4-24-1975

The Deepwater Port Act of 1974

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THE UNIVERSITY OF RHODE ISLAND

THE DEEPWATER PORT ACT OF 1974

A RESEARCH PAPER SUBMITTED TO
THE FACULTY OF THE MARINE AFFAIRS PROGRAM
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF
MASTER OF MARINE AFFAIRS

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MASTER OF MARINE AFFAIRS
UNIV. OF RHODE ISLAND

April 24, 1975
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It has been said,
"There are no simple solutions,
just intelligent choices."
PREFACE

During the past two years of the 93rd Congress, no less than eleven different bills were introduced to deal with the various aspects of deep-water port development. Nine separate House and Senate Committees and Subcommittees held hearings on these various bills, and received testimony from over one hundred individuals representing the widest range of viewpoints on the issue; nearly three thousand pages of testimony and material were accumulated in these hearings. Environmental and economic impact studies were published by several universities under the Sea Grant program, and major contracts were let to consultant firms to further analyze various aspects of the problem. Perhaps with the exception of the Outer Continental Shelf oil and gas controversy, no single marine-related proposition has appeared to be so firmly caught between the seemingly irreconcilable needs of energy and the environment, particularly at the state level. Many states had developed firm positions, pro or con, long before the first hearing came to order; very little in those hearings or this Act can be expected to move them very far from their established positions.

Much has been made of the supposition that with energy conservation, higher petroleum prices, import quotas and all the other gas-saving ideas in vogue, deepwater ports have become an anachronism of pre-energy crisis days, the days of world-scale 400 in tankers and dreams of million-ton ULCC's. The truth of the matter is that we shall still, for an indeter-
minate period, require imported oil, by the dictum of economics, it will come via the VLCC, and it will need to be offloaded via the quickest and safest means possible.

For better or worse, necessary or not, the Deepwater Port Act of 1974 was signed by President Ford as Public Law 93-627 on January 3, 1975. The purpose of this work will be to examine this legislation, identify potential problems created, and suggest a decision-making framework within which coastal zone management agencies or other bodies can operate when faced with a deepwater port application.

I would like to express my appreciation to members of the Staff of the House of Representatives Committee on Public Works, who graciously furnished many of the required committee hearings and reports; the various state coastal zone management agencies who responded to my requests for information concerning their states' deepwater port policies; and to Captains D. B. Charter and K. G. Wiman, USCG, the latter Manager of the Coast Guard Deepwater Ports Project, for their information and advice. My special thanks to the Faculty and Staff of the Master of Marine Affairs program at the University of Rhode Island for their continued guidance and encouragement, and to my wife Bonnie, who provided moral and financial support during my year of graduate study.
I. PROVISIONS OF THE DEEPWATER PORT ACT

The Deepwater Port Act of 1974 became Public Law 93-627 on the third of January, 1975 when H.R.10701 was signed by President Ford.

The purpose of the Act, as stated, is:

To regulate commerce, promote efficiency in transportation, and protect the environment, by establishing procedures for the location, construction and operation of deepwater ports off the coasts of the United States, and for other purposes.

The primary intent of this Act will be to establish regulations concerning deepwater terminals beyond territorial seas of the United States, with provision for environmental and economic protection of the individual coastal states and the United States as a whole. The Act specifically declares that no effect on the international legal status of the high seas, seabed, subsoil or continental shelf is provided for or implied in the intent of the law. (Section 2)

The Act identifies the Secretary of Transportation as the responsible officer of the Executive branch for issuance of deepwater port licenses. Licenses shall be issued for the construction and operation of deepwater terminals solely for the importation or interstate transfer of petroleum products, with approval on a case basis, for shipments outside the United States. There are a number of conditions which must be satisfied before the Secretary may issue a license. Among these are: (Section 4c)

(1) that the port will be in the national interest, and consistent with national security and other goals including energy.
(2) that the port will not unreasonably interfere with navigation or other reasonable use of the high seas;

(3) the use of the best available technology to prevent or minimize adverse effects on the marine environment;

(4) a determination by the Environmental Protection Agency that the port will be in conformance with the applicable provisions of the Clean Air Act, Federal Water Pollution Control Act, and the Marine Protection, Research and Sanctuaries Act;

(5) Federal Trade Commission and Attorney General rulings that the issuance of a license would not "adversely affect competition, restrain trade, promote monopolization, or otherwise create a situation in contravention of the antitrust laws;"

(6) the approval of the Governors of "adjacent coastal states;"

(7) that the state to which the terminal will be connected has made at least "reasonable progress" toward an approved coastal zone management plan as prescribed by the Coastal Zone Management Act of 1972;

(8) the financial responsibility of the applicant.

If an application for a license is made, and a port of the state to which the deepwater port is connected: (a) has existing plans to construct a deep draft channel or harbor; (b) has a study of such construction underway; (c) has such a permit pending before the Corps of Engineers; or, (d) applies within 30 days of the deepwater port application, no issuance shall be made until the Secretary has determined whether one project best serves the national interest, or that both projects are necessary.

(Section 4d) Bonding requirements will be established to ensure that
upon termination of the license, through revocation or expiration, sufficient funds will be available to ensure removal of the port and associated structure. (Section 4e)

Any United States citizen qualified under the Act shall be eligible for a license, having a maximum term of twenty years, with preferential renewal rights not to exceed ten years per renewal. In the event of multiple applications, priorities have been established to grant first preference to a state, state agency, group of states or political subdivisions, followed by a person in no way affiliated with the petroleum industry, and third, any other person. (Sections 4g, h and 5h) Regulations to carry out the provisions of the Act are to be established by the Coast Guard for operational issues and by the National Oceanic and Atmospheric Administration for issues involving the environment, human health or welfare, or authorized use of the Outer Continental Shelf.

Applications for deepwater port construction and operation licenses shall include, but not be limited to: (Section 5c)

(1) full personal information on applicants, including all ownership interests greater than three percent;
(2) proposed location and capacity;
(3) type and design of port and associated, including shoreside, facilities;
(4) projected completion dates;
(5) location of existing and proposed storage facilities, pipelines and refineries to which the port may supply oil;
(6) financial and technical capabilities of the applicant;
(7) operating procedures, including spill prevention, containment
and cleanup.

Upon receipt of an application, the Secretary has twenty-one days to determine its completeness according to the provisions of the Act. Upon such determination, and within five days, the application is to be published in the Federal Register. At the same time, an "application area" is to be defined. This application area is a circular area, with the proposed location of the facility at its center and with radius equal to the distance to the high water mark of the nearest adjacent coastal state. This will define the area within which the need for any additional deepwater port facilities is eliminated. Additional applications may be filed within ninety days for alternative proposals in the application area. A single Environmental Impact Statement shall then be prepared to cover all timely applications for each area. Public hearings will be held in each adjacent coastal state, and, if necessary, adjudicatory hearings in the District of Columbia, the record of which shall form the basis of the Secretary's decision. Approval or denial shall occur within ninety days of the completion of the last public hearing on the application; choice among multiple applicants is to be accomplished according to the priorities described above, unless one proposal most clearly serves the national interest. (Sections 5c,d,f,g and i)

Adjacent coastal states are characterized under the Act by three separate definitions. The first is any state to be directly connected by pipeline to a proposed deepwater port; the second is any state located within fifteen miles of a proposed deepwater port; the third is any state which, upon request for a determination based upon a NOAA finding,
can be shown to be subject to the risk of equal or greater damage than a directly connected state. States desiring such determination in the last category must request same within fourteen days of publication of the license application, and the determination must be made within forty-five days of the request. Approval of the Governor of each adjacent coastal state must be obtained prior to the granting of licenses. The Act specifies that forty-five days are allowed following completion of the last public hearing for these governors to transmit approval or disapproval; in the event of failure to transmit a position, approval is to be presumed. (Section 9)

The Act prohibits the discharge of oil into the marine environment from vessels within the safety zone surrounding the port, vessels transferring oil, or from the port itself, and establishes a civil penalty not to exceed $10,000 per violation. A separate penalty of one year imprisonment and/or fine not to exceed $10,000 is provided for any failure on the part of vessel or port operators to immediately notify the Coast Guard of discharges. Removal of spilled oil, unless accomplished expeditiously by the operator(s), shall be accomplished by the Coast Guard. Strict liability is imposed on owners and operators for recovery of cleanup and damage costs of oil from vessels within the safety zone (except when moored to the deepwater port), with limits not to exceed $150 per gross ton, or $20 million, whichever is lesser. If, however, the spill results from "gross negligence or willful misconduct within the privity and knowledge of the owner or operator," that person or persons shall be liable for the full amount. For discharges from vessels moored to deepwater ports, or the ports themselves, the above provisions
remain, except that the licensee is now liable and the limit of liability is raised to $50 million. Liability shall not be imposed if the owner or operator can show the discharge was due to an act of war, or negligence on the part of the Federal government. Further, owners and operators shall not be liable for damages if it can be shown such damages were the result of negligence on the part of the claimant.

Funding for removal costs and damages in excess of those compensated through the above procedures is to be accomplished through the Deepwater Port Liability Fund. The fund is to be maintained through the collection of a two cent fee on each barrel of oil transferred at a deepwater port, and unless unsettled claims exist, shall be limited to $100 million.

States may impose additional requirements or liability for discharge from vessels within the safety zone or the ports themselves. (Section 18a-g,j) The penalty for conviction of willful violation of the Act or any order or regulation issued pursuant thereto is a fine of not more than $25,000 per day of violation and/or not more than one year imprisonment.

For environmental protection and navigational safety, regulations are to be established governing vessel movements and operations, including adjacent anchorages, and the equipping and training of personnel responsible for pollution control. The nature and size of the safety zone around each proposed deepwater port is to be designated within thirty days of publication of the application; a safety zone may also be designated during the construction phase. In addition to these steps, environmental review criteria shall be developed which are consistent with the National Environmental Policy Act; these criteria will be established through the recommendations of the Environmental Protection Agency and NOAA. (Section 6)
Licensees are to pay the "fair market rental value" (as determined by the Department of the Interior) of the Outer Continental Shelf land occupied by the port and its pipeline right of way. Adjacent coastal states may collect "reasonable fees" for the use of the facility; a state may also establish fees for the use of land-based support facilities located on its territory. (Section 5h) The laws of the nearest adjacent coastal state shall be considered the laws of the United States with respect to a deepwater port, however the ports themselves do not have the status of islands, and have no territorial seas. (Section 19) In this regard, the Secretary of State, in consultation with the Secretary of Transportation, is directed to seek common international agreements with respect to the operation of deepwater ports. (Section 11)
II. IMPLICATIONS OF THE DEEPWATER PORT ACT

The Deepwater Port Act of 1974 is a somewhat unique bill which attempts to please two widely divergent factions, namely, the pro-deepwater port Gulf Coast states, already well into planning stages of port development, and the strongly opposed Mid-Atlantic states, while at the same time working to justify its own existence in light of criticism that such ports are no longer relevant, given the post-embargo reductions in consumption, and our stated national objective of reducing dependence upon imported oil. The bill contains several controversial elements, including at least one which may be without precedent in United States legislative history.

The earliest deepwater port bills contained widely varying designations of the Cabinet-level officer responsible for the overall deepwater port program, and are perhaps indicative of the "power struggle" occurring with respect to jurisdiction. The Secretaries of Commerce, Interior, and Transportation were all nominated by various bills, or amendments thereto, as well as references to, "the Secretary of the Department in which the Coast Guard is operating," or, "... in which the National Oceanic and Atmospheric Administration is operating," and one proposal for a Commission composed of the above three Secretaries plus the Administrator of EPA and the Chief of Engineers, U. S. Army Corps of Engineers. Table 1 illustrates the sequence through which this nomination passed as the Act developed.
TABLE 1

SEQUENCE OF NOMINATION FOR DEEPWATER PORT COGNIZANCE

<table>
<thead>
<tr>
<th>Bill</th>
<th>Date</th>
<th>Official Nominated</th>
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<tr>
<td>S.80</td>
<td>Jan. 4, 1973</td>
<td>Secretary of Department in which NOAA is operating</td>
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<td>S.1751</td>
<td>May 8, 1973</td>
<td>Secretary of the Interior</td>
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<tr>
<td>S. 2232</td>
<td>July 23, 1973</td>
<td>Secretary of Department in which Coast Guard is oper-</td>
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<td>portation, Administrator of EPA, Chief Engineer, U.S.</td>
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<tr>
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<td>Army Corps of Engineers</td>
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<tr>
<td>&quot;</td>
<td>June 6, 1974</td>
<td>Secretary of the Interior</td>
</tr>
<tr>
<td>S.4076</td>
<td>Oct. 2, 1974</td>
<td>Secretary of Department in which Coast Guard is oper-</td>
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<tr>
<td>H.R.10701</td>
<td>Oct. 9, 1974</td>
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<tr>
<td>&quot;</td>
<td>Dec. 16, 1974</td>
<td>Secretary of Transportation</td>
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</table>

As the agency which would be tasked with the bulk of responsibility for the enforcement of the provisions of the Act, the U. S. Coast Guard supplied very convincing arguments for bringing deepwater ports wholly within the jurisdiction of the Department of Transportation. The eventual turn of the legislation to identify the Secretary of Transportation as the responsible officer can undoubtedly be attributed in a large part to these arguments.

Another interesting feature is the restriction of deepwater ports solely to the importation of petroleum products. Although the earlier bills had addressed multi-use ports, by mid-1974, the concept had been dropped, without obvious identifiable reason. This deletion was criticized by Senator J. L. Buckley in a joint committee report on S.4076.2
His objections had some validity, as the bill should theoretically have had universal applicability, however, realistically, no other seagoing carrier, not even the liquified natural gas (LNG) tanker, is tending toward the size range of the crude oil carrier, and no deepwater port for any vessel but the oil tanker should be necessary in the foreseeable future. It could be expected that organized labor might have had some objections to commodities other than petroleum products moving through deepwater terminals, seeing this as a potential threat to landside employment, however, no such objection is evident.\(^3\) The most readily identifiable source of this change of opinion appears in a staff analysis prepared for the Senate Committee on Interior and Insular Affairs. This analysis reports the results of a study of European deepwater ports, which showed a high tendency for industries to move nearer to multi-use port sites, placing increased demand on already crowded coastal areas.\(^4\) With respect to the import-only provision, this appears to be further evidence of the mistrust of oil company practices, a trend throughout the bill.

The most controversial and unique element of the Act is the "adjacent state veto" provision. This provision may be unprecedented in United States legislation, for it gives a state governor the power to, in effect, directly regulate an activity in an area beyond that state's jurisdiction. Some might call it simply a logical extension of the Trial Smelter principle, with enforcement, but nevertheless it is a highly controversial idea not included in most of the original bills. With the exception of individual Atlantic coast state spokesmen, most notably Senator H. A. Williams of New Jersey, who introduced the idea,\(^5\)
most witnesses testified against the state veto as allowing too arbitrary a use of judgement and establishing potentially undesirable precedents. A Presidential veto was also intimated if the legislation were to reach his desk still containing this provision. The "adjacent state" term appears to have been defined as broadly as possible without totally alienating those opposed to such a provision. There are now three categories of adjacent states: those directly connected; those within fifteen miles of a deepwater port; and those which NOAA can determine will suffer "equal . . . or greater damage" from oil spills than a state in the first category. Depending upon the inclination of NOAA and its interpretation of oceanographic data, Massachusetts might conceivably become an adjacent coastal state with respect to a deepwater port off the coast of Georgia. This is, of course, the extreme case, but does illustrate the breadth of the concept. States must specifically request such status from the Secretary of Transportation, via the NOAA determination, and the possibility exists for court action if a state strongly opposed to deepwater port development in its region, as is Delaware, applied for and was not granted this status. Also, "any other interested state shall have the opportunity to make its views known to, and shall be given full consideration by, the Secretary regarding the location, construction and operation of a deepwater port." This provision may be another potential bone of contention and ground for legal action. It remains to be seen what the long term effects of the veto provision may be, both on deepwater ports, and as precedent for other legislation. The nuclear power plant debate would seem to be a prime candidate for the next attempt to apply this reasoning.
Perhaps the singularly most commendable provision of the bill is that which requires the state to which the proposed port will be connected to have made at least "reasonable progress" toward the development of an approved coastal zone management program in response to the Coastal Zone Management Act of 1972. Although watered down from the original intent, which was to require states to have approved plans in existence, this provision will still have at least the psychological effect of underscoring the importance of the state-level coastal zone management agencies. Without "reasonable progress," now defined as the receipt of the planning grant, no license will be issued for construction. Commendable as it is, this still appears to be at least a partial compromise, in that insistence on the submission and approval of a plan before the granting of a license, the ideal situation, could result in one of two possible undesirable effects: either an ill-conceived and hurriedly-completed plan submitted by a state eager to get on with the port process, or potentially costly delays while the state attempts a more organized approach. Regardless of its shortcomings, the provision is still critical.

State coastal zone management agencies will be in the best position to provide factual and unbiased information to state governments facing deepwater port questions. In most cases, complex analysis of environmental, economic and other factors will be in order before a properly-founded approval or veto decision results; the Governor should not be forced to rely on the "facts" as supplied by either environmentalist or business interests. The schedule developed for the application process would appear to allow ample time for an orderly process of study.
of the question to occur. Table 2 illustrates the time relationship of the various activities occurring at federal and state government levels. A state governor has over nine months in which to consider all aspects of a proposed deepwater port on his state; eight months of this time are allowed for the completion of public hearings on the matter. This should provide ample opportunity for the coastal zone management agency to collect and evaluate the necessary data, and provide their recommendation to the governor.

The location of deepwater ports beyond the United States three mile limit, and in some cases, also beyond the contiguous zone, raises a number of questions concerning the interaction of state and federal laws with the various international agreements addressing pollution, navigation and the general status of offshore structures. U. S. deepwater ports will apparently be the first to be constructed beyond a state's territorial sea. In the view of the State Department, such use of international waters will constitute a "reasonable use of the high seas," based upon the provisions of Article 2 of the 1958 Convention on the High Seas, which specifies the four freedoms "inter alia," implying that other freedoms may, or might at a future time, exist. The State Department further lists nine international agreements to which the U. S. is signatory, which could affect deepwater ports located in international waters:

1. Convention on the Territorial Sea and Contiguous Zone
2. Convention on the High Seas
3. Safety of Life at Sea Convention
<table>
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<tr>
<th>DAYS</th>
<th>APPLICATION DATE</th>
<th>REVIEW COMPLETENESS</th>
<th>PUBLISH IN FEDERAL REGISTER</th>
<th>DEADLINE FOR STATES TO APPLY FOR ADJACENT STATUS UNDER CATEGORY III</th>
<th>SECRETARY RESPONSE TO REQUEST FOR DESIGNATION UNDER CATEGORY III</th>
<th>NOTICE OF INTENT TO FILE IN APPLICATION AREA DUE TO SECRETARY</th>
<th>ALL ADJACENT COASTAL STATES DESIGNATED</th>
<th>RECEIVE APPLICATION FOR COMMENT/VETO DEADLINE FOR ADDITIONAL FILINGS IN APPLICATION AREA</th>
<th>PUBLIC HEARINGS TO BE COMPLETED</th>
<th>DEADLINE FOR ADJACENT STATE VETO AND FOR FEDERAL AGENCY COMMENTS AND RECOMMENDATIONS</th>
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(5) International Regulations for Preventing Collisions at Sea
(6) International Convention for the Prevention of Pollution of the Sea by Oil (as amended)
(7) International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution (not yet in effect)
(8) International Convention on Civil Liability for Oil Pollution Damage
(9) Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (not yet in effect)

Some of these may require further amendment to ensure their applicability to deepwater ports. Further, since the Convention on the Continental Shelf restricts the use of safety zones around structures on the shelf to installations used for exploration and exploitation of shelf resources, the United States introduced a draft treaty article which expanded the term "installation" to include all structures not normally mobile. Domestic environmental legislation will combine with many of these international agreements to provide a somewhat complicated legal framework within which deepwater ports will be operated.

Table 3 lists the various laws and international agreements concerning ocean pollution which could affect one or more aspects of deepwater port operation.

Precisely what effect all of these laws and agreements will have when their application to a deepwater port is dictated can only be estimated at present. It can be anticipated, however, that multiple penalties may, in certain instances, be assessed under the provisions of more than one statute. For example, in the case of a ship within
# TABLE 3

APPLICABLE LAWS OR CONVENTIONS WITH POTENTIAL TO AFFECT DEEPWATER PORTS OR ASPECTS OF OPERATION

<table>
<thead>
<tr>
<th>WITHIN STATE LIMITS 0-3 MILES</th>
<th>INTERNATIONAL WATERS WITHIN CONTIGUOUS ZONE</th>
<th>INTERNATIONAL WATERS BEYOND CONTIGUOUS ZONE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Deepwater Port Act</td>
<td></td>
</tr>
<tr>
<td>FWPCA</td>
<td></td>
<td></td>
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<tr>
<td>NEPA</td>
<td></td>
<td></td>
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<tr>
<td>Clean Air Act</td>
<td></td>
<td></td>
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<tr>
<td>Oil Pollution Act 61</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marine Protection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research &amp; Sanctuary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ports &amp; Waterways Safety Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CZMA of 1972</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Submerged Lands Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Convention on Terr.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sea &amp; Contig. Zone</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SOLAS</td>
<td></td>
<td>Convention on High Seas</td>
</tr>
<tr>
<td>Load Line</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rules of the Road</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Convention on Prevent.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>of Pollution at Sea</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liability Convention</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fund Convention</td>
<td></td>
<td>Intervention Conv. *</td>
</tr>
</tbody>
</table>

* Not yet in effect

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Liability and Regulation

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Regulatory only
the safety zone, but not moored to the deepwater port, which spills oil, there are at least six different sources of penalty or fine to which the shipowner may be subject. He will be liable under the Act itself, and depending upon such factors as nature and circumstances of the discharge, flag state of the vessel, and location of the port within the U. S. contiguous zone, liable for fine, civil penalty or other action under one or more of the following: Oil Pollution Act of 1961; Federal Water Pollution Control Act; Ports and Waterways Safety Act; and the International Civil Liability and Interventions, when and if the latter comes in effect. Other circumstances may bring other factors of the laws and conventions to bear on deepwater port pollution problems.19 As the owner or operator of a deepwater port will be required to give evidence of insurance or other financial responsibility to meet potential liabilities, premiums for deepwater port insurance may be quite high, if in fact the tangle of liability envisioned above is found to exist and is not remedied.

The recent controversy over alleged oil company practices has also left its mark in the Deepwater Port Act. As late as August of 1974, the Senate Commerce Committee was still recommending amendment of the bill to exclude oil companies or their affiliates from obtaining licenses to operate deepwater ports.20 Others argued that oil companies were among the few organizations that had both sufficient capital and interest to to build such ports, thus, if they were to be built at all, they would probably be built by oil companies. The best argument was put forth by Senators Fannin, Bartlett, McLure and Hansen, who stated collectively, "... a statute singling out certain businesses for special classification or regulation is subject both to the tests of equal protection
of the laws, and to prohibitions against deprivation of liberty or prop-
erty without due process of law;"21 this argument was backed by the ci-
tation of several judicial precedents. Restrictions are still strong,
perhaps reflecting the effect of the abandonment of the oil company ex-
clusion, for applications are now subject to antitrust review by both
the Attorney General and the Federal Trade Commission. The priority
system established for the granting of licenses, and the requirement to
identify all ownership interests greater than three percent appear to be
further evidence of a strong desire to maintain the strictest possible
controls on any oil company actions. Interestingly, H.R.10701, as in-
troduced, specifically exempted deepwater ports from the antitrust laws
of the United States, and contained no oil company exclusion.22

Another provision which, along with the adjacent state veto, illus-
trates the individual state impacts on the bill, is that requiring eval-
uation of dredging or other harbor expansion plans before issuance of a
license. The cost of deepening the majority of U. S. harbors is prohib-
itive; for example, three billion dollars for Baltimore, nearly one bil-
lion for Mobile, and an inestimable number of billions for Philadelphia.23

The source of the pressure for this provision appears to have been John
Young, Representative from the Fourteenth Congressional District of
Texas. Representative Young entered for the record details of a plan
to deepen facilities near Corpus Christi (his home town) to accommodate
tankers to 300,000 deadweight tons, at a cost of "one-tenth" that of an
offshore terminal.24 This provision could have a potential delaying
effect on port licensing, due to the necessity to conduct studies or
allow those underway to be completed. It is difficult to conceive of
many ports, including Corpus Christi's Harbor Island, which could be deepened for less than the cost of a single point mooring buoy system, the most commonly used deepwater terminal. This provision also came under criticism from environmentalist groups, alarmed at the massive dredging operations implicated in harbor enlargement.25

The application area provision would seem to be one of the least-developed concepts contained in the Act. These areas, which will not be larger than circles with radii equal to the distance from the port location to the nearest coastal state high water mark, must be carefully defined to avoid prejudice and legal and economic complications. Figures 1 and 2 illustrate the principle applied to areas with widely varying offshore depth characteristics, using the maximum limits of the area definition. The areas defined by this process can differ greatly from one region to the next; investors in an area such as that shown by figure 1, assuming maximum size of the application area, would be placed at a marked economical disadvantage to those desiring to locate in the region shown by figure 2, as the maximum size of the area restricted to a single deepwater port will be much larger.

In summary, while the bill appears to be well-developed in most respects, there are a number of provisions evidencing either extreme short-sightedness on the part of the Congress, pressure of an interest group, or some combination. It may be said that the bill was passed primarily to legitimize and provide the operating framework within which the Gulf Coast states could move ahead with existing port plans, while not creating an untenable situation for those East Coast states adamantly opposed to deepwater ports. Perhaps the strongest judgement
of the value of the bill can be read into the apparent lack of cohesive effort put forth by nationally-oriented environmentalist groups to oppose its passage.
The figures on the following pages illustrate two hypothetical deepwater port locations, and the maximum extent of their "application areas" as defined by the Deepwater Port Act. Water depth in each case is slightly in excess of one hundred feet; this was the only site selection criterion used for this illustration. These sites are not intended to represent any planned or proposed deepwater port locations for which applications may be submitted. The figures are not to the same scale.
FIGURE 1
HYPOTHETICAL DEEPWATER PORT SITE: DELAWARE COAST
III. THE IMPACTS OF DEEPWATER PORTS

A deepwater port will impact both offshore and onshore areas, and activities in those areas. Offshore effects, particularly environmental, may be felt over wide areas, as in the case of spilled oil driven ashore by wind and currents in another part of the state, another state, or even another country. The perceived potential for great damage from oil can definitely account for much of the impetus behind the strong state veto provision written into the Act. Other offshore impacts might be the disruption of established commercial pursuits such as coastwise shipping, or shallow water fisheries, or recreational activities such as sailing.

When taken, however, in context with the potential environmental effects of the realistic alternatives to a deepwater port system, this method appears to hold the greatest promise of being the safest means of oil delivery. Non-environmental offshore impacts such as those suggested above may be minimized or even totally eliminated through careful analysis of the application and thorough evaluation of the site selection.

This combination of VLCC's and deepwater ports is apparently being recognized as the most logical alternative when considering the importation of oil, from an environmental aspect. Very little substantive non-rhetorical evidence was introduced in the hearings in direct opposition to deepwater ports on environmental grounds; that which was offered no realistic solutions. Most controversy revolved around procedural and administrative matters, as outlined earlier in this paper. Even the historically strongest environmental group, the Sierra Club, could not
present a very convincing argument against the bill. Passage of the bill would seem to indicate that given our continued need for imported oil, the deepwater port will be the most environmentally sound and economically efficient means of receiving this oil.

Accepting this assumption, the most critical aspect of deepwater port development will then be the onshore impact in the areas adjacent to the terminus of the pipeline from the port. The Draft Environmental Impact Statement on Deepwater Ports, compiled by the Department of the Interior, in fact states these effects "could have a more significant environmental impact than any other component of a deepwater port system over a long period of time." Onshore factors, in most cases, should control the nature of the problem from the viewpoint of state coastal zone management agencies. The controversial nature of the adjacent state veto provision would make it highly advisable that this option be exercised with extreme caution, and only after the most serious consideration and thorough investigation. The state coastal zone management agencies, if performing their functions correctly, will be perhaps the most influential factors in the approval or disapproval of deepwater port license applications. This situation is intimated in the Act by the "reasonable progress" provision, for the governor of a state which has not made such progress will not even have the chance to consider a decision- the application will be rejected by the Secretary of Transportation.

As the apparent major component of deepwater port impacts, and theoretically, the most probable cause for adjacent state vetoes, landside impacts will require intense study by coastal zone management,
with careful consideration of very long-term potentials. Decisions made concerning deepwater ports and related areas will have far-reaching implications for coastal communities; the year 2000 is really not too far into the future to plan.

The specific landside impacts will vary from state to state and also depend on the quality of the planning effort which goes into any decisions. A general impact to be felt by all states, however, will be the petroleum refinery question. A number of U.S. refineries, particularly in the New Jersey-Philadelphia area, are nearing the end of their useful lives, and will ultimately require replacement. Many of these sites are quite remote from any potential deepwater port simply from a geographical aspect, let alone the high veto potential from New Jersey and Delaware. An easily drawn conclusion is that new refinery capacity will be proposed for the immediate area of deepwater ports, and that these ports will not be located near the present Mid-Atlantic industrial complex. Further, the space requirements for refineries will be over and above that for the tank farms and storage facilities needed to receive oil from the deepwater port. This may then be compounded by the nature of the petrochemical industry: "Economics, however, favor petrochemical complexes which are in close proximity to refineries which produce a full range of products." Light industry and service-oriented firms may follow the heavy industry.

Extensive studies have been undertaken to estimate the degree to which landside development will affect states in the area of a deepwater port; they all basically agree that the potential for damage is high if uncontrolled growth is permitted. This must be traded off, in
most opinions, against the economic advantages gained through the industrialization and development of an area. The expected landside impacts on the environment may include:29

1. increased land use requirements;
2. degradation of previously unspoiled wetlands and coastal areas;
3. increased demands on local water supplies for industrialization and increased population;
4. industrial and municipal discharge of pollutants;
5. atmospheric pollution;
6. pressure for land development for municipal services for increased population.

The magnitude of these impacts will vary among areas, depending on the availability of land, labor, and capital, and the ability and inclination of local and state governments to develop and enforce zoning regulations or otherwise make long-range intelligent planning decisions. Figures 3 through 6 illustrate projected impacts on one New England and two Middle Atlantic communities near proposed deepwater port sites and an overall Mid-Atlantic (Delaware, Pennsylvania and New Jersey) projection; the high and low options refer to import levels through these projected ports of 5.2 and 1.5 million barrels per day, respectively, by 1985, and 6.6 and 2.5 million barrels per day by 2000.31

As projections, these studies could not adjust their findings to political situations or popular emotions which are certain to influence deepwater port locations, and they would appear to assume development at an unchecked rate. This will not be true in most cases, but the projections do show the potential for both economic gain and environ-
SELECTED MEASURES OF ESTIMATED TOTAL\(^1\) RELATIVE REFINERY-BASED
ECONOMIC AND ENVIRONMENTAL IMPACTS

<table>
<thead>
<tr>
<th>Measure</th>
<th>Baseline Growth</th>
<th>Baseline Plus Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1970 = 8,000)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income</td>
<td></td>
<td></td>
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<tr>
<td>(1970 = $8 million dollars)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Per Capita Income</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1970 = $2,234 dollars)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1970 = 29,000)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population Density</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1970 = 12 residents/square mile)</td>
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<td></td>
</tr>
<tr>
<td>Water Withdrawal(^2,3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1970 = 21 million gallons/day)</td>
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<td></td>
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<tr>
<td>(SOD) Water Pollution(^3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1970 = 9,400 pounds/day)</td>
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<tr>
<td>Land Use</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1970 = 5,400 acres developed)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^1\)Total impact includes primary, supplier and induced.
\(^2\)Freshwater equivalent.
\(^3\)Lower of bar pairs assumes full application of advanced waste treatment sufficient to meet 1983 effluent standards ("best available"); lower of bar pairs assumes full application of "best practical" technology (1977 standards).
\(^4\)Assumes full secondary treatment ("best practical") by 1970.

FIGURE 3   SOURCE: ARTHUR D. LITTLE, INC.
FIGURE 4

MID-ATLANTIC REGION – MIDDLESEX COUNTY, NEW JERSEY: 1985/2000
SELECTED MEASURES OF ESTIMATED TOTAL\(^1\) RELATIVE REFINERY AND PETROCHEMICAL-BASED
ECONOMIC AND ENVIRONMENTAL IMPACTS

<table>
<thead>
<tr>
<th>Measure</th>
<th>1985</th>
<th>2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment (1970 = 209,000)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income (1970 = $2,375 million dollars)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Per Capita Income (1970 = $4,068 dollars)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population (1970 = 884,000)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population Density (1970 = 1,810 residents/square mile)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water Withdrawal (1970 = 515 million gallons/day)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water Pollution (BOD) (1970 = 105,000 pounds/day)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land Use (1970 = 63,000 acres developed)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Legend:
- Baseline Growth
- Baseline plus Low Option

\(^1\) Total impact includes primary, supplier and induced.
\(^2\) Freshwater equivalent.
\(^3\) Upper limit of bar curve assumes full application of advanced wastewater treatment sufficient to meet 1983 effluent standards (“best available”). Lower limit of bar curve assumes full application of “best practical” technology (1977 standards).
\(^4\) Assumes full secondary treatment (“best practical”) in 1970

SOURCE: ARTHUR D. LITTLE, INC.
SELECTED MEASURES OF ESTIMATED TOTAL1 RELATIVE REFINERY AND PETROCHEMICAL-BASED
ECONOMIC AND ENVIRONMENTAL IMPACTS

Employment
(1970 = 66,000)

Income
(1970 = $550 million dollars)

Per Capita Income
(1970 = $3,205 dollars)

Population
(1970 = 111,000)

Population Density
(1970 = 235 residents/square mile)

Water Withdrawals2,3
(1970 = 60 million gallons/day)

Water Pollution (BOD)4
(1970 = 16,000 pounds/day)

Land Use
(1970 = 97,000 acres developed)

Legend:
Baseline Growth
Baseline plus High Option

SOURCE: ARTHUR D. LITTLE, INC.
MID- ATLANTIC REGION 1985/2000
SELECTED MEASURES OF ESTIMATED TOTAL RELATIVE REFINERY AND FETROCHEMICAL-BASED ECONOMIC AND ENVIRONMENTAL IMPACTS

Legend:
- Genuine Growth
- Baseline plus Low Option
- Baseline plus High Option

1 Total impact includes primary, supplier, and induced.
2 Entire Mid-Atlantic Region.
3 Extending to the Mid-Atlantic Belt — composed of northern Delaware, eastern Pennsylvania, and northern, central, and southern New Jersey.
4 Freshwater equivalent.
5 Upper of bar pairs assumes full application of advanced waste treatment sufficient to meet 1983 effluent standards ("best available"); lower of bar pairs assumes full application of "best practical" technology (1977 standards).
6 Assumes full secondary treatment ("best practical") by 1970.

SOURCE: ARTHUR D. LITTLE, INC.
mental damage, and more importantly, the need for control.

To exercise this control, a methodology to analyze and cope with the pressures of potential deepwater ports should be developed by each state which may be in a position to become an "adjacent coastal state." What follows is the outline of a suggested step-by-step approach to analysis of the problem which may be used by a management agency tasked with providing a response to deepwater port questions. The first step in the methodology should be to define those areas which will be suitable for a deepwater port, both off the state's own coast and in the region. Ocean currents and wind effects should be calculated in advance so that predictions can be made for spills in a specific location. Computer modeling is well suited to analysis of this type, however professional assistance from local universities, federal agencies or independent research firms would be advisable. Along with oceanographic investigations, a full study of offshore activities should occur in order to establish the nature and magnitude of disruptions which might occur in the event of a port installation. Such activities as fishing, including lobstering, etc., recreational boating, local commercial trading, sport diving, etc., occur in the coastal waters, and may or may not be affected. Upon determination that a suitable offshore site or sites exist, the next question is one of whether suitable corresponding shoreside locations for such facilities as tank farms and pumping stations may be found, along with the port or marina-type facilities used by support craft serving the deepwater port. Considerations here will also include possible increased demands for public services, housing (plus the potential effect on values of property), and consumer needs.
If suitable and compatible sites are identified, a deepwater port application, if submitted, should be approved, assuming no other factors particular to the individual state. The problem now becomes one of both coastal and inland land use control, involving planning agencies over and above coastal zone. Assuming the existence of pressure for a refinery, and projecting a future pressure to allow additional and related industry to develop, the choices (somewhat simplified) would appear to be, in order of increasing potential harm for the coastal area:

(1) disallow the refinery within the state;
(2) disallow the refinery unless located well inland, zoning to limit growth to the refinery itself;
(3) coastal refinery, with same zoning provision as (2);
(4) inland refinery, plus light or moderate additional development permitted through zoning;
(5) coastal refinery, same zoning provision as (4)
(6) inland refinery, heavy development;
(7) coastal refinery, heavy development.

Economic and environmental needs of the state should determine the choice. It is important to remember, when considering coastal development, that industrial impacts are not always less desirable than recreational impacts. A study\textsuperscript{32} summarized in a recent Congressional report has noted:

\textit{... even excluding heavy industry from the coast, the shore would experience heavy economic, social and environmental consequences from rapid growth in the tourist and recreational sectors in the next twenty years. Without careful planning and enforcement mechanisms, the magnitude of environmental demands posed by tourism may be equally as severe as those associated with industrial growth.}\textsuperscript{33}
Further, the study, which addressed growth problems of the Maine coast, found:

Choosing a future for the Maine Coast which excludes heavy industry does not eliminate the problem of maintaining environmental quality. Given the incremental, decentralized nature of this nonindustrial coastal development, it is not even clear that the problem is made easier by banning heavy industry. Demands on resources by large industries are at least easily detected . . . the dispersion of recreation businesses and second homes makes monitoring and enforcement quite expensive.

Deepwater ports will be challenges for coastal zone management agencies. Properly staffed and funded, they will be able to respond to these challenges with accurate analyses of problems of the coastal zone, and responsible recommendations, with factual evidence in support, to governments faced with deepwater port decisions.
APPENDIX A

TEXT OF PUBLIC LAW 93-627
THE DEEPWATER PORT ACT OF 1974
An Act

To regulate commerce, promote efficiency in transportation, and protect the environment, by establishing procedures for the location, construction, and operation of deepwater ports off the coasts of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Deepwater Port Act of 1974".

DECLARATION OF POLICY

Sec. 2. (a) It is declared to be the purposes of the Congress in this Act to:

(1) authorize and regulate the location, ownership, construction, and operation of deepwater ports in waters beyond the territorial limits of the United States;
(2) provide for the protection of the marine and coastal environment to prevent or minimize any adverse impact which might occur as a consequence of the development of such ports;
(3) protect the interests of the United States and those of adjacent coastal States in the location, construction, and operation of deepwater ports; and
(4) protect the rights and responsibilities of States and communities to regulate growth, determine land use, and otherwise protect the environment in accordance with law.

(b) The Congress declares that nothing in this Act shall be construed to affect the legal status of the high seas, the supranational airspace, or the seabed and subsoil, including the Continental Shelf.

DEFINITIONS

Sec. 3. As used in this Act, unless the context otherwise requires, the terms:

(1) "adjacent coastal State" means any coastal State which (A) would be directly connected by pipeline to a deepwater port, as proposed in an application; (B) would be located within 15 miles of any such proposed deepwater port; or (C) is designated by the Secretary in accordance with section 9(b)(9) of this Act;
(2) "affiliate" means any entity owned or controlled by, any person who owns or controls, or any entity which is under common ownership or control with an applicant, licensee, or any person required to be disclosed pursuant to section 5(c)(2) (A) or (B);
(3) "antitrust laws" includes the Act of July 2, 1890, as amended, the Act of October 15, 1914, as amended, the Federal Trade Commission Act (15 U.S.C. 41 et seq., and sections 78 and 79 of the Act of August 27, 1934, as amended;
(4) "application" means any application submitted under this Act (A) for a license for the ownership, construction, and operation of a deepwater port; (B) for transfer of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license;
(5) "citizen of the United States" means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State or a group of States, or any corporation, partnership, or association organized under the laws of any State.
which has as its president or other executive officer and as its
chairman of the board of directors, or holder of a similar office,
a person who is a United States citizen by birth, naturalization
and which has more of its directors who are not United
States citizens by law, birth or naturalization than constitute
a minority of the number required for a quorum necessary to
do the business of the board;
(9) "coastal environment" means the navigable waters (includ-
ing the lands therewith) and the adjacent shores (including
waters therein and thereunder). The term includes
transitional and intertidal areas, bays, lagoons, salt marshes,
estuaries, and benches; the fish, wildlife and other living
resources thereof; and the recreational and scenic values of such
lands, waters and resources;
(10) "coastal State" means any State of the United States in
or bordering on the Atlantic, Pacific, or Arctic Oceans, or the
Gulf of Mexico;
(11) "construction" means the supervising, inspection, actual
building, and all other activities incidental to the building, repair-
ing, or expanding of a deepwater port or any of its components,
including, but not limited to, pile driving and backfilling, and
alterations, modifications, or additions to the deepwater port;
(12) "control" means the power, directly or indirectly, to de-
determine the policy, business practices, or decisionmaking process of
another person, whether by stock or other ownership interest, by
representation on a board of directors or similar body, by contract
or other agreement with stockholders or others, or otherwise;
(13) "deepwater port" means any fixed or floating man-made
structures other than piers or docks, that are
situated located beyond the territorial sea and off the coast of
the United States and which are used or intended for use as a port
or terminal for the loading or unloading and further handling of
oil for transportation to any State, except as otherwise provided in
section 25. The term includes all associated components and
equipment, including pipelines, pumping stations, service of other
platforms, mooring buoys, and similar appurtenances to the extent
they are located seaward of the high water mark. A deepwater
port shall be considered a "new source" for purposes of the Clean
Air Act, as amended, and the Federal Water Pollution Control
Act, as amended;
(14) "Government" means the Governor of a State or the person
designated by State law to exercise the powers granted to the
Governor pursuant to this Act;
(15) "licensee" means a citizen of the United States holding a
valid license for the ownership, construction, and operation of a
deepwater port that was issued, transferred, or renewed pur-
suant to this Act;
(16) "marine environment" includes the coastal environment,
waters of the contiguous zone, and waters of the high seas
the fish, wildlife, and other living resources of such waters; and the
recreational and scenic values of such waters and resources;
(17) "Secretary" means the Secretary of Transportation;
(18) "State" includes each of the States of the United States,
the District of Columbia, the Commonwealth of Puerto Rico, and
the territories and possessions of the United States; and
(19) "vessel" means every description of watercraft or other
artificial contrivance used as a means of transportation on or
through the water.

LICENSE FOR THE OWNERSHIP, CONSTRUCTION, AND OPERATION OF A
DEEPWATER PORT

Sec. 4. (a) No person may engage in the ownership, construction,
or operation of a deepwater port except in accordance with a license
issued pursuant to this Act. No person may transport or otherwise
transfer any oil between a deepwater port and the United States unless
such port has been so licensed and the license is in force. A deepwater
port, licensed pursuant to the provisions of this Act, may not be
utilized—
(1) for the loading and unloading of commodities or materials
(2) for the transhipment of commodities or materials, to
the United States, other than oil,
(3) except in cases where the Secretary otherwise by rule pro-
vides, for the transportation of oil, destined for locations outside
the United States,
(b) The Secretary is authorized, upon application and in accord-
ance with the provisions of this Act, to issue, transfer, amend, or
renew a license for the ownership, construction, and operation of a
deepwater port.

(c) The Secretary may issue a license in accordance with the pro-
visions of this Act if—
(1) he determines that the applicant is financially responsible
and will meet the requirements of section 18(d) of this Act;
(2) he determines that the applicant can and will comply with
applicable laws, regulations, and license conditions;
(3) he determines that the construction and operation of the
deepwater port will be in the national interest and consistent with
national security and other national policy goals and objectives,
including energy sufficiency and environmental quality;
(4) he determines that the deepwater port will not unreason-
ably interfere with international navigation or other reasonable
uses of the high seas, as defined by treaty, convention, or custom-
ary international law;
(5) he determines, in accordance with the environmental review
criteria established pursuant to section 6 of this Act, that the
applicant has demonstrated that the deepwater port will be con-
structed and operated using best available technology, so as to
prevent or minimize adverse impact on the marine environment;
(6) he has not been informed, within 45 days of the last public
hearing on a proposed license for a designated application area,
by the Administrator of the Environmental Protection Agency
that the deepwater port will not conform with all applicable pro-
visions of the Clean Air Act, as amended, the Federal Water
Pollution Control Act, as amended, or the Marine Protection,
Research and Sanitaries Act, as amended;

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(7) he has received the opinions of the Federal Trade Commission and the Attorney General, pursuant to section 7 of this Act, as to whether issuance of the license would adversely affect competition, restrain trade, promote monopolization, or otherwise create a situation in contravention of the antitrust laws; and

(8) he has consulted with the Secretary of the State, and the Secretary of Defense, to determine their views on the adequacy of the application, and its effect on programs within their respective jurisdictions;

(9) the Governor of the adjacent coastal State or States, pursuant to section 9 of this Act, approves, or is presumed to approve, issuance of the license; and

(10) the adjacent coastal State to which the deepwater port is to be directly connected by pipeline has developed, or is making, at the time the application is submitted, reasonable progress, as determined in accordance with section 9(c) of this Act, toward developing, an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972.

(4) If an application is made under this Act for a license to construct a deepwater port facility off the coast of a State, and a port of the State which will be directly connected by pipeline with such deepwater port, on the date of such application:

(a) has existing plans for construction of a deep draft channel and harbor; and

(b) has either (A) an active study by the Secretary of the Army relating to the construction of a deep draft channel and harbor, or (B) a pending application for a permit under section 10 of the Act of March 3, 1899 (30 Stat. 1241), for such construction;

and

(c) applies to the Secretary for a determination under this section within 30 days of the date of the license application; the Secretary shall issue a license under this Act until he has examined and compared the economic, social, and environmental effects of the construction and operation of the deepwater port with the economic, social and environmental effects of the construction, expansion, deepening, and operation of such State port, and has determined which project best serves the national interest or that both developments are warranted. The Secretary's determination shall be discretionary and not appealable.

(5) In issuing a license for the ownership, construction, and operation of a deepwater port, the Secretary shall prescribe any conditions which he deems necessary to carry out the purposes and provisions of this Act, or which are otherwise required by any Federal department or agency pursuant to the terms of this Act.

(6) No license shall be issued, transferred, or renewed under this Act unless the license or transferred license, or the plans in writing, shall be the Secretary's determination that such license or transferred license is consistent with the purposes of this Act, and any other regulations prescribed pursuant to this subsection. Such regulations shall be consistent with the purposes of this Act.

(c) (1) Any person making an application under this Act shall submit detailed plans to the Secretary. Within 30 days after the receipt of an application, the Secretary shall determine whether the application appears to contain all of the information required by paragraphs (1) and (2) of this subsection. Failure of the Secretary to make such determination, within such period, shall be prima facie evidence of noncompliance with any applicable regulations prescribed pursuant to this subsection. Such regulations shall be consistent with the purposes of this Act.

(2) The Secretary shall establish such bending requirements or other assurances as he deems necessary to assure that, upon the revocation or termination of a license, the licensee will remove all components of the deepwater port from the seabed below the seafloor. The Secretary is authorized to waive the removal requirements if he finds that such removal is not otherwise necessary and that the remaining components do not constitute any threat to navigation or the environment. At the request of the Secretary, the Secretary, after consultation with the Secretary of the Interior, shall be authorized to waive the removal requirement as to any component which he determines may be utilized in connection with the transportation of oil, natural gas, or other minerals, pursuant to a lease granted under the provisions of the Outer Continental Shelf Lands Act (43 U.S.C. 1331), after which the use of such component shall be governed by the terms of the Outer Continental Shelf Lands Act.

(f) Upon application, licenses issued under this Act may be transferred if the Secretary determines that such transfer is in the public interest and that the transferee meets the requirements of this Act and any other prerequisites to issuance under subsection (c) of this section.

(g) Any citizen of the United States who otherwise qualifies under the terms of this Act shall be eligible to be issued a license for the ownership, construction, and operation of a deepwater port.

(h) Licenses issued under this Act shall be for a term of not to exceed 20 years. Each licensee shall have a preferential right to renew his license subject to the requirements of subsection (c) of this section, upon such conditions and for such term, not to exceed an additional 10 years upon each renewal, as the Secretary determines to be reasonable and appropriate.

PROCEDURE

Sec. 3. (a) The Secretary shall, as soon as practicable after the date of enactment of this Act, and after consultation with other Federal agencies, issue regulations to carry out the purposes and provisions of this Act, in accordance with the provisions of section 553 of title 5, United States Code, without regard to subsection (a) thereof, which regulations shall pertain to, but need not be limited to, application, issuance, transfer, renewal, suspension, and termination of licenses. Such regulations shall provide for full consultation with other interested Federal agencies and departments and with any potentially affected coastal State, and for consideration of the views of any interested members of the general public. The Secretary is further authorized, consistent with the purposes and provisions of this Act, to amend or rescind any such regulation.

(b) The Secretary, in consultation with the Secretary of the Interior and the Administrator of the National Oceanic and Atmospheric Administration, shall, as soon as practicable after the date of enactment of this Act, prescribe regulations relating to those activities involved in site evaluation and preconstruction testing at potential deepwater port locations that may (1) adversely affect the environment; (2) interfere with authorized uses of the Outer Continental Shelf; or (3) pose a threat to human health and welfare. Such activity may thereafter not be undertaken except in accordance with the regulations prescribed pursuant to this subsection. Such regulations shall be consistent with the purposes of this Act.

(c) Any person making an application under this Act shall submit detailed plans to the Secretary. Within 30 days after the receipt of such an application, the Secretary shall determine whether the application appears to contain all of the information required by paragraphs (1) and (2) of this subsection. If the Secretary determines that such information appears to be contained in the application, the Secretary shall, no later than 5 days after making such determination, publish a notice thereof and a summary of the plans in the Federal Register. If the Secretary determines that all of the required information does not appear...
to be contained in the application, the Secretary shall notify the applicant and take no further action with respect to the application until such deficiencies have been remedied.

(2) Each application shall include such financial, technical, and other information as the Secretary deems necessary or appropriate. Such information shall include, but need not be limited to—

(A) the name, address, citizenship, telephone number, and the ownership interest in the applicant, of each person having any ownership interest in the applicant of greater than 5 percent;

(B) to the extent feasible, the name, address, citizenship, and telephone number of any person with whom the applicant has made, or proposes to make, a significant contract for the construction or operation of the deepwater port, and a copy of any such contract;

(C) the name, address, citizenship, and telephone number of each affiliate of the applicant and of any person required to be disclosed pursuant to subparagraphs (A) or (B) of this paragraph, together with a description of the manner in which such affiliate is associated with the applicant or any person required to be disclosed under subparagraph (A) or (B) of this paragraph;

(D) the proposed location and capacity of the deepwater port, including all components thereof;

(E) the type and design of all components of the deepwater port and any storage facilities associated with the deepwater port;

(F) with respect to construction in phases, a detailed description of each phase, including anticipated dates of completion for each of the specific components therein;

(G) the location and capacity of existing and proposed storage facilities and pipelines which will store or transport oil transported through the deepwater port, to the extent known by the applicant or any person required to be disclosed pursuant to subparagraphs (A), (B), or (C) of this paragraph;

(H) with respect to a proposed deepwater port; At the time notice of an application is published pursuant to paragraph 4(c) of this section, the Secretary shall forward a copy of such application to those Federal agencies and make available to such agencies and the Administration of the National Oceanic and Atmospheric Administration, and the heads of any other Federal departments or agencies having jurisdiction over any aspect of the construction or operation of deepwater ports within the designated application area, the Secretary written comments to such agencies and, based upon public considerations within its area of responsibility, recommend to the Secretary the approval or disapproval of the application.

(3) For all timely applications covering a single application area, the Secretary, in cooperation with other involved Federal agencies and departments, shall, pursuant to section 102(2) (C) of the National Environmental Policy Act, prepare a single, detailed environmental impact statement, which shall fulfill the requirements of all Federal agencies in carrying out their responsibilities pursuant to this Act to prepare an environmental impact statement. In preparing such statement the Secretary shall consider the criteria established under section 6 of this Act.
(a) A license may be issued, transferred, or renewed only after public notice and public hearings in accordance with this subsection. At least one such public hearing shall be held in each adjacent coastal State. Any interested person may present relevant material at any hearing. After hearings in each adjacent coastal State are concluded, if the Secretary determines that there exists one or more specific and material factual issues which may be resolved by a formal evidentiary hearing, at least one evidentiary hearing shall be held in accordance with the provisions of section 534 of title 5, United States Code, in the District of Columbia. The record developed in any such evidentiary hearing shall be basic for the Secretary's decision to approve or deny a license. Hearings held pursuant to this subsection shall be consolidated insofar as practicable with hearings held by other agencies. All public hearings on all applications for any designated application area shall be consolidated and shall be conducted not later than 240 days after notice of the initial application has been published pursuant to section 5(c) of this Act.

(b) (1) Each person applying for a license pursuant to this Act shall remit to the Secretary at the time the application is filed a non-refundable application fee established by regulation by the Secretary. In addition, an applicant shall also reimburse the United States and the appropriate adjacent coastal State for any additional costs incurred in processing an application.

(2) Notwithstanding any other provision of this Act, an adjacent coastal State may fix reasonable fees for the use of a deepwater port facility, with such State and any other State in which land-based facilities directly related to a deepwater port facility are located, if reasonable fees for the use of such land-based facilities. Fees may be fixed under authority of this paragraph as compensation for any economic cost attributable to the construction and operation of deepwater port and such land-based facilities, which cannot be recovered otherwise under authority of such State or political subdivision thereof, including, but not limited to, ad valorem taxes, and for encumbrances and administrative costs attributable to the construction and operation of such deepwater port and such land-based facilities. Fees under this paragraph shall not exceed such environmental, economic, and administrative costs of such State. Such fees shall be subject to the approval of the Secretary. As used in this paragraph, the term "land-based facilities directly related to a deepwater port facility" means the onshore tank farm and pipelines connecting such tank farm to the deepwater port facility.

(3) A licensee shall pay annually in advance the fair market rental value (as determined by the Secretary of the Interior) of the subsidies and easements of the Outer Continental Shelf of the United States to be utilized by the deepwater port, including the fair market rental value of the right-of-way necessary for the pipeline segment of the port located on such subsidies and easements.

(i) (1) The Secretary shall approve or deny any application for a designated application area submitted pursuant to this Act not later than 90 days after the last public hearing on a proposed license for that area.

(2) In the event more than one application is submitted for an application area, the Secretary, unless one of the proposed deepwater ports is clearly best serves the national interest, shall issue a license according to the following order of priorities:

(A) to an adjacent coastal State (or combination of States), any political subdivision thereof, or agency or instrumentality, including a wholly owned corporation of any such government;

(B) to a person who is neither (i) engaged in producing, refining, or marketing oil, nor (ii) an affiliate of any person who is engaged in producing, refining, or marketing oil or an affiliate of any such affiliate;

(C) to any other person.

(3) In determining whether any one proposed deepwater port clearly best serves the national interest, the Secretary shall consider the following factors:

(A) the degree to which the proposed deepwater ports affect the environment, as determined under criteria established pursuant to section 6 of this Act;

(B) any significant differences between anticipated completion dates for the proposed deepwater ports; and

(C) any differences in costs of construction and operation of the proposed deepwater ports, to the extent that such differential may significantly affect the ultimate cost of oil to the consumer.

ENVIRONMENTAL REVIEW CRITERIA

Sec. 6. (a) The Secretary, in accordance with the recommendations of the Administrator of the Environmental Protection Agency and the Administrator of the National Oceanic and Atmospheric Administration and after consultation with any other Federal departments and agencies having jurisdiction over any aspect of the construction or operation of a deepwater port, shall establish, as soon as practicable after the enactment of this Act, environmental review criteria consistent with the National Environmental Policy Act. Such criteria shall be used to evaluate a deepwater port as proposed in an application, including:

(1) the effect on the marine environment;

(2) the effect on oceanographic currents and wave patterns;

(3) the effect on alternate uses of the oceans and navigable waters, such as scientific study, fishing, and exploitation of other living and nonliving resources;

(4) the potential dangers to a deepwater port from waves, winds, weather, and geological conditions, and the steps which can be taken to protect against or minimize such dangers;

(5) effects of land-based developments related to deepwater port development;

(6) the effects on human health and welfare; and

(7) such other considerations as the Secretary deems necessary or appropriate.

(b) The Secretary shall periodically review and, whenever necessary, revise in the same manner as originally developed, criteria established pursuant to subsection (a) of this section.

(c) Criteria established pursuant to this section shall be developed concurrently with the regulations in section 5(a) of this Act and in accordance with the provisions of that subsection.

ANTITRUST REVIEW

Sec. 7. (a) The Secretary shall not issue, transfer, or renew any license pursuant to section 4 of this Act unless he has received the opinion of the Attorney General of the United States and the Federal Trade Commission as to whether such action would adversely affect competition, restrain trade, promote monopolization, or otherwise create a situation in contravention of the antitrust laws. The issuance of a license under this Act shall not be admissible in any way as a
defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any state right of action under such laws.

Application, submitted to Attorney General and Federal Trade Commission. Report, submission to Secretary of Transportation.}

(b) (1) Whenever any application for issuance, transfer, substantial change in, or renewal of any license is received, the Secretary shall transmit promptly to the Attorney General and the Federal Trade Commission a complete copy of such application. Within 45 days following the last public hearing, the Attorney General and the Federal Trade Commission shall each prepare and submit to the Secretary a report assessing the competitive effects which may result from issuance of the proposed license and the opinions described in subsection (a) of this section. If either the Attorney General or the Federal Trade Commission, or both, fails to file such views within such period, the Secretary shall proceed as if he had received such views.

(2) Nothing in this section shall be construed to bar the Attorney General or the Federal Trade Commission from challenging any anticompetitive situation involved in the ownership, construction, or operation of a deepwater port.

(3) Nothing contained in this section shall impair, amend, broaden, or modify any of the antitrust laws.

COMMON COURIER STATES

33 USC 1507.

Sec. 8. (a) For the purpose of chapter 39 of title 18, United States Code (18 U.S.C. 881-S87), and part I of the Interstate Commerce Act (49 U.S.C. 1-27), a deepwater port and storage facilities serviced directly by such deepwater port shall be subject to regulation as a common carrier in accordance with the Interstate Commerce Act, as amended.

(b) A license under this Act shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued. Whenever the Secretary has reason to believe that a licensee is not operating a deepwater port, any storage facility or component thereof, in compliance with its obligations as a common carrier, the Secretary shall commence an appropriate proceeding before the Interstate Commerce Commission or he shall request the Attorney General to take appropriate steps to enforce such obligation and, where appropriate, to secure the imposition of appropriate sanctions. The Secretary may, in addition, proceed as provided in section 12 of this Act to suspend or terminate the license of any person so involved.

ADJACENT COASTAL STATES

33 USC 1508.

Sec. 9. (1) The Secretary, in issuing notices of application pursuant to section 8(c) of this Act, shall designate as an "adjacent coastal State" any coastal State which (A) would be directly connected by pipeline to a deepwater port as proposed in an application, or (B) would be located within 15 miles of any such proposed deepwater port.

(2) The Secretary shall, upon request of a State, and after having received the recommendations of the Administrator of the National Oceanic and Atmospheric Administration, designate such State as an "adjacent coastal State" if he determines that there is a risk of damage to the coastal environment of such State equal to or greater than that which would be imposed on a State directly connected by pipeline to the proposed deepwater port. This paragraph shall apply only with respect to requests made by a State not later than the 14th day after the date of publication of notice of an application for a proposed deepwater port in the Federal Register in accordance with section 8(c) of this Act. The Secretary shall make the designation required by this paragraph not later than the 45th day after the date he receives such a request from a State.

(b) (1) Not later than 10 days after the designation of adjacent coastal States pursuant to this Act, the Secretary shall transmit a copy of this Act to the Governor of each adjacent coastal State. The Secretary shall not issue a license without the approval of the Governor of each adjacent coastal State. If the Governor fails to transmit his approval or disapproval to the Secretary not later than 45 days after the last public hearing upon applications for a particular application area, such approval shall be conclusively presumed. If the Governor notifies the Secretary that an application, which would otherwise be approved pursuant to this paragraph, is inconsistent with State programs relating to environmental protection, land and water use, and coastal zone management, the Secretary shall condition the license granted so as to make it consistent with such State programs.

(2) Any other interested State shall have the opportunity to make its views known to, and shall be given full consideration by, the Secretary regarding the location, construction, and operation of a deepwater port.

(3) The Secretary shall not issue a license unless the adjacent coastal State to which the deepwater port is to be directly connected by pipeline has developed, or is making, at the time the application is submitted, reasonable progress toward developing an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972 in the area to be directly and primarily impacted by land and water development in the coastal zone resulting from such deepwater port. For the purposes of this Act, a State shall be considered to be making reasonable progress if it is receiving a planning grant pursuant to section 305 of the Coastal Zone Management Act.

(4) The consent of Congress is given to two or more coastal States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States. (1) to apply for a license for the ownership, construction, and operation of a deepwater port or for the transfer of such license, and (2) to establish such agreements or compacts or otherwise, as are deemed necessary or appropriate for implementing and carrying out the provisions of any such agreement or compact. Such agreements or compacts shall be binding and obligatory upon any State or party thereto without further approval by Congress.

MARINE ENVIRONMENTAL PROTECTION AND NAVIGATIONAL SAFETY

Sec. 10. (a) Subject to recognized principles of international law, 33 USC 1509, the Secretary shall prescribe by regulation and enforce procedures with respect to any deepwater port, including, but not limited to, rules governing vessel movement, loading and unloading procedures, designation and marking of anchorage areas, maintenance, law enforcement, and the equipment, training, and maintenance required (A) to prevent pollution of the marine environment, (B) to clean up any pollutants which may be discharged, and (C) to otherwise protect or minimize any adverse impact from the construction and operation of such deepwater port.

(2) The Secretary shall issue and enforce regulations with respect to lights and other warning devices, safety equipment, and other mater-
Marking of components.

Safery zones.

(1) Subject to recognized principles of international law and after consultation with the Secretary of the Interior, the Secretary of Commerce, the Secretary of the Army, and the Secretary of Defense, the Secretary shall designate a zone of appropriate size around and including any deepwater port for the purpose of navigational safety.

The Secretary shall by regulation define permitted activities within such zone. The Secretary shall, not later than 30 days after publication of notice pursuant to section 5(c) of this Act, designate such safety zone with respect to any proposed deepwater port.

(2) In addition to any other regulations, the Secretary is authorized, in accordance with this subsection, to establish a safety zone to be effective during the period of construction of a deepwater port and to issue rules and regulations relating thereto.

INTERNATIONAL AGREEMENTS

33 USC 1510.

Sec. 11. The Secretary of State, in consultation with the Secretary, shall seek effective international action and cooperation in support of the policy and purposes of this Act and may formulate, present, or support specific proposals in the United Nations and other competent international organizations for the development of appropriate international rules and regulations relative to the construction, ownership, and operation of deepwater ports, with particular regard for measures that assure protection of such facilities as well as the promotion of navigational safety in the vicinity thereof.

SUSPENSION OR TERMINATION OF LICENSES

33 USC 1511.

Sec. 12. (a) Whenever a license fails to comply with any applicable provision of this title or any applicable rule, regulation, restriction, or condition issued or imposed by the Secretary under the authority of this title, the Attorney General, at the request of the Secretary, may file an appropriate action in the United States district court nearest to the location of the proposed or actual deepwater port, as the case may be, or in the district in which the license resides or may be found, to—

(1) suspend the license; or

(2) if such failure is knowing and continues for a period of thirty days after the Secretary mails notification of such failure by registered letter to the licensee at his record post office address, revoke such license.

No proceeding under this subsection is necessary if the license, by its terms, provides for automatic suspension or termination upon the occurrence of a fixed or agreed upon condition, event, or time.

(b) If the Secretary determines that immediate suspension of the construction or operation of a deepwater port thereof is necessary to protect public health or safety or to eliminate imminent and substantial danger to the environment, he shall order the license to cease or alter such construction or operation pending the completion of a judicial proceeding pursuant to subsection (a) of this section.

PUBLIC ACCESS TO INFORMATION

33 USC 1512.

Sec. 13. (a) Each licensee shall establish and maintain such records, make such reports, and provide such information as the Secretary, after consultation with other interested Federal departments and agencies, shall by regulation prescribe to carry out the provisions of this Act. Such regulations shall not amend, contradict, or duplicate regulations established pursuant to part I of the Interstate Commerce Act or any other law. Each licensee shall submit such reports and shall make such records and information available as the Secretary may require.

(b) All United States officials, including those officials responsible for the implementation and enforcement of United States laws applicable to a deepwater port, shall at all times be afforded reasonable access to a deepwater port licensed under this Act for the purpose of enforcing law under their jurisdiction or otherwise carrying out their responsibilities. Each such official may inspect, at reasonable times, records, files, papers, processes, controls, and facilities and may test any feature of a deepwater port. Each inspection shall be conducted with reasonable promptness, and such licensee shall be notified of the results of such inspection.

Information disclosure; prohibition

(1) to other Federal and adjacent coastal State government departments and agencies for official use, upon request;

(2) to any committee of Congress having jurisdiction over the subject matter to which the information relates, upon request;

(3) to any person in any judicial proceeding, under a court order formulated to preserve such confidentiality without impairing the proceeding;

(4) to the public in order to protect health and safety, after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the party to which the information pertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health and safety).
Penalties.
33 USC 1514.

Sec. 15. (a) Any person who willfully violates any provision of this Act or any rule, order, or regulation issued pursuant thereto shall on conviction be fined not more than $25,000 for each day of violation or imprisoned for not more than 1 year, or both.

(b) (1) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any provision of this Act or any rule, order, license, or condition thereof, or other requirements under this Act, he shall issue an order requiring such person to comply with such provision or requirement, or he shall bring a civil action in accordance with paragraph (b) of this subsection.

(2) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(3) Upon a request by the Secretary, the Attorney General shall commence a civil action for appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed $25,000 per day of such violation, for any violation for which the Secretary is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business and such court shall have jurisdiction to restrain such violation, require compliance, or impose such penalty.

(4) Upon a request by the Secretary, the Attorney General shall bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of any provision of this Act, any regulation under this Act, or any license condition. The district courts of the United States shall have jurisdiction to grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, compensatory damages, and punitive damages.

Vessels, Liability.
33 USC 1515.

Sec. 16. (a) Except as provided in subsection (b) of this section, any person may commence a civil action for equitable relief on his own behalf, whenever such action constitutes a case or controversy—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any provision of this Act or any condition of a license issued pursuant to this Act; or

(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this Act which is not discretionary with the Secretary. Any action brought against

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the Secretary under this paragraph shall be brought in the district court for the District of Columbia or the district of the appropriate adjacent coastal State.

In suits brought under this Act, the district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any provision of this Act or any condition of a license issued pursuant to this Act, or to order the Secretary to perform such act or duty, as the case may be.

(b) No civil action may be commenced—

(1) under subsection (a) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Secretary and (ii) to any alleged violator;
or

(B) if the Secretary or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to such matters in a court of the United States, but in any such action any person may intervene as a matter of right:
or

(2) under subsection (a) of this section prior to 60 days after the plaintiff has given notice of such action to the Secretary.

Notice under this subsection shall be given in such a manner as the Secretary shall prescribe by regulation.

(c) In any action under this section, the Secretary or the Attorney General, if not a party, may intervene as a matter of right.

(d) The Court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such an award is appropriate.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement or to seek any other relief.

Judicial review
Sec. 17. Any person suffering legal wrong, or who is adversely affected or aggrieved by the Secretary's decision to issue, transfer, modify, renew, suspend, or revoke a license, may not later than 60 days after such decision is made, seek judicial review of such decision in the United States Court of Appeals for the circuit in which the nearest adjacent coastal State is located. A person shall be deemed to be aggrieved by the Secretary's decision within the meaning of this Act if—

(A) has participated in the administrative proceedings before the Secretary (or if he did not so participate, he can show that his failure to do so was caused by the Secretary's failure to provide the required notice); and

(B) is adversely affected by the Secretary's action.

Liability
Sec. 18. (a) (1) The discharge of oil into the marine environment from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port is prohibited.

(2) The owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged in violation of this subsection shall be assessed a civil penalty of not more than $10,000 for each violation.

Penalty


33 USC 1516.

Sec. 15. (a) Any person who willfully violates any provision of this Act or any rule, order, or regulation issued pursuant thereto shall on conviction be fined not more than $25,000 for each day of violation or imprisoned for not more than 1 year, or both.

(b) (1) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any provision of this Act or any rule, order, license, or condition thereof, or other requirements under this Act, he shall issue an order requiring such person to comply with such provision or requirement, or he shall bring a civil action in accordance with paragraph (b) of this subsection.

(2) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(3) Upon a request by the Secretary, the Attorney General shall commence a civil action for appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed $25,000 per day of such violation, for any violation for which the Secretary is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business and such court shall have jurisdiction to restrain such violation, require compliance, or impose such penalty.

(c) (1) upon a request by the Secretary, the Attorney General shall bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of any provision of this Act, any regulation under this Act, or any license condition. The district courts of the United States shall have jurisdiction to grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, compensatory damages, and punitive damages.

(d) (1) Except as provided in subsection (b) of this section, any person may commence a civil action for equitable relief on his own behalf, whenever such action constitutes a case or controversy—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any provision of this Act or any condition of a license issued pursuant to this Act; or

(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this Act which is not discretionary with the Secretary. Any action brought against

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the Secretary under this paragraph shall be brought in the district court for the District of Columbia or the district of the appropriate adjacent coastal State.

In suits brought under this Act, the district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any provision of this Act or any condition of a license issued pursuant to this Act, or to order the Secretary to perform such act or duty, as the case may be.

(b) No civil action may be commenced—

(1) under subsection (a) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Secretary and (ii) to any alleged violator;
or

(B) if the Secretary or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to such matters in a court of the United States, but in any such action any person may intervene as a matter of right:
or

(2) under subsection (a) of this section prior to 60 days after the plaintiff has given notice of such action to the Secretary.

Notice under this subsection shall be given in such a manner as the Secretary shall prescribe by regulation.

(c) In any action under this section, the Secretary or the Attorney General, if not a party, may intervene as a matter of right.

(d) The Court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such an award is appropriate.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement or to seek any other relief.

Judicial review
Sec. 17. Any person suffering legal wrong, or who is adversely affected or aggrieved by the Secretary's decision to issue, transfer, modify, renew, suspend, or revoke a license, may not later than 60 days after such decision is made, seek judicial review of such decision in the United States Court of Appeals for the circuit in which the nearest adjacent coastal State is located. A person shall be deemed to be aggrieved by the Secretary's decision within the meaning of this Act if—

(A) has participated in the administrative proceedings before the Secretary (or if he did not so participate, he can show that his failure to do so was caused by the Secretary's failure to provide the required notice); and

(B) is adversely affected by the Secretary's action.

Liability
Sec. 18. (a) (1) The discharge of oil into the marine environment from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port is prohibited.

(2) The owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged in violation of this subsection shall be assessed a civil penalty of not more than $10,000 for each violation.

Penalty

No penalty shall be assessed unless the owner or operator or the licensee has given notice and opportunity for a hearing on such charge. Each violation is a separate offense. The Secretary of the Treasury shall withhold, at the request of the Secretary, the clearance required by subsection (c) of section 107 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary.

Oil discharge, removal, or contamination.

Penalty.

(c) (1) Whenever any oil is discharged from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port, the Secretary shall remove or arrange for the removal of such oil as soon as possible, unless he determines such removal will be done properly and expeditiously by the licensee of the deepwater port or the owner or operator of the vessel from which the discharge occurs.

(2) The removal of and actions to minimize damage from oil discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan for removal of oil and hazardous substances established pursuant to section 311 of the Federal Water Pollution Control Act, as amended.

33 USC 1321.

Liability.

(d) Notwithstanding any other provision of law, except as provided in subsection (e) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and for damages that result from a discharge of oil from such vessel. The liability of the licensee of a vessel which has received oil from another vessel at a deepwater port, except when such vessel is moored at a deepwater port. Such liability shall not exceed $150 per gross ton or $20,000,000, whichever is lesser, except that if it can be shown that the discharge was the result of gross negligence or willful misconduct within the privity and knowledge of the owner or operator, such owner and operator shall be jointly and severally liable for all cleanup costs and damages.

(2) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the owner of a vessel shall be liable, without regard to fault, for cleanup costs and damage claims that result from a discharge of oil from such vessel or from a vessel moored at such deepwater port. Such liability shall not exceed $60,000,000, except that if it can be shown that such discharge was the result of gross negligence or willful misconduct within the privity and knowledge of the owner, such owner shall be liable for the full amount of all cleanup costs and damages.

January 3, 1975 - 17 - Pub. Law 93-627

Deepwater Port Liability Fund. Establishment.

January 3, 1975 - 17 - Pub. Law 93-627

Deeplwater Port Liability Fund. Establishment.

1. There is established a Deepwater Port Liability Fund (hereinafter referred to as the "Fund") as a nonprofit corporate entity which may sue or be sued in its own name. The Fund shall be administered by the Secretary.

2. The Fund shall be liable, without regard to fault, for all cleanup costs and all damages in excess of those actually compensated pursuant to subsections (d) and (e) of this section.

3. Each license shall collect from the owner of any oil loaded or unloaded at the deepwater port operated by such licensee, at the time of loading or unloading, a fee of 2 cents per barrel, except that (A) bunker or fuel oil for the use of any vessel, and (B) oil which was transported through the trans-Alaska pipeline, shall not be subject to such collection. Such collections shall be delivered to the Fund at such times and in such manner as shall be prescribed by the Secretary. Such collections shall cease once the amount of money in the Fund has reached $100,000,000, unless there are adjudicated claims against the Fund yet to be satisfied. Collection shall be resumed when the Fund is reduced below $100,000,000. Whenever the money in the Fund is less than the claim for cleanup costs and damages for which it is liable under this section, the Fund shall borrow the balance required to pay such claims from the United States Treasury at an interest rate determined by the Secretary of the Treasury. Costs of administration shall be paid from the Fund only after appropriation in an appropriation bill. All sums needed for administration and the satisfaction of claims shall be prudently invested in income-producing securities issued by the United States, and approved by the Secretary of the Treasury. Income from such securities shall be applied to the principal of the Fund.

4. Liability shall not be imposed under subsection (d) or (e) of this section if the owner or operator of a vessel or the owner or operator of a vessel or the license can show that the discharge was caused by (A) an act of war, or (B) negligence on the part of the Government in establishing safety zones or in computing aids to navigation. In addition, liability will be limited to damages claimed by a damaged party shall not be imposed under subsection (d), (e), or (f) of this section if the owner or operator of a vessel, the licensee, or the Fund can show that such damage was caused by (A) an act of war, or (B) negligence on the part of the Government in establishing safety zones or in computing aids to navigation.

5. In any case where liability is imposed pursuant to subsection (d) of this section, if the discharge was the result of the negligence of the owner or operator of such vessel, the liability shall be subrogated to the rights of any person entitled to recovery against such owner or operator.

6. In any case where liability is imposed pursuant to subsection (e) of this section, if the discharge was the result of the unseaworthiness of a vessel or the negligence of the owner or operator of such vessel, the license shall be subrogated to the rights of any person entitled to recovery against such owner or operator.

7. Payment of compensation for any damages pursuant to subsection (f)(2) of this section shall be subject to the Fund acquiring by subrogation all rights of the claimant to recover for such damages from any other person.

8. The liabilities established in this section shall in no way affect or limit any rights which the licensee, the owner, or operator of a vessel, or the Fund may have against any third parties whose net gains may in any way have caused or contributed to a discharge of oil.

9. In any case where the owner or operator of a vessel or the license of a deepwater port from which oil is discharged acts to remove such oil in accordance with subsection (c)(1) of this section, such owner or
operator or such license shall be entitled to recover from the Fund the reasonable cleanup cost incurred in such removal if he can show that such discharge was caused solely by (A) an act of war or (B) negligence on the part of the Federal Government in establishing and maintaining aids to navigation.

Recovery of claims.

(1) The Attorney General may act on behalf of any group of damaged citizens he determines would be more adequately represented as a class in recovery of claims under this section. Suit recovered shall be distributed to the members of such group. If, within 90 days after a discharge of oil in violation of this section has occurred, the Attorney General fails to act in accordance with this paragraph, to sue on behalf of a group of persons who may be entitled to compensation pursuant to this section for damages caused by such discharge, any member of such group may maintain a class action to recover such damages on behalf of such group. Failure of the Attorney General to act in accordance with this subsection shall have no bearing on any class action maintained in accordance with this paragraph.

(2) In any case where the number of members in the class exceeds 1,000, publishing of notice of the action in the Federal Register and in local newspapers serving the areas in which the damaged parties reside shall be deemed to fulfill the requirement for public notice established by rule 2(c) (2) of the Federal Rules of Civil Procedure.

(3) The Secretary may act on behalf of the public as trustee of the natural resources of the marine environment to recover for damages to such resources in accordance with this section. Sums recovered shall be applied to the restoration and rehabilitation of such natural resources by the appropriate agencies of Federal or State government.

(4) The Secretary shall establish by regulation procedures for the filing and payment of claims for cleanup costs and damages pursuant to this Act.

(5) No claims for payment of cleanup costs or damages which are filed with the Secretary more than 3 years after the date of the discharge giving rise to such claims shall be considered.

Appeals.

(1) Appeals from any final determination of the Secretary pursuant to this section shall be filed not later than 120 days after such determination in the United States Court of Appeals of the circuit within which the nearest adjacent coastal State is located.

(2) The Secretary shall require that any owner or operator of a vessel using any deepwater port or any licensee of a deepwater port, or owner or operator of a vessel using any deepwater port or any licensee of a deepwater port, shall carry insurance or give evidence of other financial responsibility in an amount sufficient to meet the liabilities imposed by this section.

Definitions.

(1) "Cleanup costs" means all actual costs, including but not limited to costs of the Federal Government, of any State or local government, of other nations or of their contractors or subcontractors incurred in the (A) removing or attempting to remove, or (B) taking other measures to reduce or mitigate damages from, any oil discharged into the marine environment in violation of subsection (a) (1) of this section;

January 3, 1975

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according to the terms of this Act, while the vessel is located within the safety zone, and (2) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel located within such a safety zone.

(d) The customs laws administered by the Secretary of the Treasury shall not apply to any deepwater port licensed under this Act, but all foreign laws applicable to the construction or operation of deepwater ports shall apply. The Secretary shall be liable to the extent of the customs laws applicable to the construction or operation of deepwater ports: and

(e) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with the construction and operation of deepwater ports, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent coastal State nearest the place where the cause of action arose.

(2) Section 4(a) of the Act of August 7, 1933 (67 Stat. 492) is amended by deleting the words "as of the effective date of this Act" in the first sentence thereof and inserting in lieu thereof the words "as of the date of enactment of this Act", now in effect or hereafter adopted, amended, or repeated.

ANNUAL REPORT BY SECRETARY TO CONGRESS

33 US 1519.
Sec. 20. Within 6 months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives (1) a report on the administration of the Deepwater Port Act during such fiscal year, including all deepwater port development activities; (2) a summary of management, supervision, and enforcement activities; and (3) recommendations to Congress for such additional legislative authority as may be necessary to improve the management and safety of deepwater port development and for resolution of jurisdictional conflicts or ambiguities.

REPORT TO CONGRESS

33 US 1520.
Sec. 31. (a) The Secretary, in cooperation with the Secretary of the Interior, shall establish and enforce such standards and regulations as may be necessary to assure the safe construction and operation of oil pipelines on the Outer Continental Shelf.

(b) In cooperation with the Secretary of the Interior, the Secretary is authorized and directed to report to Congress within 60 days after the date of enactment of this Act on the construction, operation, and maintenance of pipelines on Federal lands and the Outer Continental Shelf so as to assure that they meet all applicable standards for construction, operation, and maintenance.

(c) The Secretary, in cooperation with the Secretary of the Interior, is authorized and directed to report to Congress thereon within 6 months after the date of enactment of this Act on administrative changes needed and recommendations for new legislation.

LEGISLATIVE HISTORY

HOUSE REPORTS: No. 93-668 (Comm. on Public Works) and No. 93-1605 (Comm. of Conference).

SENATE REPORTS: No. 93-1187 accompanying S. 4076 (Committee on Commerce, Interior and Insular Affairs, and Public Works) and No. 93-1293 (Comm. of Conference).

June 5, considered and passed Senate.
Oct. 9, considered and passed Senate, amended, in lieu of S. 4076.
Dec. 17, Senate and House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 11, No. 2:
Jan. 4, 1975, Presidential statement.
APPENDIX B

LEGISLATIVE HISTORY OF THE DEEPWATER PORT ACT

The majority of this Appendix is a verbatim extract from the Joint Report of the Committees on Commerce; Interior and Insular Affairs; and Public Works, U. S. Senate, to accompany S.4076.

Bills to authorize deepwater port development off the coast of the United States were first introduced in the 92d Congress. During that Congress, the Senate Interior and Insular Affairs Committee conducted informational hearings on Deepwater Port policy under the National Fuels and Energy Policy Study in April, 1972.

During the 92d and 93d Congresses a number of bills pertaining to deepwater ports and other types of offshore development were introduced. The Senate Commerce Committee held three days of hearings in March of 1973 on S.80 (Mr. Hollings and others). This bill amended the Ports and Waterways Safety Act of 1972 to require the Administrator of the National Oceanic and Atmospheric Administration and the Secretary of the Department of Housing and Urban Development to certify that the construction and operation of offshore facilities would not pose an unreasonable threat to the integrity of the marine environment.

A number of bills, including S.1316 (Mr. Biden and Mr. Muskie), S.836 (Mr. Case), and S.180 (Mr. Williams and others) and S.1558 (Mr. Roth), proposed to amend the Federal Water Pollution Control Act to provide for the licensing and regulation of deepwater ports. These bills, referred to the Senate Committee on Public Works, described various roles for a number of different Federal agencies and for the States in licensing and regulating deepwater ports. The Public Works Committee held one day of hearings on these bills in February, 1973.

In addition, S.568 (Mr. Tower), a bill amending the Outer Continental Shelf Lands Act to authorize and regulate the construction and operation of deepwater ports was introduced and referred to the Committee on Interior and Insular Affairs.

On April 18, 1973, the Administration proposed the enactment of S.1751, a bill authorizing the Secretary of the Interior to license and regulate deepwater ports in consultation and coordination with other Federal agencies. This measure, by agreement of the respective Chairmen, was jointly referred to the Senate Committees on Commerce, Public Works, and Interior and Insular Affairs. The three Committees established a Special Joint Subcommittee to consider legislation authorizing and regulating deepwater port development. Three majority and two minority members from each full committee were appointed by the Chairmen to serve on the Special Joint Subcommittee.

The Subcommittee held six days of hearings on July 23, 24, and 25, August 1, and October 2 and 3, of 1973, to consider S.1751 and S.2232,
a measure introduced by Senators Hollings and Magnuson, which would authorize the Secretary of the Department in which the Coast Guard is operating to license and regulate deepwater ports. During these hearings, over 55 witnesses representing Federal and State governments, industry, and environmental groups presented testimony on the economic, environmental and social issues associated with deepwater port policy.

The Special Joint Subcommittee convened in Executive Session the following spring to draft an original bill providing for the licensing and regulation of deepwater ports. The Subcommittee met in Executive Session on April 2 and 11, May 16, June 11 and 25, July 24, and August 7, 1974. During this time the House passed H.R.10701, the High Seas Oil Port Act. This bill authorizes the Secretary of the Interior to license and oversee the construction of deepwater ports, and the Secretary of the Department in which the Coast Guard is operating to regulate the operation of such facilities. The measure was jointly referred to the Senate Committees on Commerce, Public Works, and Interior and Insular Affairs.

On August 7, 1974, the Senate Special Joint Subcommittee on Deepwater Ports met in Executive Session and voted unanimously to report the Deepwater Port Act of 1974 to its parent full Committees.

The three Committees considered the Deepwater Port of 1974 with the understanding that the bill would be jointly reported to the Senate floor in the same form as it was reported from the Special Joint Subcommittee. Any amendments recommended by each parent full Committee would be included in a joint report of the three Committees... and offered as separate amendments on the Senate floor.

The Committee on Commerce met in Executive Session on Thursday, August 8, 1974, and ordered the Deepwater Port Act reported with one recommended amendment. The Committee on Interior and Insular Affairs met in open mark-up on Thursday, August 8, 1974, and ordered the bill reported with three recommended amendments. The Committee on Public Works met in Executive Session on Wednesday, August 14, 1974, and ordered the bill reported with two recommended amendments.

The three full Committees jointly report the Deepwater Port Act of 1974 as an original bill. On October 9, 1974, the bill passed the Senate. The House-Senate Conference was completed on December 16, 1974, and on December 17, the bill passed both Houses in voice votes. The Deepwater Port Act of 1974 was signed by the President on January 3, 1975.
REFERENCES


5. U. S. Congress, Senate, Hearings on S.1751 and S.2232, p. 94.


9. State of Delaware, Delaware Coastal Zone Act, Title 7, Chapter 70, Delaware Code, 126th General Assembly, 1st sess., House Bill 300.


21. Ibid., p. 100.


27. Deepwater Port Policy Issues, p. 66.


29. Deepwater Port Policy Issues, p. 11.


33. Deepwater Port Policy Issues, p. 70.


