine environment and promoting the safety of life and property on the OCS. The USCG regulates OCS facilities, mobile offshore drilling units, and vessels engaged in OCS activities through compliance inspections and enforcement of regulatory requirements related to personnel, workplace safety and health, operations, and emergency equipment and procedures.

D. AGENCY RESPONSIBILITIES

The OCSLA-based regulations under 33 CFR Subchapter N are the USCG regulations that would be appropriate for MMS civil penalty assessment. If it is determined that a violation may warrant a civil penalty under the provisions of the OCSLA, the MMS (for the Secretary of the Interior) is the agency that will assess, pursue, and collect civil penalties for that violation. The USCG retains civil penalty action authority for vessel-related activities under Title 46 USC and for the OPA/MARPOL regulations incorporated in Title 33 CFR.

The regulatory authority allows both the MMS and the USCG to inspect for violations of Title 33 Subchapter N. Therefore, the MMS Civil Penalty Program may receive a USCG violation to review from either the USCG or from within the MMS, depending on which agency cited the violation. Because Subchapter N requires a period of corrective action, the MMS will not review those USCG violations that constitute or constituted a threat of serious, irreparable, or immediate harm, for civil penalty purposes, until Subchapter N, "Sanctions" reflects 43 USC § 1350 (b)(2).

1. USCG PROCESS

If the violation is cited by the USCG, the USCG will investigate and document OCSLA-based violation cases according to the procedures in 33 CFR §140.40 with the following clarification: the cognizant Officer-in-Charge, Marine Inspection (OCMI) will confirm that a violation occurred and establish a reasonable time for the violator to fix the problem. The OCMI may do this in consultation with MMS, particularly on matters in which MMS has expertise or knowledge of industry practice. If the violator does not correct the problem, or does not file an appeal with the appropriate USCG official in the allotted time, the OCMI will refer the case to MMS, for civil penalty action, pursuant to 43 USC §1348 (a). The OCMI may require immediate corrective action for more serious deficiencies, including those that constitute a threat of serious, irreparable, or immediate harm; however, a violation case shall not be initiated until after the party has been notified of the deficiency and fails to comply with an order to correct the deficiency.

When referring a case to the MMS, the OCMI will forward the following information:

- a. The case file, which consists of a summary of the investigation and a USCG determination of the regulations violated. This should include the date(s) of the violation, when the violator was notified, the time period given to correct the violation, and the follow-up that confirmed the violation was not corrected during that time period.
- b. A description of the seriousness of the violation and any incidents actually associated with the violation.

- c. If requested, additional information concerning the merits of a civil penalty action. All physical evidence remains with the USCG, but will be made available to the MMS upon request.

If the violator files an appeal of a USCG enforcement action, the USCG will not forward the case to MMS until the appeal has been resolved.

Upon receipt of the violation report, the MMS OCS Regional Civil/Criminal Penalties Program Coordinator will appoint a Reviewing Officer (RO) who will process the report in accordance with the procedures outlined in the MMS OCS Criminal/Civil Penalties Program Guidebook (Attachment 1).

Notification of the MMS RO's decision regarding the civil penalty assessment, collection, compromise, or dismissal shall be provided to the OCMI originating the violation report.

Any item, collection or grouping of information about an individual, or that can be retrieved by using the name of the individual, that is obtained by the USCG pursuant to an investigation into OCSLA violations must be maintained or used in compliance with the Privacy Act (5 U.S.C § 552a) and entered into an appropriate system of records.

2. MMS PROCESS

If MMS cites the violation, then the violation will follow the procedures outlined in OCS Civil Penalty Program Flow Charts located in the OCS Civil/Criminal Penalties Program Guidebook (Attachment 1, Pages 26-27.) For cases involving violation of Coast Guard regulations, the MMS will copy the OCMI on the letter advising the violator of the civil penalty review. After review, the MMS will send a copy of the Notice of Proposed Civil Penalty Assessment and copy of the case file to the OCMI. The MMS will also send a copy of the RO's Final Decision, and appeal information, if applicable; and notify the OCMI when payment is made and the case is closed.

If, after receiving a copy of either the advisement letter or the Notice of Proposed Civil Penalty Assessment, the USCG would like to participate in the process (either by providing additional information or attending meetings), the OCMI will contact the MMS Reviewing Officer. The USCG will neither contact the violator nor discuss any part of the civil penalty case with the violator; the USCG will refer any civil penalty discussions to the MMS RO.

3. CONTACTS

Agency staff responsible for implementation and maintenance of this MOA are:

- a. MMS National Civil/Criminal Penalties Coordinator
 MMS Headquarters
 Offshore Minerals Management
 Office of Offshore Regulatory Programs
 Safety and Enforcement Branch – MS 4023
 381 Elden Street
 Herndon, VA 20170

b. USCG Commandant (G-PCA-1)
 U.S. Coast Guard
 Office of Investigations and Analysis
 2100 2nd Street, S.W.
 Washington, D.C. 20593-0001

E. GENERAL PROVISION

This MOA does not alter, amend, or affect in any way, the statutory authority of the MMS or the USCG. This MOA cannot be used to obligate or commit funds or as the basis for the transfer of funds. All provisions in this MOA are subject to the availability of personnel and funds. The MOA is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person. This MOA neither expands nor is in derogation of those powers and authorities vested in the participating agencies by applicable law. It is the intent of the parties that the MOA remain in force even if a portion of it is determined to be unlawful, provided the remaining portion can be read coherently and understood.

F. AMENDMENTS TO THE MOA

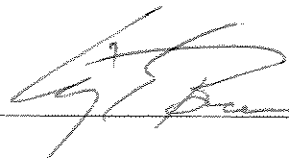
This MOA may be amended by mutual agreement of the participating agencies as described in Section J of the MMS/USCG MOU dated 30 September 2004.

G. TERMINATION

The MOA may be terminated by either party upon a 30-day advance written notification.



Robert P. LaBelle
Acting Associate Director
Offshore Minerals Management
Minerals Management Service
U.S. Department of the Interior



Rear Admiral Craig E. Bone
Assistant Commandant for Prevention
U.S. Coast Guard
U.S. Department of Homeland Security

