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93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 93–1605

DEEPWATER PORT ACT

DECEMBER 16, 1974.—Ordered to be printed

Mr. JONES of Alabama, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 10701]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10701) to amend the Act of October 27, 1965, relating to public works on rivers and harbors to provide for construction and operation of certain port facilities, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Deepwater Port Act of 1974".

DEFINITIONS

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 superjacent airspace, or the seabed and subsoil, including the Continental Shelf.

DECLARATION OF POLICY

SEC. 3. As used in this Act, unless the context otherwise requires, the term—

(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(a)(2) 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 73 and 74 of the Act of August 27, 1894, 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 law, birth or naturalization and which has no 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 conduct the business of the board;

(6) "coastal environment" means the navigable waters (including the lands therein and thereunder) and the adjacent shorelines (including waters therein and thereunder). The term includes transitional and intertidal areas, bays, lagoons, salt marshes, estuaries, and beaches; the fish, wildlife and other living resources thereof; and the recreational and scenic values of such lands, waters and resources;

(7) "coastal State" means any State of the United States in or bordering on the Atlantic, Pacific, or Arctic Oceans, or the Gulf of Mexico;

(8) "construction" means the supervising, inspection, actual building, and all other activities incidental to the building, repairing, or expanding of a deepwater port or any of its components, including, but not limited to, pile driving and bulkheading, and alterations, modifications, or additions to the deepwater port;

(9) "control" means the power, directly or indirectly, to 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;

(10) "deepwater port" means any fixed or floating manmade structures other than a vessel, or any group of such structures, 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 23. The term includes all associated components and equipment, including pipelines, pumping stations, service 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;

(11) "Governor" 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;

(12) "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 pursuant to this Act;

(13) "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;

(14) "oil" means petroleum, crude oil, and any substance refined from petroleum or crude oil;

(15) "person" includes an individual, a public or private corporation, a partnership or other association, or a government entity;

(16) "safety zone" means the safety zone established around a deepwater port as determined by the Secretary in accordance with section 10(d) of this Act;

(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 (other than oil) transported from the United States, other than materials to be used in the construction, maintenance, or operation of the high seas oil port, to be used as ship supplies, including bunkering, for vessels utilizing the high seas oil port.

(2) for the transshipment of commodities or materials, to the United States, other than oil,

(3) except in cases where the Secretary otherwise by rule provides, for the transshipment of oil, destined for locations outside the United States.

(b) The Secretary is authorized, upon application and in accordance 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 provisions of this Act if—

(1) he determines that the applicant is financially responsible and will meet the requirements of section 18(l) 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 unreasonably interfere with international navigation or other reasonable uses of the high seas, as defined by treaty, convention, or customary 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 constructed 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 provisions of the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, or the Marine Protection, Research and Sanctuaries Act, as amended;

(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;

(8) he has consulted with the Secretary of the Army, the Secretary of 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.

(d) 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—

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

(2) 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. 1121), for such construction; and

(3) applies to the Secretary for a determination under this section within 30 days of the date of the license application;

the Secretary shall not 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 nonreviewable.

(e) (1) 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 provisions of this Act, or which are otherwise required by any Federal department or agency pursuant to the terms of this Act.

(2) No license shall be issued, transferred, or renewed under this Act unless the licensee or transferee first agrees in writing that (A) there will be no substantial change from the plans, operational systems, and methods, procedures, and safeguards set forth in his application, as approved, without prior approval in writing from the Secretary; and (B) he will comply with any condition the Secretary may prescribe in accordance with the provisions of this Act.

(3) The Secretary shall establish such bonding 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. In the case of components lying in the subsoil below the seabed, 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 to the environment. At the request of the licensee, the Secretary, after consultation with the Secretary of the Interior, is authorized to waive the removal requirement as to any components 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 (67 Stat. 462), after which waiver the utilization of such components 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 the 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. 5. (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. Such 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 and cooperation with all 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 thenceforth not be undertaken except in accordance with 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 21 days after the receipt of an application, the Secretary shall determine whether the application appears to contain all of the information required by paragraph (2) hereof. 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 a determination, publish notice of the application 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 3 per centum;

(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 thereof;

(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 subparagraph (A), (B), or (C) of this paragraph;

(H) with respect to any existing and proposed refineries which will receive oil transported through the deepwater port, the location and capacity of each such refinery and the anticipated volume of such oil to be refined by each such refinery, to the extent known by the applicant or any person required to be disclosed pursuant to subparagraph (A), (B), or (C) of this paragraph;

(I) the financial and technical capabilities of the applicant to construct or operate the deepwater port;

(J) other qualifications of the applicant to hold a license under this Act;

(K) a description of procedures to be used in constructing, operating, and maintaining the deepwater port, including systems of oil spill prevention, containment, and cleanup; and

(L) such other information as may be required by the Secretary to determine the environmental impact of the proposed deepwater port.

(d) (1) At the time notice of an application is published pursuant to subsection (c) of this section, the Secretary shall publish a description in the Federal Register of an application area encompassing the deepwater port site proposed by such application and within which construction of the proposed deepwater port would eliminate, at the

time such application was submitted, the need for any other deepwater port within that application area.

(2) As used in this section, "application area" means any reasonable geographical area within which a deepwater port may be constructed and operated. Such application area shall not exceed a circular zone, the center of which is the principal point of loading and unloading at the port, and the radius of which is the distance from such point to the high water mark of the nearest adjacent coastal State.

(3) The Secretary shall accompany such publication with a call for submission of any other applications for licenses for the ownership, construction, and operation of a deepwater port within the designated application area. Persons intending the file applications for such license shall submit a notice of intent to file an application with the Secretary not later than 60 days after the publication of notice pursuant to subsection (c) of this section and shall submit the completed application no later than 90 days after publication of such notice. The Secretary shall publish notice of any such application received in accordance with subsection (c) of this section. No application for a license for the ownership, construction, and operation of a deepwater port within the designated application area for which a notice of intent to file was received after such 60-day period, or which is received after such 90-day period has elapsed, shall be considered until the applications pending with respect to such application area have been denied pursuant to this Act.

(e) (1) Not later than 30 days after the date of enactment of this Act, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Chief of Engineers of the United States Army Corps of Engineers, the Administrator of the National Oceanic and Atmospheric Administration, and the heads of any other Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the construction or operation of deepwater ports shall transmit to the Secretary written comments as to their expertise or statutory responsibilities pursuant to this Act or any other Federal law.

(2) An application filed with the Secretary shall constitute an application for all Federal authorizations required for ownership, construction, and operation of a deepwater port. At the time notice of any application is published pursuant to subsection (c) of this section, the Secretary shall forward a copy of such application to those Federal agencies and departments with jurisdiction over any aspect of such ownership, construction, or operation for comment, review, or recommendation as to conditions and for such other action as may be required by law. Each agency or department involved shall review the application and, based upon legal considerations within its area of responsibility, recommend to the Secretary the approval or disapproval of the application not later than 45 days after the last public hearing on a proposed license for a designated application area. In any case in which the agency or department recommends disapproval, it shall set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall notify the Secretary how the application may be amended so as to bring it into compliance with the law or regulation involved.

(f) 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 requirement 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.

(g) 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 adjudicatory hearing shall be held in accordance with the provisions of section 554 of title 5, United States Code, in the District of Columbia. The record developed in any such adjudicatory hearing shall be basis 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 concluded not later than 240 days after notice of the initial application has been published pursuant to section 5(c) of this Act.

(h) (1) Each person applying for a license pursuant to this Act shall remit to the Secretary at the time the application is filed a nonrefundable 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, and such State and any other State in which land-based facilities directly related to a deepwater port facility are located may set 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 such deepwater port and such land-based facilities, which cannot be recovered under other authority of such State or political subdivision thereof, including, but not limited to, ad valorem taxes, and for environmental 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 economic, environmental, 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 subsoil

and seabed 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 subsoil and seabed.

(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 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 date of 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 effect 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 opinions 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 private right of action under such laws.

(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 CARRIER STATUS

SEC. 8. (a) For the purpose of chapter 39 of title 18, United States Code (18 U.S.C. 831–837), 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 licensee 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

SEC. 9. (a)(1) The Secretary, in issuing notice of application pursuant to section 5(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 the risk posed to 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 5(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 complete copy of the application 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 on 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.

(c) The Secretary shall not issue a license unless the adjacent coastal State to which the deepwater ports 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.

(d) 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 agencies, joint or otherwise, as are deemed necessary or appropriate for implementing and carrying out the provisions of any such agreement or compact. Such agreement or compact 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, 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 prevent or minimize any adverse impact from the construction and operation of such deepwater port.

(b) The Secretary shall issue and enforce regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property in any deepwater port and the waters adjacent thereto.

(c) The Secretary shall mark, for the protection of navigation, any component of a deepwater port whenever the licensee fails to mark such component in accordance with applicable regulations. The licensee shall pay the cost of such marking.

(d)(1) Subject to recognized principles of international law and after consultation with the Secretary of the Interior, the Secretary of Commerce, the Secretary of State, 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. In such zone, no installations, structures, or uses will be permitted that are incompatible with the operation of the deepwater port. 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

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

Sec. 12. (a) Whenever a licensee 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 licensee 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 or any component thereof is necessary to protect public health or safety or to eliminate imminent and substantial danger to the environment, he shall order the licensee to cease or alter such construction or operation pending the completion of a judicial proceeding pursuant to subsection (a) of this section.

RECORDKEEPING AND INSPECTION

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 provision 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 request.

(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 laws 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.

PUBLIC ACCESS TO INFORMATION

Sec. 14. (a) Copies of any communication, document, report, or information transmitted between any official of the Federal Government and any person concerning a deepwater port (other than contracts referred to in section 5(c)(2)(B) of this Act) shall be made available to the public for inspection, and shall be available for the purpose of reproduction at a reasonable cost, to the public upon identifiable request, unless such information may not be publicly released under the terms of subsection (b) of this section. Except as provided in subsection (b) of this section, nothing contained in this section shall be construed to require the release of any information of the kind described in subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(b) The Secretary shall not disclose information obtained by him under this Act that concerns or relates to a trade secret, referred to in section 1905 of title 18, United States Code, or to a contract referred to in section 5(c)(2)(B) of this Act, except that such information may be disclosed, in a manner which is designed to maintain confidentiality—

(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 proceedings; and

(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).

REMEDIES

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, regulation, 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 (3) 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 perma-

nent 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) Upon a request by the Secretary, the Attorney General shall bring an action in an apropriate 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) Any vessel, except a public vessel engaged in noncommercial activities, used in a violation of this Act or of any rule or regulation issued pursuant to this Act, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation, a consenting party or privy to such violation.

CITIZEN CIVIL ACTION

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 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)(1) 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)(2) 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 any such decision is made, seek judicial review of such decision in the United States Court of Appeals for the circuit within 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 he—

(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. No penalty shall be assessed unless the owner or operator or the licensee has been 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 section 4197 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.

(b) Any individual in charge of a vessel or a deepwater port shall notify the Secretary as soon as he has knowledge of a discharge of oil. Any such individual who fails to notify the Secretary immediately of

such discharge shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than 1 year, or both. Notification received pursuant to this subsection, or information obtained by the use of such notification, shall not be used against any such individual in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) (1) Whenever any oil is discharged from a vessel with 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) Removal of oil 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 (c) (2) of the Federal Water Pollution Control Act, as amended.

(3) Whenever the Secretary acts to remove a discharge of oil pursuant to this subsection, he is authorized to draw upon money available in the Deepwater Port Liability Fund established pursuant to subsection (f) of this section. Such money shall be used to pay promptly for all cleanup costs incurred by the Secretary in removing or in minimizing damage caused by such oil discharge.

(d) Notwithstanding any other provision of law, except as provided in subsection (g) 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 within any safety zone, or from 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 such 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 the full amount of all cleanup costs and damages.

(e) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the licensee of a deepwater port shall be liable, without regard to fault, for cleanup costs and damages that result from a discharge of oil from such deepwater port or from a vessel moored at such deepwater port. Such liability shall not exceed $50,000,000, except that if it can be shown that such damage was the result of gross negligence or willful misconduct within the privity and knowledge of the licensee, such licensee shall be liable for the full amount of all cleanup costs and damages.

(f) (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 licensee 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 after 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 claims 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 not 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.

(g) Liability shall not be imposed under subsection (d) or (e) of this section if the owner or operator of a vessel or the licensee can show that the discharge was caused solely by (1) an act of war, or (2) negligence on the part of the Federal Government in establishing and maintaining aids to navigation. In addition, liability with respect 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 solely by the negligence of such party.

(h) (1) In any case where liability is imposed pursuant to subsection (d) of this section, if the discharge was the result of negligence of the licensee, the owner or operator of a vessel held liable shall be subrogated to the rights of any person entitled to recovery against such licensee.

(2) 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 licensee shall be subrogated to the rights of any person entitled to recovery against such owner or operator.

(3) 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.

(4) 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 party whose act may in any way have caused or contributed to a discharge of oil.

(5) In any case where the owner or operator of a vessel or the licensee 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 licensee 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.

(i)(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. Sums 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 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 23(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.

(j)(1) The Secretary shall establish by regulation procedures for the filing and payment of claims for cleanup costs and damages pursuant to this Act.

(2) 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.

(3) Appeals from any final determination of the Secretary pursuant to this section shall be filed not later than 30 days after such determination in the United States Court of Appeals of the circuit within which the nearest adjacent coastal State is located.

(k)(1) This section shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil from a deepwater port or a vessel within any safety zone.

(2) Any person who receives compensation for damages pursuant to this section shall be precluded from recovering compensation for the same damages pursuant to any other State or Federal law. Any person who receives compensation for damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same damages as provided in this section.

(l) The Secretary shall require that any 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.

(m) As used in this section the term—

(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;

(2) "damages" means all damages (except cleanup costs) suffered by any person, or involving real or personal property, the natural resources of the marine environment, or the coastal environment of any nation, including damages claimed without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or natural resources;

(3) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil determined to be harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency; and

(4) "owner or operator" means any person owning, operating, or chartering by demise, a vessel.

(n)(1) The Attorney General, in cooperation with the Secretary, the Secretary of State, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Council on Environmental Quality, and the Administrative Conference of the United States, is authorized and directed to study methods and procedures for implementing a uniform law providing liability for cleanup costs and damages from oil spills from Outer Continental Shelf operations, deepwater ports, vessels, and other ocean-related sources. The study shall give particular attention to methods of adjudicating and settling claims as rapidly, economically, and equitably as possible.

(2) The Attorney General shall report the results of his study together with any legislative recommendations to the Congress within 6 months after the date of enactment of this Act.

RELATIONSHIP TO OTHER LAWS

SEC. 19. (a)(1) The Constitution, laws, and treaties of the United States shall apply to a deepwater port licensed under this Act and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State. Nothing in this Act shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty. Deepwater ports licensed under this Act do not possess the status of islands and have no territorial seas of their own.

(2) Except as otherwise provided by this Act, nothing in this Act shall in any way alter the responsibilities and authorities of a State or the United States within the territorial seas of the United States.

(b) The law of the nearest adjacent coastal State, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to any deepwater port licensed pursuant to this Act, to the extent applicable and not inconsistent with any provision or regulation under this Act or other Federal laws and regulations now in effect or hereafter adopted, amended, or repealed. All such applicable laws shall be administered and enforced

by the appropriate officers and courts of the United States. For purposes of this subsection, the nearest adjacent coastal State shall be that State whose seaward boundaries, if extended beyond 3 miles, would encompass the site of the deepwater port.

(c) Except in a situation involving force majeure, a licensee of a deepwater port shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, or otherwise utilize a deepwater port licensed under this Act unless (1) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessel and its personnel, in accordance with the provisions 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 while 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 articles to be used in the construction of any such deepwater port, including any component thereof, shall first be made subject to all applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States. Duties and taxes shall be paid thereon in accordance with laws applicable to merchandise imported into the customs territory of the United States.

(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.

(f) Section 4(a)(2) of the Act of August 7, 1953 (67 Stat. 462) 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 ", now in effect or hereafter adopted, amended, or repealed".

ANNUAL REPORT BY SECRETARY TO CONGRESS

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 the 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.

PIPELINE SAFETY AND OPERATION

SEC. 21. (a) The Secretary, in cooperation with the Secretary of the Interior, shall estabilsh and enforce such standards and regualtions as may be necessary to assure the safe construction and operation of oil pipelines on the Outer Continental Shelf.

(b) The Secretary in cooperation with the Secretary of the Interior, is authorized and directed to report to the Congress within 60 days after the date of enactment of this Act on appropriations and staffing needed to monitor 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 review all laws and regulations relating to the construction, operation, and maintenance of pipelines on Federal lands and the Outer Continental Shelf and 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.

NEGOTIATIONS WITH CANADA AND MEXICO

SEC. 22. The President of the United States is authorized and requested to enter into negotiations with the Governments of Canada and Mexico to determine:

(1) the need for intergovernmental understandings, agreements, or treaties to protect the interests of the people of Canada, Mexico, and the United States and of any party or parties involved with the construction or operation of deepwater ports; and

(2) the desirability of undertaking joint studies and investigations designed to insure protection of the environment and to eliminate any legal and regulatory uncertainty, to assure that the interests of the people of Canada, Mexico, and the United States are adequately met.

The President shall report to the Congress the actions taken, the progress achieved, the areas of disagreement, and the matters about which more information is needed, together with his recommendations for further action.

SEC. 23. Nothing in this Act shall be construed to amend, restrict or otherwise limit the application of section 28(u) of the Mineral Leasing Act of 1920, as amended by Public Law 93-153.

GENERAL PROCEDURES

SEC. 24. The Secretary or his delegate shall have the authority to issue and enforce orders during proceedings brought under this Act. Such authority shall include the authority to issue subpenas, administer oaths, compel the attendance and testimony of witnesses and the production of books, papers, documents, and other evidence, to take depositions before any designated individual competent to administer oaths, and to examine witnesses.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 25. There is authorized to be appropriated for administration of this Act not to exceed $2,500,000 for the fiscal year ending June 30, 1975, not to exceed $2,500,000 for the fiscal year ending June 30, 1976, and not to exceed $2,500,000 for the fiscal year ending June 30, 1977.

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title and agree to the same.

Robert E. Jones,
David N. Henderson,
John Breaux,
Wm. H. Harsha,
Gene Snyder,
Don H. Clausen,
Managers on the Part of the House.
Russell B. Long,
E. F. Hollings,
Ted Stevens,
Henry M. Jackson,
J. Bennett Johnston, Jr.,
Clifford P. Hansen,
Mike Gravel,
Floyd Bentsen,
James L. Buckley,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10701) to amend the Act of October 27, 1965, relating to public works on rivers and harbors to provide for construction and operation of certain port facilities, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Short Title

House bill

Provides that the Act may be cited as the "High Seas Oil Port Act".

Senate amendment

Provides that the Act may be cited as the "Deepwater Port Act of 1974".

Conference substitute

The conference substitute is the same as the Senate amendment.

Table of Contents

House bill

No comparable provision.

Senate amendment

The Senate amendment contains a table of contents of each section of the amendment.

Conference substitute

The conference substitute contains no table of contents.

Declaration of Policy

House bill

Section 2(a) sets forth findings of the Congress which indicate that (1) increasing energy requirements continue to exceed sources of energy supply, (2) various factors which affect other potential energy sources dictate that increased energy demand be met, at least for the

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near future, by imported oil, (3) economic considerations and transportation efficiency demand the utilization of large vessels to transport the needed foreign oil, (4) present ports and port facilities are physically incapable of accommodating larger tankers and it is neither economically nor environmentally feasible to alter, to the extent necessary, the existing ports or port facilities, (5) the use of smaller tankers is, due to environmental and safety considerations, not a viable alternative solution, (6) the construction of high seas oil ports in waters sufficiently deep to accommodate the needed draft vessels is both economically advantageous and environmentally sound, (7) the licensing of high seas oil ports as to location, construction standards, and operational regulations is primarily a matter of national interest, and the shoreside impact of the high seas oil ports is a matter of both national and local interest, and (8) construction and operation of high seas oil ports, in accordance with the provisions of this Act, in waters adjacent to the Continental Shelf of the United States is a reasonable use of the high seas and consistent with recognized principles of international law.

Section 2(b) establishes a policy which authorizes the Secretary of the Interior to grant licenses to applicants for the construction of high seas oil ports and authorizes the Secretary of the Department in which the Coast Guard is operating to issue necessary and reasonable regulations for the operation of high seas oil ports.

Section 2(b) also sets an objective of minimizing any adverse impact on the marine environment that may result from the construction and operation of high seas oil ports and of insuring that reasonable precautions are taken to protect both the national interest of the United States in the construction and operation of high seas oil ports and the national and local interests affected by the impact of the high sea oil ports on adjacent coastal States.

Senate amendment

Section 2(a) establishes a policy of regulating the location, ownership, construction, and operation of deepwater ports in waters beyond the territorial limits of the United States.

Section 2(a) also sets an objective of protecting (1) the marine and coastal environment to prevent or minimize any adverse impact resulting from the development of deepwater ports, (2) the interests of the United States and adjacent coastal States in the location, construction, and operation of deepwater ports, and (3) the rights and responsibilities of States and communities to regulate growth, determine land use, and otherwise protect the environment in accordance with law.

Conference substitute

The conference substitute is the same as the Senate amendment.

DEFINITIONS

House bill

Section 3 defines the following terms: high seas oil port, oil port, offshore costal waters of the United States, United States, State, coastal State, adjacent coastal State, port reference point, person,

eligible applicant, and marine environment. In particular, the term "adjacent coastal State" is defined to mean a coastal State any point of which is within ten miles of a high seas oil port as such term is used in either a structural or geographical sense.

Section 101 defines "Secretary", for purposes of title I of the Act (Construction of High Seas Oil Ports), as the Secretary of the Interior.

Section 201 defines "Secretary", for purposes of title II of the Act (Operation of High Seas Oil Ports), as the Secretary of the department in which the Coast Guard is operating.

Senate amendment

Section 3 defines the following terms: coastal State, marine environment, person, and State, in basically the same way as defined in the House bill.

Section 3 defines the term "adjacent coastal State" in a manner which differs from the House bill as follows:

The term "adjacent coastal State" is defined as any adjacent State directly connected by pipeline to a deepwater port, located within 15 miles of any such proposed deepwater port, or designated by the Administrator of the National Oceanic and Atmospheric Administration as a State to which there is a substantial risk of serious damage to its coastal environment due to its location in relation to any proposed deepwater port.

Section 3 defines the term "Secretary" as it is defined in title II of the House bill.

Section 3 also defines the following terms which are not defined in the House bill: affiliate, antitrust laws, application, citizen of the United States, coastal environment, construction, control, Governor, deepwater port, licensee, natural gas, oil safety zone, and vessel.

Conference substitute

Section 3 is the same as section 3 of the Senate amendment except as follows:

(1) The term "adjacent coastal State" includes any coastal State designated by the Secretary in accordance with section 9(a)(2) of this Act.

(2) The term "citizen of the United States" is amended to include language from section 3(h) of the House bill which places restrictions on who can hold decisionmaking positions in a corporation, partnership, or association.

(3) The term "deepwater port" is amended, in part, to eliminate any reference to natural gas.

(4) The term "natural gas" is deleted.

(5) The term "Secretary" is defined as the Secretary of Transportation.

The managers expect the Secretary to consider various new methods and technology of oil transfer including self-propelled, unmoored terminals of advanced design with the capability of relocation and storm avoidance which offer possible lead time and cost effectiveness advantages. The determination of the need for a license under this legislation will depend upon the specifics of the design and operation.

Activities Prohibited

House bill

Section 4(a) prohibits, except as authorized by Federal law, any person from constructing, maintaining, or operating a high seas oil port or other fixed structure in the offshore coastal water of the United States.

Section 4(b) prohibits any high seas oil port licensed by this Act being utilized (1) for unloading items transported from the United States, other than items to be used in the construction, maintenance, or operation of the high seas oil port or to be used as ship supplies for vessels utilizing the high seas oil port, (2) for the transshipment of commodities or materials to the United States other than petroleum or petroleum products, (3) except where the Secretary of the Interior provides by rule, for the transshipment of petroleum or petroleum products destined for location outside the United States, (4) for the transportation of minerals (including oil and gas) extracted from the Continental Shelf of the United States in the coastal area in which the high seas oil port is located, or (5) by any carrier of petroleum or petroleum products unless the carrier is equipped with certain collision avoidance radar systems.

Senate amendment

Section 4(a) is similar to section 4(a) of the House bill except that, when properly authorized, the transfer of natural gas between a deepwater port and the United States would be permitted.

Conference substitute

Section 4(a) of the conference substitute combines, with minor changes, section 4(a) of the Senate amendment and sections 4(b) (1) through (3) of the House bill.

Under this provision, deepwater ports may be utilized for the shipment of oil between States. For example, a deepwater port may be used to load oil off the coast of Texas, and another deepwater port may be used to offload this oil off the coast of California. Further, with the approval of the President, pursuant to Public Law 93-153, a deepwater port off the coast of Alaska may be used to load oil for shipment to foreign ports.

License for the Ownership, Construction, and Operation of a Deepwater Port

House bill

Section 102(a) lists the general criteria to be used in the Secretary's determination as to the issuance of a license. The criteria include the applicant's financial position, whether the location of the high seas oil port serves the national or regional needs, and the ramifications of the issuance of the license on the marine environment, competition, international navigation, national security, and international obligations of the United States.

Section 202(a) requires the Secretary, upon the occurrence of certain conditions, to convert the license to construct a high seas oil port to a license to operate the oil port.

Senate amendment

Section 4(b) gives the Secretary the general authority to issue, transfer, amend, or renew a license for the ownership, construction, and operation of a deepwater port.

Section 4(c), in addition to listing the criteria in the House bill, requires the Secretary to base his decision on information received from the Environmental Protection Agency and the approval of the Governor of any adjacent coastal State. Also, the Secretary must determine that the adjacent coastal State to which the deepwater port is to be connected by pipeline has developed or is making progress towards developing an approved coastal zone management program.

Conference substitute

The conference substitute is the same as the Senate amendment.

Port Evaluation

House bill

Section 102(a)(8) permits the Secretary to issue a license to an eligible applicant if he determines, after consultation with other appropriate Federal agencies and departments, that the benefits resulting from the construction and operation of the high seas oil port will be greater than any potential adverse effect on existing nearby ports.

Senate amendment

Section 4(d) prohibits the issuance of a license to construct a deepwater port facility off the coast of a State if the port of the State has, on the date of the license application, plans for construction of a deep draft channel and harbor and meets certain other requirements, until the Secretary makes a comparison of the two plans to determine which is the more economically, socially, and environmentally advantageous.

Conference substitute

Section 4(d) is similar to the Senate amendment, except that the phrase "the State which will be directly connected by pipeline with such deepwater port" is inserted in place of the phrase "such State which".

The inclusion of this provision is not intended to encourage protracted study which would have the effect of delaying by months or years a final decision on a deepwater port application. The comparative evaluation is to be completed within the timetable established for the Secretary to receive agency comments, which is no more than 45 days after the final public hearing provided for by section 5(g).

Conditions of Licenses

House bill

Section 102(d) specifies conditions that the Secretary must include in any license issued. The conditions deal with construction schedule requirements, fees for administrative costs, fees for the rental value of certain areas around the high seas oil port, measures to protect the marine environment, continual compliance with qualifications, and requirements to insure nondiscriminatory access to the oil port at reasonable rates.

Section 102(d)(1)(G) specifies a bonding or similar condition to insure removal from the seabed and subsoil of all components of the high seas oil port upon the revocation or suspension of the license. However, the Secretary may waive the removal of such components if (1) the components do not constitute a threat to navigation or the environment, or (2) he determines such components can be utilized pursuant to a lease granted under the Outer Continental Shelf Lands Act (67 Stat. 462).

Section 102(d)(2) requires the Secretary to consult with the Secretary of the department in which the Coast Guard is operating prior to including a condition in a license to construct a high seas oil port when such condition is to remain in effect after the license is converted to a license to operate such a port.

Section 104(b)(6) requires that the prospective licensee include in his application an agreement to obtain approval from the Secretary before making a material change in submitted plans.

Senate amendment

Section 4(e)(1) is basically similar to section 102(d)(1) of the House bill.

Section 4(e)(2) is basically similar to section 104(b)(6) of the House bill.

Section 4(e)(3) is basically similar to section 102(d)(1)(G) of the House bill except that no reference is made to a waiver based on a lease pursuant to the Outer Continental Shelf Lands Act (67 Stat. 462).

Conference substitute

Section 4(e) of the conference substitute combines the waiver provision of section 102(d)(1)(G) of the House bill with section 4(e) of the Senate amendment.

Transfer of Licenses

House bill

Section 102(c) permits a construction license to be transferred if the proposed transferee complies with the requirements of title I of the Act.

Senate amendment

Section 4(f) is basically the same as the House bill except that it applies to any type of license available under the provisions of the Act.

Conference substitute

The conference substitute is the same as section 4(f) of the Senate amendment.

Eligibility for a License

House bill

Section 3(h) defines the term "eligible applicant" to mean any citizen or group of citizens of the United States, any public entity, or any private corporation or entity which has citizens of the United States holding a certain per centum of the decisionmaking positions of such corporation or entity.

Senate amendment

Section 4(g) is similar to section 3(h) of the House bill, except that it does not require citizens of the United States to hold a certain per centum of the decisionmaking positions of a private corporation or entity.

Conference substitute

Section 4(g) of the conference substitute combines the restrictive aspect of section 3(h) of the House bill relating to corporations, partnerships, and associations with section 4(g) of the Senate amendment.

Term and Renewal of Licenses

House bill

Section 102(b) provides for a construction license to be issued by the Secretary for five years with an extension to be issued if necessary for the completion of the construction. It also provides that conversion of the license to an operational license may be granted if conditions under title II of the Act are met.

Section 202(b) provides that in the conversion of a construction to an operation license or the renewal of an operation license the term of the license shall be for no more than thirty years. This section also states that if the high seas oil port is in commercial operation, is operating in the public interest, and is otherwise in compliance with existing provisions of law the Secretary shall renew the license.

Senate amendment

Section 4(h) provides for a license to be issued by the Secretary that permits the licensee to construct and operate the deepwater port for 20 years. The licensee may apply to renew his license for a term of up to 10 years each time such license expires.

Conference substitute

Section 4(h) of the conference substitute is the same as the Senate amendment.

Regulations for Licensing Procedures

House bill

Section 104(a) authorizes the Secretary to issue, pursuant to the provisions of section 553 of title 5, United States Code, rules and regulations regarding the application for and issuance of construction licenses. Such rules and regulations must provide for consultation and cooperation with interested Federal agencies, any affected adjacent coastal State, and members of the public.

Section 203(a), in part, provides for the Secretary to issue rules and regulations on the operation of high seas oil ports in the same manner as required in section 104(a).

Senate amendment

Section 5(a) is basically similar to section 104(a) of the House bill except that it affects both construction and operation licenses.

Conference substitute

Section 5(a) of the conference substitute is basically the same as section 104(a) of the House bill and section 5(a) of the Senate amendment.

REGULATIONS FOR SITE EVALUATION

House bill

No comparable provision.

Senate amendment

Section 5(b) requires the Secretary to consult with the Secretary of the Interior and the Administrator of the National Oceanic and Atmospheric Administration and then issue rules and regulations governing site evaluation and precondition testing at potential deepwater port locations to avoid (1) any adverse effect on the environment, (2) interference with authorized uses of the Outer Continental Shelf, or (3) any threat to human health and welfare. In addition, no site evaluation or precondition testing may commence without the Secretary's approval.

Conference substitute

Section 5(b) of the conference substitute is the same as the Senate amendment, except that it does not have a provision requiring the approval of the Secretary prior to the commencement of site evaluation or precondition testing.

SUBMISSION OF APPLICATION

House bill

Section 104(b) requires the application to include, in addition to any other information that the Secretary deems necessary, the location of the proposed high seas oil port and all its components, the type and design of facilities, a description of each construction phase, the financial and technical capabilities of the applicant to construct and operate the oil port, the qualifications of the applicant to hold a license under title I of the Act, and an agreement that the licensee shall, upon termination of the license, remove all components of the oil port in accordance with the license conditions.

Senate amendment

Section 5(c)(1) requires the Secretary, within 21 days of receipt of an application, to decide if the application is in order. If so, the Secretary has 5 days to publish notice of such application in the Federal Register.

Section 5(c)(2), in addition to requiring most of the information required under section 104(b) of the House bill, requires the application to contain certain identifying information about each applicant, individuals with whom the applicant plans to make significant contracts, and affiliates of the applicant. Also, such section requires information on existing and proposed storage facilities and pipelines which will store or transport oil or natural gas transported through the deepwater port, similar information with respect to existing or proposed refineries that will receive oil transported through the deepwater port, and a description of procedures for construction, maintenance and operation of the deepwater port, including systems of oil spill prevention, containment, and cleanup.

Conference substitute

Except for the deletion of the phrase "or natural gas", section 5(c) of the conference substitute is the same as the Senate amendment.

APPLICATION AREA

House bill

No comparable provision.

Senate amendment

Section 5(d)(1) mandates that the Secretary publish, along with the notice of an application being filed, a description of the application area encompassing the deepwater port site proposed by such application and within which no additional deepwater port would be needed.

Section 5(d)(2) defines the term "application area" to mean an area not to exceed a circular zone the center of which is the port and the radius of which is the distance from such port to the high water mark of the nearest adjacent coastal State.

Section 5(d)(3) requires the Secretary to include in the publication of the notice of an application a call for any other applications in the designated application area to be submitted within a specified number of days. Failure to comply with the deadline eliminates consideration of an application until the applications pending with respect to such application area have been denied or approved.

Conference substitute

The conference substitute is the same as section 5(d) of the Senate amendment except as follows:

(1) Section 5(d)(2) indicates that an application area shall not exceed a circular zone, the center of which is the principal point of loading and unloading at the port and the radius of which is the distance from such point to the high water mark of the nearest adjacent coastal State.

(2) Section 3(d)(3) states that failure to comply with the deadline eliminates consideration of an application until the pending applications with respect to such application have been denied.

AGENCY COORDINATION

House bill

Section 104(d)(1) indicates that an application filed with the Secretary for a construction license shall constitute an application for all necessary Federal authorizations and that copies of such application be forwarded to each appropriate department or agency with any additional information as is required by any such department or agency.

Section 104(d)(2) requires each department or agency to, within 60 days of receipt of an application, recommend approval or disapproval of such application. If such department or agency recommends disapproval of an application, it shall set out in detail how the application does not comply with any law or regulation and what steps are required for the application to conform with any such law or regulation. Failure of any department or agency to act on an application within 60 days shall result in a conclusive presumption of such department's or agency's approval.

Senate amendment

Section 5(e) is similar to section 104(d) of the House bill with the following exceptions:

(1) Section 5(e)(1) requires the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Chief of the Corps of Engineers, the Administrator of the National Oceanic and Atmospheric Administration, and any other departments or agencies having expertise in, or jurisdiction concerning, any aspect of the construction or operation of deepwater ports to transmit to the Secretary, within 30 days after the date of enactment of this Act, written comments as to their expertise or statutory responsibilities pursuant to this Act or any other Federal law.

(2) Section 5(e)(2) sets a specific date on which any application for ownership, construction, or operation must be forwarded to Federal agencies and departments for comment. Such section also requires agency or department response within 45 days after the last public hearing on a proposed license. In addition, no presumption arises from failure to comply with the 45-day time limit.

Conference substitute

Section 5(e) of the conference substitute is basically the same as the Senate amendment.

Environmental Impact Statement

House bill

Section 103(b) indicates that in connection with any action by the Secretary on an application for a construction license an environmental impact statement must be prepared pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act (83 Stat. 852).

Senate amendment

Section 5(f) is basically the same as section 103(b) of the House bill, except that it requires only one environmental impact statement for each application area and also requires the Secretary in preparing such a statement to consider the criteria established under section 6 of this Act.

Conference substitute

Section 5(f) of the conference substitute is the same as the Senate amendment, except that the environmental impact statement need only cover timely applications.

Timely applications mean only those applications received in the time period set forth in section 5(d)(3).

Hearing Requirement

House bill

Section 104(f) requires the Secretary, within 30 days after receipt of an application for a construction license and prior to the issuance of any such license, to publish in the Federal Register a notice of the application and information as to where such application can be examined by interested persons who shall have at least 60 days to submit written data, views, or arguments on the application. Such notice shall also be furnished to the Governor of each adjacent coastal State and provide for a hearing or hearings in each adjacent coastal State. After all hearings are completed, findings and recommendations are to

be submitted to the Secretary with opportunity for the participants to comment thereon.

Senate amendment

Section 5(g) provides for a hearing or hearings in an adjacent coastal State in much the same manner as provided for in section 104(f) of the House bill in the case of the issuance, transference, or renewal of any license pursuant to the provisions of this Act. In addition, the Secretary, under certain circumstances, may hold one adjudicatory hearing pursuant to the provisions of section 554 of title 5, United States Code, in the District of Columbia. If such a hearing is held, the Secretary shall base his decision on the record of such hearing. This section further provides for all hearings on applications to be concluded not later than 240 days after notice of the initial application is published.

Conference substitute

Section 5(g) of the conference substitute is identical to the Senate amendment.

Reimbursement of Cost

House bill

Section 102(d)(1)(B) permits the Secretary to include a condition in a construction license to cover administrative and other costs incurred in processing the application for, and in monitoring the construction of, the high seas oil port.

Section 102(d)(1)(C) permits the Secretary to include as another license condition fees for the fair market rental value of the subsoil and seabed subjacent to the high seas oil port, including the fair market value of the right-of-way necessary for the pipeline segment lying outside the seaward boundaries of any State as such term is defined in the Submerged Lands Act (69 Stat. 29).

Senate amendment

Section 5(h)(1) requires each applicant for a license to file a nonrefundable application fee. In addition, the applicant must reimburse the United States and the appropriate adjacent coastal State for additional costs incurred in processing the application.

Section 5(h)(2) requires annual reimbursement to the United States and each appropriate coastal State for monitoring the construction, operation, maintenance, and termination of any deepwater port or component thereof.

Section 5(h)(3) is basically the same as section 102(d)(1)(C) of the House bill.

Conference substitute

Section 5(h)(1) is the same as the Senate amendment.

Section 5(h)(2) permits an adjacent coastal State to fix reasonable fees for the use of a deepwater port facility. In addition, such State and any other State in which land-based facilities directly related to a deepwater port facility are located may set reasonable fees for the use of land-based facilities. Fees may be fixed for any economic cost attributable to the construction and operation of such deepwater port and such land-based facilities which cannot be otherwise recovered and for environmental and administrative costs attributable to the

construction and operation of such port and such land-based facilities.

Section 5(h)(3) is basically the same as section 102(d)(1)(C) of the House bill and section 5(h)(3) of the Senate amendment.

These economic, environmental, and administrative costs include monitoring in the construction, operation, maintenance, and termination of a deepwater port. This section does not derogate from the provisions of section 19(b) of this Act.

SECRETARY'S DECISION

House bill

Section 104(1) requires the Secretary to make a decision in writing granting or denying a license within 120 days after the conclusion of all hearings. Such decision, along with a discussion of the issues, shall include the environmental impact statement.

Senate amendment

Section 5(i)(1) requires the Secretary to make a decision on an application within 90 days after the last public hearing on the proposed license.

Section 5(i)(2) lists in order of descending priority the application that the Secretary is to approve if more than one application is submitted for an application area and none of the applications clearly best serves the national interest.

Section 5(i)(3) provides criteria the Secretary must consider to determine if a deepwater port clearly best serves the national interest.

Conference substitute

The conference substitute is the same as the Senate amendment except as follows:

(1) Any references to natural gas is deleted.
(2) Section 5(i)(3)(B) is deleted.

ENVIRONMENTAL REVIEW CRITERIA

House bill

Section 103(a) requires the Secretary, after consultation with appropriate Federal agencies and departments, to establish and apply, and revise as necessary, criteria for evaluating the impact of the construction or operation of a high seas oil port on the marine environment, including the marine environment of any adjacent coastal State. Such criteria must include (1) effects on aquatic plants and animals, (2) effects on ocean currents or wave patterns, (3) effects on alternative uses of high seas area, (4) protective steps that may be taken to avoid dangers to components of the oil port, (5) effects on esthetic and recreational values, (6) effects on related land-based developments, and (7) effects on public health and welfare.

Senate amendment

Sections 6(a) and (b) are basically the same as section 103(a) of the House bill except that environmental review criteria must be consistent with the National Environmental Policy Act.

Section 6(c) requires that criteria established pursuant to this section must be developed concurrently with the regulations in section 5(a) and in accordance with the provisions of such section.

Conference substitute

The conference substitute is identical to section 6 of the Senate amendment.

ANTITRUST REVIEW

House bill

A general statement appears in section 102(a)(2) indicating that the Secretary shall determine that operations under a license (construction) will not adversely affect competition or result in restraint of trade.

Senate amendment

Section 7(a) prohibits the Secretary from issuing, transferring, or renewing any license pursuant to section 4 of this Act until receipt of the opinions of the Attorney General of the United States and the Federal Trade Commission as to whether such action would be in contravention of the antitrust laws.

Section 7(b) requires the Secretary to transmit to the Attorney General or the Federal Trade Commission a complete copy of any application submitted for issuance, transfer, substantial change, or renewal of any license. Within 45 days following the last public hearing, the Attorney General and the Federal Trade Commission must submit a report to the Secretary describing the competitive effects which might result from issuance of the proposed license. If the Secretary fails to receive such reports, he shall proceed as if he had received them.

Conference substitute

The conference substitute, with minor technical changes, is the same as the Senate amendment.

COMMON CARRIER STATUS

House bill

Section 204(e) states that, for purposes of chapter 39 of title 18, United States Code (18 U.S.C. 831–837), and part 1 of the Interstate Commerce Act (24 Stat. 379), as amended (49 U.S.C. 1–27), movement of petroleum or petroleum products by a pipeline component of a high seas oil port, licensed under this Act, from outside to within the territorial jurisdiction of any adjacent coastal State shall be deemed to be transportation of commerce from one State to another State. Also, this section deems a licensee of such high seas oil port to be a common carrier for purposes of regulation by the Interstate Commerce Commission and the Secretary of Transportation.

Senate amendment

Section 8(a)(1) states that, for purposes of the same statutory citations as appear in section 204(e) of the House bill, a deepwater port and storage facilities serviced directly by such deepwater port are to be subject to regulations as a common carrier in accordance with the Interstate Commerce Act, as amended.

Section 8(a)(2) indicates that a deepwater port and storage facilities serviced directly by such deepwater port shall be subject to regulation in accordance with the Natural Gas Act (15 U.S.C. 717 et seq.), as amended.

Conference substitute

Section 8(a) of the conference substitute is the same as section 8(a)(1) of the Senate amendment.

DISCRIMINATION BARRED

House bill

No comparable provision.

Senate amendment

Section 8(b) requires a licensee under this Act to accept, transport, or convey without discrimination all oil and natural gas delivered to to the deepwater port with respect to which its license is issued. If the Secretary believes there is a lack of compliance with such licensee's obligations as a common carrier, he shall commence a proceeding before the Interstate Commerce Commission, the Federal Power Commission, or he shall request the Attorney General to enforce such obligations. In addition, the Secretary may act to suspend or terminate a license of any person so involved.

Conference substitute

The conference substitute is the same as the Senate amendment except as follows:

(1) The phrase "and natural gas" is deleted.
(2) The phrase "or the Federal Power Commission," is deleted.

COORDINATION WITH ADJACENT COASTAL STATES

House bill

Section 104(e)(1) requires the Secretary to consult with, and consider the views of, officials of any coastal State prior to issuing a construction license for a high seas oil port.

Section 104(e)(2) states that, when an adjacent coastal State has requirements relating to land or water uses that could be directly affected by the construction of a high seas oil port, the applicant must certify to the Secretary that the issuance of the license applied for would be consistent with applicable State requirements. A copy of the certification must be furnished by the applicant to the appropriate State officials who shall notify, within six months of the receipt of such certification, the Secretary of their agreement or disagreement with the certification. If the latter is the case, specific information must be provided as to how compliance can be accomplished. Failure to comply with the time deadline conclusively presumes concurrence of the State officials with the certification. No license may be issued by the Secretary until concurrence or presumptive concurrence is obtained from the State.

Section 104(e)(3) requires the Secretary to consider the views of State officials of any State that will be indirectly affected by the issuance of a license under this title.

Senate amendment

Section 9(a) requires that the Secretary designate in the notice required to be published under section 5(c) of this Act adjacent coastal States as defined in sections 3(1) (A) and (B) of this Act. In addition, the Administrator of the National Oceanic and Atmospheric Administration shall, no later than 60 days after publication of notice pursuant to section 5(c) of this Act, designate as an adjacent coastal State any State that meets the definitional requirements of section 3(1)(C) of this Act, notify the Secretary of such designation, and publish notice of such designation.

Section 9(b) mandates that the Secretary, within 10 days after designation of a State as an adjacent coastal State, transmit to the Governor of such State a copy of the application to construct and operate a deepwater port. The remainder of section 9(b) is similar to section 104(e)(2) of the House bill, except that the time for a Governor to respond to the Secretary is 45 days after the last public hearing on applications for a particular application area. Any other interested State shall have its views considered by the Secretary on the location, construction, and operation of a deepwater port.

Conference substitute

Section 9(a)(1) is the same as the Senate amendment.

Section 9(a)(2) requires the Secretary, upon the timely request of a State, and after consultation with the National Oceanic and Atmospheric Administration, to 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 the risk posed to a State directly connected by pipeline to the proposed deepwater port.

Section 9(b) is identical to the Senate amendment.

COASTAL ZONE MANAGEMENT

House bill

No comparable provision.

Senate amendment

Section 9(c) prohibits the issuance of a license by the Secretary 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.

Conference substitute

The conference substitute is the same as the Senate amendment.

INTERSTATE COMPACTS

House bill

No comparable provision.

Senate amendment

Section 9(d) gives the consent of Congress for two or more coastal States to enter into agreements or compacts to apply for a license for the ownership, construction, and operation of a deepwater port or for the transfer of such a license, and to establish such agencies necessary to implement any such agreement or compact.

Conference substitute

The conference substitute is the same as the Senate amendment.

Rules and Regulations for Operating Procedures of Deepwater Ports

House bill

Section 203(a) authorizes the Secretary to issue, in accordance with section 553 of title 5, United States Code, without regard to the limitations of subsection (a) thereof, rules and regulations prescribing procedures for the operation of high seas oil ports. Such rules and regulations must include pilotage requirements, maximum vessel drafts, designation of anchorage areas, facility maintenance requirements, health and safety measures, and requirements for the protection of the environment.

Senate amendment

Section 10(a) is basically the same as 203(a), except that no reference is made to section 553 of title 5, United States Code, and paragraph (2) requires all regulations promulgated under section 10(a) to require all oil carrying vessels using a deepwater port to comply with regulations issued under section 4417a of the Revised Statutes, as amended.

Conference substitute

Section 10(a) is similar to section 203(a) of the House bill and section 10(a)(1) of the Senate amendment.

Lights and Other Warning Devices and Safety Equipment

House bill

Section 203(b) authorizes the Secretary to issue and enforce regulations with respect to the promotion of safety of life and property in high seas oil ports or on waters adjacent thereto.

Senate amendment

Section 10(b) is basically the same as section 203(b) of the House bill except that it requires the Secretary to issue such regulations.

Conference substitute

The conference substitute is identical to the Senate amendment.

Protection of Navigation

House bill

Section 203(c) authorizes the Secretary to mark any component of a high seas oil port for the protection of navigation if the licensee fails to mark such port in accordance with existing regulations. Such section requires the licensee to pay the cost of such marking.

Senate amendment

Section 10(c) is basically the same as section 203(c) of the House bill except that it requires the Secretary to mark any component of a port not properly marked.

Conference substitute

Section 10(c) is the same as the Senate amendment.

Safety Zones

House bill

Section 203(d) requires the Secretary, after consultation with the Secretary of the Interior, the Secretary of Defense, and the Secretary of State, to designate a safety zone surrounding any high seas oil port licensed under this Act. In designating any such safety zone, every point on and within the perimeter of any such safety zone shall lie within two to ten nautical miles from the port reference point. Also, such section requires the Secretary, after consultation with the Secretary of State, to issue rules and regulations as to permitted activity within any such safety zone.

Senate amendment

Section 10(d)(1) is basically the same as section 203(d) of the House bill except as follows:

(1) The Secretary must also consult with the Secretary of Commerce before designating a safety zone.

(2) It does not prescribe any specific limitations as to the size of the safety zone.

(3) It requires designation of a safety zone for any proposed deepwater port within 30 days after publication of notice of an application for a license pursuant to the provisions of section 5(c) of this Act.

Conference substitute

Section 10(d) is, with a minor change, the same as the Senate amendment.

Regulations for Safety of Navigation During Period of Construction

House bill

Section 203(c) authorizes the Secretary, after consultation with the Secretary of the Interior, to establish a safety zone in a manner similar to that prescribed in section 203(d) to be effective during the period of construction of a high seas oil port.

Senate amendment

Section 10(d)(2) is basically the same as section 203(c) of the House bill except no consultation with the Secretary of the Interior is required.

Conference substitute

Section 10(d)(2) is basically the same as section 203(c) of the House bill and section 10(d)(2) of the Senate amendment.

International Agreements

House bill

Section 206 requires the Secretary of State, in consultation with the Secretary, to seek effective international action in support of the policy of this Act.

Senate amendment

Section 11 is basically the same as section 206 of the House bill.

Conference substitute

Section 11 is basically the same as section 206 of the House bill and section 11 of the Senate amendment.

Suspension or Termination of Licenses

House bill

Section 105(a) provides that if a licensee, holding a license to construct, fails to comply with any applicable provision of title I of this Act or any applicable rule, regulation, restriction, or condition issued or imposed by the Secretary under such title, the Attorney General, at the Secretary's request, may file an appropriate action in the United States district court nearest to the location of the high seas oil port to be constructed or in the district where the licensee resides or may be found to (1) suspend operations under the license, or (2) if such failure is knowing and continues for thirty days, after the Secretary mails notification of such failure to the licensee, revoke such license.

Section 209(a) provides for similar action by the Attorney General for failure of a licensee, holding a license to operate, to comply with any applicable provision of title II of this Act or any applicable rule, regulation, restriction, or condition imposed under authority of this Act.

Section 209(c) provides that, if a license is revoked under section 209(a), the Secretary, in lieu of requiring or permitting removal of components of the high seas oil port, may (1) order forfeiture of the posted bond, or if no bond exists, collect money based on assurances given in the application for a license, (2) take custody of the port, and (3) transfer the license to any other eligible applicant and remit the moneys paid for the license to the former licensee.

Section 209(d) permits the Secretary, after certain conditions are met, to reinstitute a license suspended pursuant to the provisions of section 209 of this Act.

Senate amendment

Section 12(a) provides that failure of a licensee to comply with any applicable provision of this Act or any applicable rule, regulation, or condition issued or imposed by the Secretary shall be grounds for suspension or termination of the license. If after (1) due notice to the licensee, (2) a reasonable opportunity for corrective action by the licensee, and (3) an appropriate administrative proceeding in accordance with the provisions of section 554 of title 5, United States Code, the Secretary determines that any such grounds exist, he may suspend or terminate the license. Such administrative procedure is not necessary if the license provides for automatic suspension or termination upon the occurrence of a certain condition, event, or time.

Conference substitute

Section 12(a) combines, with minor changes, section 105(a) of the House bill and the second sentence of section 12(a) of the Senate amendment.

The conference intended that any license shall include provisions for automatic suspension in the event that the licensee deliberately fails for any continuous two-year period to use the license for a purpose for which it was granted or renewed. In addition, the license should require the licensee to make a good-faith effort to initiate construction and proceed with operations.

Immediate Suspension

House bill

Section 105(b) provides for an immediate suspension of operations under a construction license if the Secretary feels the licensee's action creates a serious threat to the environment. Such section also requires notification to the licensee of such suspension. In addition, this section indicates that such suspension is in lieu of an action under section 105(a) of this title and shall constitute final agency action for purposes of section 704 of title 5, United States Code.

Section 209(b) provides for similar action by the Secretary under title II of this Act, except such action shall constitute final agency action for purposes of section 706 of title 5, United States Code.

Senate amendment

Section 12(b) permits the Secretary, for reasons similar to those provided under sections 105(b) and 209(b) of the House bill, to order a licensee to cease construction or operation pending the completion of an administrative hearing.

Conference substitute

Section 12(b) is the same as the Senate amendment, except that a judicial proceeding instead of an administrative proceeding is required.

Abandonment

House bill

No comparable provision.

Senate amendment

Section 12(c) provides that a rebuttable presumption of abandonment exists if there is a deliberate failure on the part of a licensee for a 2-year period to use the license for the purpose for which it was granted. Unless rebutted, such failure will result in the revocation or termination of the license.

Conference substitute

No comparable provision.

Authority To Issue and Enforce Orders

House bill

No comparable provision.

Senate amendment

Section 12(d) gives the Secretary or his delegate the authority to issue subpenas, administer oaths, compel the attendance and testimony of witnesses, order the production of certain evidence, examine witnesses, and take depositions.

Conference substitute

No comparable provision.

RECORDKEEPING AND INSPECTION

House bill

Section 207 provides that all United States officials shall be afforded reasonable access to a high seas oil port for purposes of enforcing laws under their jurisdiction.

Senate amendment

Section 13(a) requires each licensee to maintain records, make reports, and provide information to the Secretary as prescribed in regulations issued by the Secretary. Such regulations may not change or duplicate regulations established pursuant to part I of the Interstate Commerce Act or any other law.

Section 13(b) provides that any officer or employee designated by the Secretary shall have reasonable access to the deepwater port and any associated facility for purposes of assuring compliance with this Act. Such section also provides that the results of any inspection must be reported to the licensee.

Conference substitute

Section 13(a) is, with a minor technical change, the same as the Senate amendment.

Section 13(b) combines, with minor changes, section 207 of the House bill and the second sentence of the Senate amendment.

PUBLIC ACCESS TO INFORMATION

House bill

Section 104(c)(1) provides, subject to certain exceptions contained in sections 104(c) (2) and (3), public access to copies of communications, documents, reports, or information received or sent by any applicant.

Section 104(c)(2) prohibits disclosure of information which concerns or relates to a trade secret except that such information (1) shall be disclosed (A) upon request, on a confidential basis to a committee of Congress having jurisdiction over the subject matter to which the information relates, and (B) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information, and (2) may be disclosed (A) upon request, on a confidential basis to another Federal department or agency, and (B) after opportunity for comment in writing or discussion of the release of the information by the party from which the information was obtained, to the public in order to protect public health and safety.

Section 104(c)(3) indicates that nothing in section 104(c) shall be construed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise exempted by law from disclosure to the public.

Senate amendment

Section 14 is basically the same as section 104(c) of the House bill, except that disclosure to any committee of Congress and to any person for a judicial proceeding is at the discretion of the Secretary.

Conference substitute

Section 14 is basically the same as section 104(c) of the House bill and section 14 of the Senate amendment, except that disclosure of information concerning contracts referred to in section 5(c)(2)(B) of the conference substitute is prohibited.

CRIMINAL VIOLATIONS

House bill

Section 208(b) provides that any person who willfully and knowingly violates any provision of this title, or any rule or regulation issued pursuant to section 203, shall be punished by a fine of not more than $25,000 for each day during which such violation occurs.

Senate amendment

Section 15(a) is similar to section 208(b) of the House bill except as follows:

(1) Section 15(a) provides a sanction for any willful violation of any provision of this Act or any order or regulation issued pursuant thereto.

(2) Such section provides a term of imprisonment for any willful violation.

Conference substitute

The conference substitute is the same as the Senate amendment.

CIVIL PENALTIES

House bill

Section 208(a) provides that any person who violates any provision of this title or any rule or regulation issued pursuant to section 203 thereof shall be liable for a civil penalty of $10,000 for each day during which the violation continues. After notice and opportunity for a hearing, the Secretary shall assess the penalty. If the penalty is not paid, the Secretary may request the Attorney General to commence an action for collection of the penalty.

Section 208(c) provides that any vessel, other than a public vessel engaged in noncommercial activity, used in a violation of the provisions of this title or regulations issued under section 203 thereof, shall be liable in rem for any civil penalty assessed or criminal fine imposed unless it cannot be shown that one or more of the owners, or bare-boat charterers, was at the time of the violation a consenting party or privy to such violation.

Senate amendment

Section 15(b)(1) provides that whenever any person is in violation of any provision of this Act or any requirement prescribed in any rule, regulation, order, license, or condition thereof, the Secretary shall issue an order requiring compliance with such provision or requirement or he shall bring a civil action against such person.

Section 15(b)(2) states that the period for compliance with any order issued pursuant to section 15(b)(1) shall exceed thirty days.

Section 15(b)(3) authorizes the Secretary to commence a civil action for appropriate relief, including injunctive relief or a civil penalty not to exceed $25,000 per day, for any violation for which he can issue a

compliance order under section 15(b)(1). This section also grants jurisdiction to the district court of the United States for the district in which the defendant resides or is located to hear and determine such action.

Conference substitute

Sections 15(b)(1) and (2) are the same as the Senate amendment.

Section 15(b)(3) is similar to the Senate amendment, except that the Attorney General, at the request of the Secretary, commences a civil action for appropriate relief.

Section 15(d) is basically the same as section 208(c) of the House bill.

Specific Equitable Relief

House bill

No comparable provision.

Senate amendment

Section 15(c) permits the Attorney General or the Secretary to bring an action in an appropriate district court of the United States for equitable relief to redress a violation of any provision of this Act, any regulation issued under this Act, or any license condition.

Conference substitute

Section 15(c) is the same as the Senate amendment, except that only the Attorney General may bring an action under this section, and he must do so at the request of the Secretary.

Citizen Civil Action

House bill

No comparable provision.

Senate amendment

Section 16(a) permits, except as provided in section 16(b), any person to commence a civil action for equitable relief on his own behalf against (1) any person, including the United States or any other instrumentality or agency, 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 for failure to perform any nondiscretionary function. Any such action against the Secretary must be brought in the district court for the District of Columbia or the district of the appropriate adjacent coastal State.

In addition, section 16(a) gives the district courts of the United States jurisdiction in actions brought pursuant to the provisions of such section without regard to the amount in controversy or the citizenship of the parties to the action.

Section 16(b) prohibits any action being commenced under section 16(a)(1) within 60 days after the plaintiff has given notice to the Secretary and the alleged violator or if the Secretary or Attorney General has commenced and is diligently prosecuting an action with respect to such matters. However, in the latter situation, any person may intervene as a matter of right.

Section 16(b)(2) prohibits any action being commenced under section 16(a)(2) within 60 days after the plaintiff has notified the Secretary of such action.

Section 16(c) gives the Secretary or Attorney General the right to intervene in any action brought under the provisions of section 16(a).

Section 16(d) gives the court, in issuing a final order in any action brought under section 16(a), the authority to award costs of litigation, including attorney and expert witness fees.

Section16(e) indicates that section 16 does not restrict any other available remedy.

Conference substitute

The conference substitute is, with minor technical changes, identical to the Senate amendment.

Judicial Review

House bill

Section 104(f)(3) provides for judicial review of the Secretary's decision to grant or deny a construction license in accordance with sections 701 through 706 of title 5, United States Code. This section also defines who can be considered to be a person who has been aggrieved by agency action.

Senate amendment

Section 17 permits any person suffering legal wrong or adversely affected or aggrieved by the Secretary's decision to issue, transfer, modify, renew, suspend, or revoke a license to, within 60 days after such decision, seek review of such decision in the United States Court of Appeals for the circuit within which the nearest adjacent coastal State is located.

Conference substitute

Section 17 combines, with minor conforming changes, the second sentence of section 104(f)(3) of the House bill and section 17 of the Senate amendment.

Prohibition Against Discharge of Oil and Natural Gas

House bill

No comparable provision.

Senate amendment

Section 18(a)(1) prohibits the discharge of oil or natural gas into the marine environment from a vessel within a safety zone, a vessel which has received oil or natural gas from another vessel at a deepwater port, or a deepwater port.

Section 18(a)(2) requires the Secretary to assess a civil penalty of not more than $10,000 against any owner or operator of a vessel or the licensee of any deepwater port each time such owner or operator of a vessel or such licensee violates any provision of section 18(a)(1). Section 18(a)(2) also allows the Secretary of the Treasury, at the request of the Secretary, to withhold the clearance required by section 4197 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. However, clearance can be obtained by the filing of a bond or other surety.

Conference substitute

Except for the deletion of all references to natural gas, section 18 (a) is the same as the Senate amendment.

REPORTING ANY DISCHARGE OF OIL OR NATURAL GAS

House bill

No comparable provision.

Senate amendment

Section 18(b) subjects any individual in charge of a vessel or deepwater port who fails to notify the Secretary as soon as he has knowledge of a discharge of oil or natural gas to a fine of not more than $10,000 or imprisonment for one year, or both.

Conference substitute

Except for the deletion of a reference to natural gas, section 18(b) is the same as the Senate amendment. In addition, the conferees agree to delete the words "by the Secretary" so that civil penalties would be assessed by courts, not the Secretary.

PROVISIONS FOR THE CLEANUP OF DISCHARGES

House bill

No comparable provision.

Senate amendment

Section 18(c)(1) provides that, whenever any oil or natural gas is discharged within a safety zone from a vessel which has received oil or natural gas from another vessel at a deepwater port or from a deepwater port, the Secretary shall accomplish the removal of such oil or natural gas, unless the owner or operator of the vessel or licensee of the deepwater port responsible for the discharge will expeditiously and properly remove such discharge.

Section 18(c)(2) requires that any cleanup procedures be done in accordance with the National Contingency Plan established by the Federal Water Pollution Control Act, as amended.

Section 18(c)(3) allows the Secretary, if he is to accomplish the cleanup, to draw upon money within the Deepwater Port Liability Fund established in section 18(f) to pay for the cleanup costs incurred.

Conference substitute

Except for the deletion of all references to natural gas, section 18(c) is the same as the Senate amendment.

LIABILITY OF VESSEL OWNERS AND OPERATORS FOR DISCHARGING OIL OR NATURAL GAS

House bill

No comparable provision.

Senate amendment

Section 18(d) indicates that, except as provided in section 18(g), the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and damages for the discharge of oil or natural gas (1) in a safety zone, or (2) after leaving a deepwater port at which it received such oil or natural gas from another vessel not to exceed $150 per gross ton (weight of the vessel) or $20,000,000, whichever is less. However, such monetary limitation shall not apply if the discharge resulted from gross negligence or willful misconduct.

Conference substitute

Except for the deletion of all references to natural gas and for a minor technical change, section 18(d) is the same as the Senate amendment.

LIABILITY OF A LICENSEE FOR DISCHARGING OIL OR NATURAL GAS

House bill

No comparable provision.

Senate amendment

Section 18(e) indicates that, except as provided in section 18(g), the licensee of a deepwater port shall be liable, without regard to fault, for cleanup costs and damages for a discharge of oil or natural gas from the deepwater port or from a vessel moored to such deepwater port. Such liability shall not exceed $100,000,000 unless willful misconduct or gross negligence can be attributed to the licensee.

Conference substitute

The conference substitute is the same as the Senate amendment, except that the reference to natural gas is deleted and the liability figure is reduced to $50,000,000.

ESTABLISHMENT OF LIABILITY FUND

House bill

Section 211(d) establishes the High Seas Oil Port Liability Fund (hereinafter referred to in any reference to the House bill as the "Fund") to be administered by the Secretary.

Section 211(a) states that the Fund shall be liable for damages (excluding cleanup costs) to property within the territorial jurisdiction of the United States sustained as a result of operations and activities related to a high seas oil port.

Section 211(c) limits the liability of the Fund to $100,000,000 for all claims arising out of one incident with a proportionate reduction in each allowed claim if the total amount allowed exceeds $100,000,000.

Section 211(e) requires each licensee to collect from the owner of any oil offloaded at the high seas oil port a fee of 2 cents per barrel and deliver it to the Fund. This section also states that administrative costs are to be paid from the Fund, and any excess sums are to be invested prudently in income-producing securities with any income from the securities being added to the principal of the Fund. Further, expenditures can be made from the Fund only after appropriation in an appropriation bill.

Section 211(f) indicates that liability under section 211 ceases with respect to oil offloaded at a high seas oil port when such oil has been removed from the onshore facilities of such high seas oil port.

Section 211(i) permits the Fund to borrow the money needed to satisfy a claim made pursuant to the provisions of this section from any commercial credit source at the lowest rate of interest.

Section 211(j) authorizes an appropriation not to exceed $100,000,000 to carry out the provisions of section 211 with any appropriated sums remaining available until expended.

Senate amendment

Section 18(f)(1) establishes a Deepwater Port Liability Fund (hereinafter referred to in any reference to the Senate amendment as the "Fund") to be administered by the Secretary.

Section 18(f)(2) makes the Fund liable, without regard to fault, for all cleanup costs and damages in excess of those compensated for pursuant to sections 18 (d) and (e).

Section 18(f)(3) provides, with two exceptions, that each licensee collect from the owner of any oil or natural gas loaded or unloaded at the deepwater port 2 cents per barrel or in the case of liquified natural gas, its metric volume equivalent, and deliver the collections to the Fund. Such fee collection shall terminate when the Fund reaches $100,000,000, unless there are adjudicated claims yet unsatisfied, and shall resume when the Fund is below $100,000,000. Also, the Fund has the authority to borrow money from the Treasury to pay unsatisfied claims. In addition, cost of administration can be paid from the Fund only after appropriation in an appropriation bill. Further, all excess sums are to be invested in income-producing securities issued by the United States with the income derived from such securities being applied to the principal.

Conference substitute

Except for the deletion of all references to natural gas and for minor technical changes, section 18(f) is the same as the Senate amendment.

Defenses to Liability

House bill

Section 211(b) provides that the Fund shall not be liable if it can prove that the damages in question were caused (1) by an act of war, or (2) by the negligence of the claimant.

Senate amendment

Section 18(g) indicates liability shall not be imposed on a vessel owner or operator or on a deepwater port licensee pursuant to section 18(d) or (e) if such individual can show the discharge of oil or natural gas was caused solely by (1) an act of war, (2) negligence of the Federal Government in establishing and maintaining navigation aids, or (3) by the negligence of the claimant, with respect to his claim. In addition, the Fund shall not be liable if it can show that the damages were caused solely by the negligence of the claimant.

Conference substitute

The conference substitute is the same as the Senate amendment.

Subrogation and Other Rights

House bill

Section 211(g)(1) provides that when the Fund is liable under section 211 for damages caused by the unseaworthiness of the vessel, or by the negligence of the owner or operator of such vessel or the licensee, it shall be subrogated under applicable State and Federal laws to the rights of any person entitled to recover under such laws. In addition, any affiliate of any owner, operator, or licensee shall be liable to the Fund if the respective owner, operator, or licensee cannot satisfy a claim by the Fund that is allowed.

Section 211(g)(2) provides that if the Fund is liable for claims under section 211 to any person having a claim under any international agreement to which the United States is a party it shall be subrogated to the rights of recovery of such person.

Senate amendment

Section 18(h)(1) indicates that a vessel owner or operator on whom liability has been imposed under the provisions of section 18(d) shall, if the discharge was the result of the negligence of the licensee, be subrogated to the rights of any person entitled to recovery against such licensee.

Section 18(h)(2) is basically the reverse of section 18(h)(1).

Section 18(h)(3) states that payment of any claim pursuant to the provisions of section 18(f)(2) shall be subject to the Fund being subrogated to the rights of the claimant to recover from any other person.

Section 18(h)(5) permits reimbursement for the cleanup cost to the owner or operator of a vessel or the licensee of a deepwater port for removing discharged oil or natural gas in accordance with section 18(c)(1) if such owner, operator, or licensee can show that the discharge was caused solely by (1) an act of war, or (2) negligence on the part of the Federal Government in establishing and maintaining aids to navigation.

Conference substitute

Except for the deletion of all references to natural gas, section 18(h) is the same as the Senate amendment.

Class and Trustee Action

House bill

No comparable provision.

Senate amendment

Section 18(i)(1) permits the Attorney General to sue on behalf of any damaged group of citizens who may be entitled to compensation pursuant to the provisions of section 18. If the Attorney General fails to act within 90 days of the discharge of oil or natural gas which gives rise to the claim for compensation, any member of such group may maintain a class action to recover for such group.

Section 18(i)(2) states that, when the number of members of a class seeking relief under section 18 exceeds 1,000, the publication of

notice of the action in the Federal Register and in local newspapers satisfies the requirements of rule 23(c)(2) of the Federal Rules of Civil Procedure.

Section 18(i)(3) allows the Secretary to act as trustee of the natural resources of the marine environment to recover for damages to such resources in accordance with section 18.

Conference substitute

Except for the deletion of a reference to natural gas, section 18(i) is the same as the Senate amendment.

Award Process for Costs and Damages

House bill

No comparable provision.

Senate amendment

Section 18(j) requires the Secretary to establish, by regulation, procedures for the filing and payment of claims for cleanup costs and damages pursuant to the provisions of this Act. Such section also indicates that no claims for such costs or damages may be filed more than 3 years after the occurrence giving rise to such claim. Further, any appeal from a decision of the Secretary under section 18 must be filed within 30 days after such decision in the United States Court of Appeals for the circuit within which the nearest adjacent coastal State is located.

Conference substitute

The conference substitute is the same as the Senate amendment.

Preemption

House bill

Section 211(h) states that section 211 shall not (1) preempt the field of liability without regard to fault or preclude any State from imposing any additional requirements, or (2) affect the applications of the Federal Water Pollution Control Act.

Senate amendment

Section 18(k)(1) states that section 18 shall not preempt the field of liability or preclude any State from imposing additional requirements or liability for any discharge of oil or natural gas from a deepwater port or a vessel within any safety zone.

Section 18(k)(2) precludes recovering more than once for the same damages arising from the discharge of oil or natural gas.

Conference substitute

Except for the deletion of a reference to natural gas and a minor conforming change, section 18(k) is the same as the Senate amendment.

Financial Responsibility

House bill

No comparable provision.

Senate amendment

Section 18(l) indicates that the Secretary must require that any owner or operator of a vessel using any deepwater port, or the licensee of a deepwater port, carry insurance or otherwise be able to meet any liabilities imposed by this section.

Conference substitute

The conference substitute is identical to the Senate amendment.

Definitions Applicable to the Section on Liability

House bill

Section 211 defines the following terms: affiliate, licensee, and entity.

Senate amendment

Section 18(m) defines the following terms: cleanup costs, damages, discharge, and owner or operator.

Conference substitute

Section 18(m) is, except for the removal of all references to natural gas, the same as the Senate amendment.

Oil Spill Liability Study

House bill

No comparable provision.

Senate amendment

Section 18(n)(1) authorizes and directs the Attorney General, in cooperation with various governmental bodies, to study methods and procedures for implementing a uniform law providing liability for cleanup costs and damages from oil spills from Outer Continental Shelf operations, deepwater ports, vessels, and other ocean-related sources.

Section 18(n)(2) requires the Attorney General to report the results of this study together with any legislative recommendation to the Congress within 6 months after the date of enactment of this Act.

Conference substitute

The conference substitute is identical to the Senate amendment.

Authority for Research Activities

House bill

Section 210(a) authorizes the Secretary to engage in research, studies, experiments, and demonstrations with respect to the removal from waters of oil spilled incident to high seas oil port operations and the prevention and control of such spills and to publish the results of such activities.

Section 210(b) authorizes the Secretary, in carrying out section 210, to enter into contracts with, or make grants to, public or private agencies and organizations and individuals.

Senate amendment

No comparable provision.

Conference substitute

No comparable provision.

RELATIONSHIP TO OTHER LAWS

House bill

Section 204(a) states that high seas oil ports licensed under this Act are not islands and do not have territorial seas of their own. Also, except as specifically provided in section 204, the Constitution, laws, and treaties of the United States shall apply to such high seas oil ports.

Senate amendment

Section 19(a)(1) states that the Constitution, laws, and treaties of the United States shall apply to a deepwater port in the same manner as if such port were in the navigable waters of the United States.

Section 19(a)(2) states that, except as otherwise provided in this Act, nothing in this Act shall alter the responsibilities and authorities of a State or the United States within the territorial seas of the United States.

Conference substitute

Section 19(a)(1) is the same as the Senate amendment except as follows:

(1) The phrase "an area of exclusive Federal jurisdiction located within a State" replaces the phrase "located in the navigable waters of the United States".

(2) That part of section 204(a) of the House bill which refers to the status of deepwater ports is included in the conference substitute.

Section 19(a)(2) is the same as the Senate amendment.

RELATIONSHIP TO STATE LAWS

House bill

Section 204(b) indicates that State taxation laws shall not apply to any high seas oil port or component thereof located outside the tax jurisdiction of the State. Such section also indicates that, except as preempted by Federal laws and regulations, the civil and criminal laws of the State nearest the high seas oil port are declared to be the law of the United States for such high seas oil port.

Senate amendment

Section 19(b) is basically the same as section 204(b) of the House bill except that section 19(b) makes no reference to the inapplicability of State tax laws.

Conference substitute

Section 19(b) indicates that, except as preempted by Federal laws and regulations, the laws of the nearest adjacent coastal State shall apply as Federal law to any deepwater port licensed pursuant to this Act. In addition, this section states that such laws and regulations shall be administered and enforced by the appropriate officers and courts of the United States.

FOREIGN CITIZENS AND VESSELS

House bill

Section 205 provides that, except where force majeure is involved, a licensee of a high seas oil port may not permit a vessel registered in or flying the flag of a foreign state to utilize such port unless (1) the foreign-flag state involved has agreed to recognize the jurisdiction of the United States over the vessel and its personnel in accordance with the provisions of this Act, and (2) the vessel owner, or bareboat charterer, has designated an agent within the United States for service of process in the case of any claim or legal proceeding arising from the activities of the vessel while such vessel is at the high seas oil port.

Senate amendment

Section 19(c) is basically the same as section 205 of the House bill except that the area of jurisdiction of the United States and the area for which an agent is designated for service of process is the safety zone around the deep water port.

Conference substitute

The conference substitute is the same as the Senate amendment.

CUSTOM LAWS

House bill

Section 204(i) states that the custom laws of the United States shall not apply to any high seas oil port licensed under this Act. However, all foreign articles to be used in the construction of the high seas oil port and components thereof shall be subject to all applicable duties and taxes which would be imposed upon, or by reason of, their importation into the United States.

Senate amendment

Section 19(d) is basically the same as section 204(i) of the House bill.

Conference substitute

Section 19(d) is identical to the Senate amendment.

JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES

House bill

No comparable provision.

Senate amendment

Section 19(e) gives the district courts of the United States original jurisdiction of cases or controversies arising out of or in connection with the construction and operation of deepwater ports.

Conference substitute

The conference substitute is the same as the Senate amendment.

CONFORMING AMENDMENT

House bill

No comparable provision.

Senate amendment

Section 19(f) amends section 4(a)(2) of the Act of August 7, 1953 (67 Stat. 462).

Conference substitute

The conference substitute is, with a minor technical change, the same as the Senate amendment.

ANNUAL REPORT BY SECRETARY TO CONGRESS

House bill

No comparable provision.

Senate amendment

Section 20 requires the Secretary, within 6 months after the end of each fiscal year, to report to the Congress on the administration of the Deepwater Port Act during such fiscal year. Each such report shall include a financial statement, a summary of management, supervision, and enforcement activities, and recommendations for additional legislative authority necessary to improve the management and safety of deepwater port development and for resolution of jurisdictional conflicts or ambiguities.

Conference substitute

The conference substitute is basically the same as the Senate amendment, except that it does not specifically require a detailing of all moneys received and expended.

PIPELINE SAFETY AND OPERATION

House bill

No comparable provision.

Senate amendment

Section 21 requires the Secretary of Transportation, in cooperation with the Secretary of the Interior, to (1) establish and enforce standards and regulations as may be necessary to assure safety in the construction and operation of oil pipelines on the Outer Continental Shelf, (2) report to the Congress within 60 days after the date of enactment of this Act on appropriations and staffing needed to monitor pipelines on Federal lands and the Outer Continental Shelf to assure all standards are met, and (3) review all applicable laws and regulations relating to the construction, maintenance, and operation of such pipelines and to report to the Congress thereon within 6 months after the date of enactment of this Act on administrative changes needed and recommendations for new legislation.

Conference substitute

Except for minor technical changes, section 21 is the same as the Senate amendment.

NEGOTIATIONS WITH CANADA AND MEXICO

House bill

No comparable provision.

Senate amendment

Section 22 authorizes and requests the President of the United States to negotiate with the Governments of Canada and Mexico to determine (1) the need for intergovernmental understandings, agreements, or treaties to protect the interest of the peoples of the three countries in the construction and operation of deepwater ports, and (2) the desirability of undertaking joint studies and investigations to insure protection of the environment and eliminate any legal uncertainties. Also, this section requires the President to report to the Congress the results of such negotiations together with his recommendations for further action.

Conference substitute

Except for minor technical changes, section 22 is the same as the Senate amendment.

SEVERABILITY

House bill

No comparable provision.

Senate amendment

Section 23 is a severability provision.

Conference substitute

No comparable provision.

PUBLIC LAW 93–153

House bill

Section 3(a) of the House bill defines the term "high seas oil port", in part, to mean any complex, operated as a means for the unloading and further handling of petroleum or petroleum products for transshipment to the United States.

Senate amendment

Section 3(10) of the Senate amendment defines the term "deepwater port", in part, to mean any fixed or floating manmade structure located beyond the territorial sea off the coast of the United States which is used as a port or terminal for the loading or unloading and further handling of oil for transportation to any State.

Conference substitute

As a result of the adoption of section 3(10) of the Senate amendment, section 23 of the conference substitute permits the shipment of oil from Alaska to foreign ports pursuant to section 28(u) of the Mineral Leasing Act of 1920, as amended by Public Law 93-153, through the use of a deepwater port.

GENERAL PROCEDURES

House bill

No comparable provision.

Senate amendment

Section 12(d) of the Senate amendment gives the Secretary or his delegate the authority to issue and enforce orders during proceedings brought under this Act. Such authority includes, in part, authority to

issue subpenas, administer oaths, and compel the attendance and testimony of witnesses.

Conference substitute

Section 24 of the conference substitute is the same as section 12(d) of the Senate amendment.

CERTIFICATION OF COMPLETION OF CONSTRUCTION

House bill

Section 106(a) requires that upon completion of construction of a high seas oil port the licensee notify the Secretary of such completion. At such time, the Secretary shall cause an inspection to be performed to assure the construction has been completed in accordance with the license, and if necessary, the Secretary shall require corrective measures to be taken.

Section 106(b) permits the licensee to invoke the inspection procedure prescribed in section 106(a) at the end of each designated phase of construction if his license authorizes construction in designated places.

Senate amendment

No comparable provision.

Conference substitute

No comparable provision.

AUTHORIZATION FOR APPROPRIATIONS

House bill

Section 212(a) authorizes to be appropriated for fiscal year 1976 and for each of the three succeeding fiscal year sums, not exceeding $2,500,000, for the administration of title II of this Act (other than section 210), and for succeeding fiscal years only such sums as may be specifically authorized by law.

Section 212(b) authorizes to be appropriated $10,000,000 for each of the fiscal years 1975, 1976, and 1977, to carry out the purposes of section 210 of this title.

Senate amendment

Section 24 authorizes to be appropriated for administration of this Act not to exceed $1,000,000 for each of the fiscal years ending June 30, 1975, 1976, and 1977.

Conference substitute

Section 25 is the same as section 24 of the Senate amendment, except that the monetary figure for each of the fiscal years is $2,500,000.

NAVIGABLE WATERS OF THE UNITED STATES

House bill

Section 104(c) lists several statutory provisions for the purposes of which high seas oil ports, licensed under this Act, shall be deemed to be located within the navigable waters of the United States.

Senate amendment

No comparable provision.

Conference substitute

No comparable provision.

PORT OR PLACE WITHIN THE UNITED STATES

House bill

Section 204(d) lists several statutory provisions for the purposes of which high seas oil ports, licensed under this Act, shall be deemed to be ports or places within the United States.

Senate amendment

No comparable provision.

Conference substitute

No comparable provision.

COMPENSATION FOR INJURY

House bill

Section 204(f) provides that with respect to the disability or death of an employee resulting from an injury occurring in connection with the construction, maintenance, or operation of a high seas oil port compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424), as amended (33 U.S.C. 901–950). In addition, for the purposes of applying such Act to high seas oil ports section 204(f) limits the term "employee", defines certain activities to be "maritime employment", and indicates that high seas oil ports shall be deemed to be located in the navigable waters of the United States.

Senate amendment

No comparable provision.

Conference substitute

No comparable provision.

LABOR DISPUTES

House bill

Section 204(g) indicates that, for purposes of the National Labor Relations Act (61 Stat. 136), as amended (29 U.S.C. 151–168), any unfair labor practices, as defined in such Act, occurring upon a high seas oil port shall be deemed to have occurred within the nearest judicial district located in the coastal State nearest to the location of such high seas oil port.

Senate amendment

No comparable provision.

Conference substitute

No comparable provision.

SPECIAL MARITIME AND TERRITORIAL JURISDICTION

House bill

Section 204(h) states that for purposes of section 7 of title 18, United States Code, high seas oil ports, licensed under this Act, shall

be deemed to be within the special maritime and territorial jurisdiction of the United States.

Senate amendment

No comparable provision.

Conference substitute

No comparable provision.

TITLE

House bill

Is an amendment to the Act of October 27, 1965, relating to public works on rivers and harbors to provide for construction and operation of certain port facilities.

Senate amendment

Is 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.

Conference substitute

The conference substitute is the same as the Senate amendment.

ROBERT E. JONES,
DAVID N. HENDERSON,
JOHN BREAUX,
WM. H. HARSHA,
GENE SNYDER,
DON H. CLAUSEN,
Managers on the Part of the House.

RUSSELL B. LONG,
E. F. HOLLINGS,
TED STEVENS,
HENRY M. JACKSON,
J. BENNETT JOHNSTON, Jr.,
CLIFFORD P. HANSEN,
MIKE GRAVEL,
LLOYD BENTLEY,
JAMES L. BUCKLEY,
Managers on the Part of the Senate.

93D CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT No. 93-692

HIGH SEAS OIL PORT ACT

December 3, 1973.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mrs. SULLIVAN, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 5898]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 5898) to amend the Merchant Marine Act, 1936, to provide authority to the Secretary of Commerce to issue permits to construct, operate, and maintain certain offshore port and terminal facilities, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert the following:

That this Act may be cited as the "High Seas Oil Port Act".

DECLARATION OF POLICY

SEC. 2. (a) FINDINGS.—The Congress finds—

(1) that the Nation's energy requirements will continue to increase for the foreseeable future and that energy demands will increasingly exceed available domestic sources of energy supply;

(2) that technological, economic, and environmental factors which will directly affect other potential sources of energy supply may dictate that the increased energy demand be met, for at least the near future, largely by the utilization of oil as the source of energy supply and that a substantial part of the needed oil must be imported from foreign sources;

(3) that the economic use of resources, the necessity for improving the national balance-of-payments position, the interest in transportation efficiency, and the maintenance of a competitive position in world trade demand the utilization of increasingly larger vessels to transport the needed quantities of foreign oil;

(4) that the physical limitations of present ports and port facilities in the United States render them incapable of accommodating the large tankers that will be needed, and that it is not feasible, either economically or environmentally, to deepen the port waters and expand the port facilities to the extent required for the needed accommodation;

(5) that, as an alternative solution, the use of smaller tankers which can be accommodated in the port areas of the United States would result in substantially increased port congestion and would constitute a massive

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threat, from environmental and safety viewpoints, from the increased vessel traffic and the expanded oil transfer activities;

(6) that the construction of a sufficient number of high seas oil ports, located in areas where existing water depths will permit the accommodation of the deep draft vessels needed, will be both economically advantageous and environmentally sound;

(7) that the licensing of such ports as to location, construction standards, and operational regulations is a matter primarily of national interest, and that the shoreside impact of such ports is a matter of both national and local interest; and

(8) that the construction and operation of high seas oil ports, in accordance with the provisions of this Act, in waters superjacent to the Continental Shelf of the United States would be a reasonable use of the high seas and would be consistent with recognized principles of international law.

(b) PURPOSES.—The Congress declares that the purposes of this Act are—

(1) to authorize the Secretary of the Interior to grant to eligible applicants licenses for the construction of high seas oil ports;

(2) to authorize the Secretary of the Department in which the Coast Guard is operating to issue necessary and reasonable regulations for the operation of high seas ports;

(3) to minimize any adverse impact on the marine environment which may result from the construction or operation of high seas oil ports; and

(4) to insure that all reasonable precautions are taken to protect the national interests of the United States in the construction and operation of high seas oil ports and to protect the national and local interests involved in the impact of such construction and operation on adjacent coastal States.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(a) "High seas oil port" or "oil port" means any complex, consisting of a permanently sited structure or structures, located in, or subjacent to, the offshore coastal waters of the United States, operated as a means for the unloading and further handling of petroleum or petroleum products for transshipment to the United States. The term includes all necessary components, such as vessel mooring, facilities, storage facilities, cargo hose systems, pumping stations, operational platforms, pipelines, and their associated equipment and appurtenances. The term also includes any pipeline segment, lying in or subjacent to the territorial sea of the United States, designed to connect a component of the oil port to facilities located landward of the base line from which the territorial sea is measured. In a geographical sense, a high seas oil port shall consist of a circular zone, the center of which is the port reference point, and the diameter of which is not less than two, and not more than four nautical miles.

(b) "Offshore coastal waters of the United States" means the high seas, outside the territorial sea, superjacent to the Continental Shelf of the United States, as the latter term is delineated by the provisions of article 1 of the Convention on the Continental Shelf (25 U.S.T. 471; TIAS 5578).

(c) "United States" or "State" includes the several States, the District of Columbia, the territories and possessions of the United States, and the Commonwealth of Puerto Rico.

(d) "Coastal State" means any State in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, or Gulf of Mexico.

(e) "Adjacent coastal State" means, as to the high seas oil port (either existing or proposed), a coastal State any point of which lies within ten miles of the high seas oil port, including any component thereof.

(f) "Port reference point" means a point designated by the Secretary of the Interior and defined by coordinates of latitude and longitude as nearly as possible at the center of activity of a high seas oil port.

(g) "Person" includes private individuals, associations, corporations, or other entities, and any officer, employee, agent, department, agency, or instrumentality of the Federal Government, or any State or local unit of government, or of any foreign government.

(h) "Eligible applicant" means any citizen, or group of citizens, of the United States, any State, or any private, public, or municipal corporation, or other entity, created pursuant to the laws of the United States or of any State.

(i) "Marine environment" means the offshore coastal waters of the United States; the coastal waters of a State, containing a measurable quantity or percentage of seawater, including, but not limited to, bays, sounds, lagoons, bayous, salt ponds and estuaries; the living and nonliving resources of all such waters; and the economic, recreational, and esthetic values of those waters and their resources.

ACTIVITIES PROHIBITED

SEC. 4. (a) Except as specifically authorized by the laws of the United States (including the provisions of this Act), or pursuant to an authorized Federal program, no person may construct, maintain, or operate a high seas oil port or any other fixed structure in the offshore coastal waters of the United States.

(b) Except in cases where the Secretary of the Interior otherwise by rule provides, a high seas oil port, licensed pursuant to the provisions of this Act, may not be utilized—

(1) for the unloading of commodities or materials transported from the United States, other than materials to be used in the construction, maintenance, or operation of the high seas oil port, or to be used as ship supplies, including bunkering, for vessels utilizing the high seas oil port,

(2) for the transshipment of commodities or materials, to the United States, other than petroleum or petroleum products,

(3) for the transshipment of petroleum or petroleum products, destined for locations outside the United States,

(4) for the transportation of minerals, including oil and gas, which have been extracted from the subsoil or seabed of the Continental Shelf of the United States, in the coastal area in which the high seas oil port is located, nor

(5) by carriers of petroleum or petroleum products, unless such carriers are equipped with collision avoidance radar systems which meet or exceed such systems as are required by the United States Maritime Administration of vessels built with the assistance of United States Government subsidies.

TITLE I—CONSTRUCTION OF HIGH SEAS OIL PORTS

DEFINITION

SEC. 101. For the purposes of this title, the term Secretary" means, except where its usage specifically indicates otherwise, the Secretary of the Interior.

LICENSE TO CONSTRUCT

SEC. 102. (a) GENERAL.—Pursuant to the provisions of this title, the Secretary may issue to any eligible applicant a license to construct a high seas oil port, if the Secretary, after consultation with other appropriate Federal agencies and departments, first determines—

(1) that the applicant is financially responsible and has demonstrated the ability to comply with applicable laws, regulations, and license conditions;

(2) that operations under the license will not adversely affect competition or result in restraint of trade;

(3) that the construction and operation of the high seas oil port will not pose an unreasonable threat to the integrity of the marine environment in which it is to be located, and that all reasonable precautions will be taken to minimize any adverse impact, actual or potential, on the marine environment, including the marine environment of any adjacent coastal State;

(4) that the high seas oil port will not unreasonably interfere with international navigation or other reasonable uses of the high seas, as defined by any treaty or convention to which the United States is signatory, or by customary international law;

(5) that the issuance of a license does not conflict otherwise with the international obligations of the United States;

(6) that the issuance of a license will not be contrary to the national security interests of the United States;

(7) that the location of a high seas oil port in the area for which the license is issued is in the national interest and will meet national needs, or regional needs, or both; and

(8) the economic effects of the construction and operation of a high seas oil port on existing nearby ports.

(b) TERM OF LICENSE.—Any license issued under the provisions of this title shall be for a term of five years and may be extended for such additional period of time as the Secretary finds is reasonably necessary for the completion of construction. Such license shall be converted into a license to operate the oil port in accordance with the provisions of title II of this Act.

(c) TRANSFER OF LICENSE.—Upon the application of a licensee, the Secretary may transfer a license issued under this title when he determines that the proposed transferee qualifies as an eligible applicant and otherwise meets the requirements of this title.

(d) LICENSE CONDITIONS.—(1) The Secretary is authorized to include in any license issued, or transferred, under this title, any reasonable conditions which he finds necessary to carry out the purposes of this Act. Such conditions shall include, but need not be limited to—

(A) such construction schedule requirements as the Secretary finds necessary to assure prompt and effective implementation of the license by the licensee;

(B) such fees as the Secretary may prescribe as reimbursement to the United States for administrative and other costs incurred in processing the application for, and in monitoring the construction of, the high seas oil port;

(C) such fees as the Secretary may prescribe as the fair market rental value of the subsoil and seabed subjacent to the high seas oil port, including the fair market rental value of the right-of-way for the pipeline segment connecting the other components of the high seas oil port to the land, fifty per centum of any such fee to be disbursed to the adjacent coastal State or States;

(D) such measures as the Secretary may prescribe to prevent or minimize any adverse impact of the construction on the marine environment, including the marine environment of any adjacent coastal State;

(E) such requirements as the Secretary may find necessary in order to insure nondiscriminatory access to the oil port at reasonable rates; and

(F) such bonding requirements or other assurances as the Secretary may find necessary in order to insure that, upon the revocation or surrender of a license, the licensee will remove from the seabed and subsoil all components of the high seas oil port: *Provided*, That in the case of components lying in the subsoil below the seabed, 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 to the environment: *Provided further*, That, at the request of the licensee, the Secretary is authorized to waive the removal requirement as to any components 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 (67 Stat. 462), after which waiver the utilization of such components shall be governed by the terms of the Outer Continental Shelf Lands Act.

(2) Prior to including any license condition which is designed to continue to be applicable after the license to construct is converted to a license to operate, pursuant to title II of this Act, the Secretary shall consult with, and give full consideration to the views of, the Secretary of the Department in which the Coast Guard is operating.

ENVIRONMENTAL CONSIDERATIONS

SEC. 103. (a) CRITERIA.—Prior to the issuance of a license under section 102 of this title, the Secretary, after consultation with other appropriate Federal agencies and departments, shall establish and apply, and may from time to time revise, criteria for evaluating the potential impact of the construction or operation of the proposed high seas oil port on the marine environment, including the marine environment of any adjacent coastal State. Such criteria shall include, but are not limited to—

(1) effects on aquatic plants and animals;

(2) effects on ocean currents or wave patterns, and on nearby shorelines or beaches, including bays and estuaries and other features of the coastal zone of any affected coastal State;

(3) effects on other uses of the high seas area, such as navigation, fishing, aquaculture, and scientific research;

(4) effects on other uses of the subjacent seabed and subsoil such as exploitation of resources and the laying of cables and pipelines;

(5) the dangers to any components of the oil port which might be occasioned by waves, winds, and other natural phenomena, and the steps which can be taken to protect against such dangers;

(6) effects on esthetic and recreational values;

(7) effects of land-based developments which are related to port development;

(8) effects on public health and welfare; and

(9) such other considerations as the Secretary finds reasonably necessary to fully evaluate the impact of any high seas oil port.

(b) ENVIRONMENTAL IMPACT STATEMENT.—In connection with the grant or denial of an application for a license under this title, the action of the Secretary will constitute a major Federal action in the sense of section 102(2)(C) of the National Environmental Policy Act of 1969 (83 Stat. 852), and the requirements of that Act will be applied accordingly.

LICENSING PROCEDURES

SEC. 104. (a) GENERAL.—The Secretary is authorized to issue reasonable rules and regulations prescribing procedures governing the application for and the issuance of licenses pursuant to this title. Such rules and regulations shall be issued in accordance with section 553 of title 5, United States Code, without regard to subsection (a) thereof. Such rules and regulations shall contain a mechanism for full consultation and cooperation with all other interested Federal agencies and departments and with any affected adjacent coastal State, and for the consideration of the views of any interested members of the general public.

(b) LICENSE APPLICATION.—Each application shall contain such financial, technical, and other information as the Secretary may find necessary to evaluate the application. Such information shall include, but is not limited to—

(1) the specific location of the proposed high seas oil port including all components thereof;

(2) the type and design of facilities;

(3) where construtcion in phases is intended, the detailed description of each phase, including the specific components thereof;

(4) the financial and technical capabilities of the applicant to construct and operate the oil port;

(5) the qualifications of the applicant to hold a license under this title;

(6) an agreement that there will be no material change from the submitted plans without prior approval in writing from the Secretary;

(7) an agreement that the licensee, upon acceptance of the license, will comply with all conditions attached thereto; and

(8) an agreement that the licensee, upon termination of the license, pursuant to the provisions of this Act, will remove all components of the oil port from the seabed and subsoil, in accordance with the license conditions included pursuant to subsection 102(d) hereof.

(c) PUBLIC ACCESS TO INFORMATION.—(1) Copies of any communications, documents, reports, or information received or sent by any applicant shall be made available to the public upon identifiable request, and at reasonable cost, unless such information may not be publicly released under the terms of paragraph (2) of this section.

(2) The Secretary shall not disclose information obtained by him under this section which concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information—

(A) shall be disclosed,

(i) upon request, on a confidential basis, to a Committee of Congress having jurisdiction over the subject matter to which the information relates, and

(ii) in any judicial proceedings under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; and

(B) may be disclosed,

(i) upon request, on a confidential basis, to another Federal department or agency, and

(ii) to the public in order to protect public health and safety after notice and opportunity for comment in writing, or for discussion in

closed session within fifteen days, by the party from which the information was obtained (if the delay resulting from such notice and opportunity for comment or discussion would not be detrimental to the public health and safety).

(3) Nothing contained in this subsection shall be construed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(d) AGENCY CONSTRUCTION.—(1) Notwithstanding any other provision of law, an application filed with the Secretary for a license under this title shall constitute an application for all Federal authorizations required for construction of a high seas oil port. The Secretary will furnish a copy of the application to all other Federal departments or agencies which would otherwise have permit authority over any aspect of the proposed construction and shall insure that the application contains all the information which would have otherwise been required by those agencies.

(2) Upon receipt of its copy of the application, each department or agency involved shall review the information contained therein and, based upon legal considerations within its area of responsibility, recommend to the Secretary the approval or disapproval of the application. In any case in which a department or agency recommends disapproval, it shall set out in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall notify the Secretary how the application may be amended so as to bring it into compliance with the law or regulations involved. The failure of any department or agency to forward its recommendations to the Secretary within sixty days after receiving a copy of the application shall be conclusively presumed as a recommendation by that department or agency that the application be approved.

(e) COORDINATION WITH ADJACENT COASTAL STATES.—(1) Prior to issuing a license under this title, the Secretary shall consult with, and give full consideration to the views of, the responsible officials of any adjacent coastal State.

(2) When an adjacent coastal State has an existing State program controlling, or other legislative requirements related to, land or water uses, upon which the construction of a high seas oil port will have a direct impact, the applicant shall include, in his application to the Secretary, a certification that in the applicant's best judgment the issuance of the license applied for would be consistent with applicable State requirements. At the same time, the applicant shall furnish to the appropriate State officials a copy of the certification, with all necessary information and data. After completion of its established procedures for the consideration of such matters, the State involved shall, at the earliest practicable time, notify the Secretary that the State concurs with, or disagrees with, the applicant's certification, and in case of disagreement, the State shall specify the manner in which the certification is in error. The State shall also indicate how the application may be brought into compliance with State requirements, if such compliance is possible. In the event that the State fails to furnish the required notification of concurrence or disagreement, within six months after receipt of its copy of the applicant's certification, the State's concurrence with the certification shall be conclusively presumed. The Secretary may not grant a license under this title until the State has concurred with the application or until, by its failure to act, the State's concurrence is conclusively presumed.

(3) In addition to following the procedures outlined in paragraph (2) hereof, the Secretary shall also take into account the views of appropriate officials of any State which will be indirectly affected by the issuance of a license under this title, to the extent that the overall project will have a secondary impact on that State because of needs related to the addition or expansion of supporting landslide facilities or the furnishing of expanded services.

(f) NOTICE HEARINGS, AND REVIEW.—(1) Within thirty days after receipt of an application filed under subsection (b) hereof, and prior to granting any license, the Secretary shall publish in the Federal Register a notice containing a summary of the application and information as to where the application and supporting data required by subsection (b) may be examined, allowing interested persons at least sixty days for the submission of written data, views, or arguments relevant to the grant of the license, with or without opportunity for oral presentation. Such notice shall also be furnished to the Governor of each adjacent coastal State, and the Secretary shall utilize such additional methods as he deems reasonable to inform interested persons and groups about the proceeding and

to invite comments thereform. Each such publication shall provide for a hearing or hearings which shall take place in the adjacent coastal State. After the completion of all hearings, the presiding officer shall submit to the Secretary a report of his findings and recommendations, and the participants in the hearings shall have an opportunity to comment thereon.

(2) The Secretary's decision granting or denying the license shall be in writing and shall be made within one hundred and twenty days following the conclusion of all hearings. The decision shall include a discussion of the issues raised in the proceeding and his conclusions thereon and findings on the issues of fact considered at any hearing. The decision shall be accompanied by the environmental impact statement as required by section 12(2)(C) of the National Environmental Policy Act of 1969.

(3) Judicial review of the Secretary's decision shall be in accordance with sections 701–706 of title 5, United States Code. A person shall be deemed to be aggrieved by agency action within the meaning of this Act if he—

(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 notice required by this subsection) and

(B) is adversely affected by the agency action or asserts an interest and speaks knowingly for the environmental values asserted to be involved in the suit.

SUSPENSION OR REVOCATION OF LICENSE TO CONSTRUCT

SEC. 105. (a) Whenever a licensee, holding a license to construct, fails to comply with any applicable provision of this title or any 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 high seas oil port to be constructed or in the district in which the licensee resides or may be found, to—

(1) suspend operations under 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.

(b) When the licensee's failure to comply, in the judgment of the Secretary, creates a serious threat to the environment, the Secretary, in lieu of the action authorized under subsection (a), may suspend operations under the license forthwith and notify the licensee accordingly. Such suspension shall constitute final agency action for the purposes of section 704 of title 5, United States Code.

CERTIFICATION OF COMPLETION OF CONSTRUCTION

SEC. 106. (a) Upon completion of construction of a high seas oil port, the licensee shall notify the Secretary of such completion and of his readiness to commence operation of the oil port. Upon receipt of such notification, the Secretary shall cause an inspection to be made to assure himself that the licensee has completed construction in accordance with the license, including the conditions specified by the Secretary under section 102 of this title. If necessary, the Secretary may require such corrective measures as may be necessary to bring the construction into conformance with the provisions of this title.

(b) When the license to construct authorizes construction in designated phases, the licensee may notify the Secretary of the completion of a designated phase, and, upon the request of the licensee, the Secretary shall invoke the procedures of subsection (a) hereof, as if the construction had been fully completed. Subsequent phase completions shall be similarly treated.

(c) Having determined that the construction has been completed in accordance with the requirements of the license and of the provisions of this title, the Secretary shall collect from the licensee a fee equaling three percentum of the cost of construction of the high seas oil port. The Secretary shall disburse one-third of the fee to the Unitedl States Treasury and the remaining two-thirds to the adjacent coastal State, or to the adjacen coastal Staes in equal division. After collection of the fee, the Secretary shall certify the fact of the completion of construction to the Secretary of the department in which the Coast Guard is operating, and the latter official shall thereupon take appropriate action under the authority of setcion 202 of title II of this Act.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 107. There are authorized to be appropriated for fiscal year 1974 and for each of the two succeeding fiscal years such sums, not exceeding $500,000 for any fiscal year, for the administration of this title, and for succeeding fiscal years only such sums as may be specifically authorized by law.

TITLE II—OPERATION OF HIGH SEAS OIL PORTS

DEFINITION

SEC. 201. For the purposes of this title, the term "Secretary" means, except where its usage specifically indicates otherwise, the Secretary of the department in which the Coast Guard is operating.

LICENSE TO OPERATE

SEC. 202. (a) GENERAL.—Upon receipt of the certification of the Secretary of the Secretary of the Interior, as required by section 106 of title I of this Act and subject to the provisions of subsection (b) hereof, the Secretary shall convert the license to construct a high seas oil port to a license to operate the oil port.

(b) DURATION AND RENEWAL OF LICENSE.—Each license converted, or renewed, pursuant to this title shall be limited to a reasonable term in light of all circumstances concerning the project, but in no event for a term of more than thirty years. In determining the duration of the license, as converted or as renewed, the Secretary shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. Upon the expiration of any licensing period, and on application of the licensee, the Secretary shall renew any such license: *Provided*, That, at the time of renewal, the high seas oil port is in commercial operation, is operating in accordance with the public interest, and the license is otherwise in compliance with the conditions of the license, with the requirements of this title and the regulations issued pursuant thereto, and with such other provisions of law as are applicable.

RULES AND REGULATIONS

SEC. 203. (a) GENERAL.—The Secretary is authorized to issue reasonable rules and regulations prescribing procedures under which the high seas oil ports shall be operated. Such rules and regulations shall be issued in accordance with section 553 of title 5, United States Code, without regard to the limitations of subsection (a) thereof. They shall include, but not be limited to, port operations, vessel movements, pilotage requirements, maximum vessel drafts, designation and marking of anchorage areas, facility maintenance, personnel health and safety measures, and the provision of all equipment necessary to prevent or minimize pollution of the marine environment, to clean up any pollutants which may be discharged, and to otherwise prevent or minimize any adverse impact from the operation of the oil port.

(b) LIGHTS AND OTHER WARNING DEVICES AND SAFETY EQUIPMENT.—The Secretary may issue and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on high seas oil ports or on the waters adjacent thereto as he may deem necessary.

(c) PROTECTION OF NAVIGATION.—The Secretary may mark for the protection of navigation any component of a high seas oil port whenever the licensee has failed suitably to mark the same in accordance with regulations issued hereunder, and the licensee shall pay the cost thereof.

(d) SAFETY ZONES.—Subject to recognized principles of international law, the Secretary, after consultation with the Secretary of State, the Secretary of Defense, and the Secretary of the Interior, shall designate a safety zone surrounding any high seas oil port licensed under this Act, every point in the perimeter of which lies not less than two, and not more than ten, nautical miles from the port reference point. No other installations, structures, or uses incompatible with the operation of the high seas oil port will be permitted within the safety zone. The Secretary shall issue necessary rules and regulations relating to permitted activities within such zone. In promulgating such rules, the Secretary shall consult with the Secretary of State to insure that the rules are consistent with the international obligations of the United States.

(e) SPECIAL REGULATIONS FOR THE SAFETY OF NAVIGATION.—In addiion to any other regulations, the Secretary, after consultation with the Secretary of the Interior, is authorized to establish a safety zone in the manner described in subsection (d) hereof, and to issue reasonable rules and regulations relating thereto, to be effective during the construction of a high seas oil port for the purpose of protecting navigation in the vicinity of the construction.

APPLICABLE LAWS

SEC. 204. (a) GENERAL.—High seas oil ports licensed under this Act do not possess the status of islands and have no territorial seas of their own. Except as specifically provided as otherwise in this section, the Constitution and the laws and treaties of the United States shall apply to such high seas oil ports in accordance with their location on the high seas.

(b) STATE LAWS.—State taxation laws shall not apply to any high seas oil port or to any component thereof located outside the tax jurisdiction of the State. In other respects, and the extent that they are not inconsistent with the provisions of this Act or the regulations issued pursuant thereto, or with other Federal laws and regulations now in effect or hereafter adopted, the civil and criminal laws of the State nearest to the high seas oil port, now in effect or hereafter adopted, are declared to be the law of the United States for the high seas oil port.

(c) NAVIGABLE WATERS OF THE UNITED STATES.—For the purposes of title I of the Ports and Waterways Safety Act of 1972 (86 Stat. 424; 33 U.S.C. 1221–1227); of titles 52 and 53 of the Revised Statutes of the United States, and of Acts amendatory and supplementary thereto, including, but not limited to, sections 4472 and 4417a thereof, as amended (46 U.S.C. 170, 391a); of title II of the Act of June 15, 1917 (40 Stat. 220), as amended (50 U.S.C. 191–194); and of sections 311 and 312 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321–1322), high seas oil ports, licensed under this Act, shall be deemed to be located within the navigable waters of the United States.

(d) PORT OR PLACE WITHIN THE UNITED STATES.—For the purposes of the International Voyage Load Line Act of 1973 (87 Stat. 418); of the Coastwise Load Line Act, 1935 (49 Stat. 891), as amended (46 U.S.C. 88–88i); of section 4370 of the Revised Statutes of the United States, as amended (46 U.S.C. 316); of section 8 of the Act of June 19, 1886 (24 Stat. 81; 46 U.S.C. 289); of section 27 of the Act of June 5, 1920 (41 Stat. 998), as amended (46 U.S.C. 883); and of title I of the Marine Protection, research and Sanctuaries Act of 1972 (86 Stat. 1052; 33 U.S.C. 1401–1421), high seas oil ports, licensed under this Act, shall be deemed to be ports or places within the United States.

(e) TRANSPORTATION BETWEEN STATES: COMMON CARRIER.—For the purposes of chapter 39 of title 18, United States Code (18 U.S.C. 831–837), and part 1 of the Interstate Commerce Act (24 Stat. 379), as amended (49 U.S.C. 1–27), movement of petroleum or petroleum products by a pipeline component of a high seas oil port, licensed under this Act, from outside, to within, the territorial jurisdiction of any coastal State shall be deemed to be transportation or commerce from one State to another State, and the licensee shall be deemed to be a common carrier for all purposes of regulation by the Interstate Commerce Commission and by the Secretary of Transportation.

(f) COMPENSATION FOR INJURY.—With respect to disability or death of an employee resulting from any injury occurring in connection with the construction, maintenance, or operations of, a high seas oil port, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424) as amended (33 U.S.C. 901–950). For the purposes of applying that Act to high seas oil ports—

(1) the term "employee" does not include a master or a crewmember of any vessel, or an officer or employee of the United States or any agency thereof, or of any State, or foreign government, or of any political subdivision;

(2) employment in the construction, maintenance, or operation of a high seas oil port shall be deemed to be maritime employment"; and

(3) high seas oil ports shall be deemed to be located in the navigable waters of the United States.

(g) LABOR DISPUTES.—For the purposes of the National Labor Relations Act (61 Stat. 136), as amended (29 U.S.C. 151–168), any unfair labor practices, as defined in that Act, occurring upon a high seas oil port, shall be deemed to have

occurred within the nearest judicial district located in the coastal State nearest to the location of the oil port.

(h) SPECIAL MARITIME AND TERRITORIAL JURISDICTION.—For the purposes of section 7 of title 18, United States Code, high seas oil ports, licensed under this Act, shall be deemed to be within the special maritime and territorial jurisdiction of the United States.

(i) CUSTOMS LAWS.—The customs laws of the United States shall not apply to any high seas oil port licensed under this Act, but all foreign articles to be used in the construction of any such high seas oil port, including any component thereof, shall first be made subject to a consumption entry in the United States and all applicable duties and taxes, which would be imposed upon or by reason of their importation if they were imported for consumption in the United States, shall be paid thereon in accordance with the laws applicable to merchandise imported into the customs territory of the United States.

FOREIGN-FLAG VESSELS

SEC. 205. Except in a situation involving force majeure, a licensee of a high seas oil port may not permit a vessel, registered in or flying the flag of a foreign state, to call at, or otherwise utilize, a high seas oil port licensed under this Act unless (a) a foreign-flag state involved, by specific agreement, or otherwise, has agreed to recognize the jurisdiction of the United States over the vessel and its personnel, in accordance with the provisions of this Act, while the vessel is at the high seas oil port, and (b) the vessel owner, or bareboat charterer, has designated an agent in the United States for the service of process in the case of any claim or legal proceeding resulting from the activities of the vessel or its personnel while at the high seas oil port.

INTERNATIONAL COOPERATION

SEC. 206. The Secretary of State, in consultation with the Secretary, shall seek effective international action and cooperation in support of the policy of this Act and may, for this purpose, 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 and operation of high seas oil ports, with particular regard for measures to promote the safety of navigation in the vicinity thereof.

OFFICIAL ACCESS

SEC. 207. All United States officials, including those officials responsible for the implementation and enforcement of United States laws applicable to a high seas oil port, shall at all times be afforded reasonable access to a high seas oil port licensed under this Act for the purpose of enforcing laws under their jurisdiction or otherwise carrying out their responsibilities.

PENALTIES

SEC. 208. (a) Any person who violates any provision of this title or any rule or regulation issued pursuant to section 203 hereof shall be liable to a civil penalty of $10,000 for each day during which the violation continues. The penalty shall be assessed by the Secretary, who, in determining the amount of the penalty, shall consider the gravity of the violation, any prior violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of the violation. No penalty may be assessed until the person charged shall have been given notice of the violation involved and an opportunity for a hearing. For good cause shown, the Secretary may remit or mitigate any penalty assessed. Upon failure of the person charged to pay an assessed penalty, the Secretary may request the Attorney General to commence an action in the appropriate district court of the United States for collection of the penalty, without regard to the amount involved, together with such other relief as may be appropriate.

(b) In addition to any other penalty, any person who willfully and knowingly violates any provision of this title, or any rule or regulation issued pursuant to section 203 hereof, shall be punished by a fine of not more than $25,000 for each day during which such offense occurs.

(c) Any vessel, except a public vessel engaged in noncommercial activities, used in a violation of this title or of any rule or regulation issued pursuant to

section 203 hereof, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation, a consenting party or privy to such violation.

SUSPENSION OR REVOCATION OF LICENSE

SEC. 209. (a) Whenever a licensee, holding a license to operate, fails to comply with any applicable provision of this title or any applicable rule, regulation, restriction, or license condition issued or imposed under the authority of this Act, 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 high seas oil port or in the district in which the licensee resides or may be found, to—

(1) suspend operations under 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.

(b) When the licensee's failure to comply, in the judgment of the Secretary, creates a serious threat to the environment, the Secretary, in lieu of the action authorized under subsection (a), may suspend operations under the license forthwith. Such suspension shall constitute final agency action for the purposes of section 706 of title 5, United States Code.

LIABILITY FOR DAMAGE

SEC. 210. (a) Notwithstanding any other provision of law, the High Seas Oil Port Liability Fund (hereafter referred to in this section as the "Fund") shall be liable without regard to fault, in accordance with the provisions of this section, for all damages (excluding clean-up costs) to real and personal property within the territorial jurisdiction of the United States that are sustained by any person or entity, public or private, as a result of operations or activities related to a high seas oil port and occurring at, along, or in the vicinity of, any high seas oil port.

(b) Liability may not be imposed under this section—

(1) if the Fund can prove that the damages concerned were caused by an act of war; or

(2) with respect to the claim of a damaged party if the Fund can prove that the damage was caused by the negligence of such party.

(c) Liability for all claims arising out of any one incident shall not exceed $100,000,000. and the Fund shall be liable for the claims that are allowed up to $100,000,000. If the total claims allowed exceed $100,000,000. If the total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable law.

(d) The Fund is hereby established as a nonprofit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General of the United States, and a copy of the audit shall be submitted to the Congress.

(e)(1) Each licensee shall collect from the owner of any oil offloaded at the high seas oil port operated by such licensee, at the time of off-loading, a fee of two cents per barrel.

(2) The collections made under paragraph (1) shall be delivered to the Fund at such times and in such manner as shall be prescribed by the Secretary. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by such Secretary. Income from such securities shall be added to the principal of the Fund.

(f) Liability under this section shall cease with respect to any oil off-loaded at any high seas oil port at such time when the oil has been removed from the onshore facilities of such high seas oil port.

(g)(1) In any case where liability without regard to fault is imposed pursuant to this section and the damages involved were caused by the unseaworthiness of the vessel or by negligence of the owner or operator or of the licensee, the Fund shall be subrogated under applicable State and Federal laws to the

rights under such laws of any person entitled to recovery thereunder. If the Fund brings an action based on unseaworthiness of the vessel or negligence of its owner or operator or of the licensee, it may recover from any affiliate of the owner or operator or licensee, if the respective owner or operator or licensee fails to satisfy any claim by the Fund allowed under this paragraph.

(2) In any case where liability without regard to fault is imposed pursuant to this section and claims with respect to the damages involved may be made under any international agreement to which the United States is party, the Fund shall be subrogated to the rights of recovery under such agreements of the person compensated under this section.

(h) This section shall not be interpreted—

(1) to preempt the field of liability without regard to fault or to preclude any State from imposing additional requirements; or

(2) to affect in any manner the application of the Federal Water Pollution Control Act.

(i) If the Fund is unable to satisfy a claim asserted and finally determined under this section, the Fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest.

(j) For the purposes of this section—

(1) the term "affiliate" includes—

(A) any entity owned or effectively controlled by the vessel owner or operator or licensee;

(B) any entity that effectively controls or has the power effectively to control the vessel owner or operator or licensee by—

(i) stock interest,

(ii) representation on a board of directors or similar body,

(iii) contract or other agreement with other stockholders, or

(iv) otherwise; or

(C) any entity which is under common ownership with or control of the vessel owner or operator or licensee.

(2) The term "licensee" means any person holding a license to operate a high seas oil port under section 202.

(3) The term "entity" means an individual corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization."

AUTHORITY FOR RESEARCH ACTIVITIES

SEC. 211(a). The Secretary, in cooperation with other Federal agencies of the Government, or not, as may be in the national interest, shall—

(1) engage in such research, studies, experiments, and demonstrations as he deems appropriate with respect to (A) the removal from waters of oil spilled incident to high seas oil ports operations, and (B) the prevention and control of such spills; and

(2) publish from time to time the results of such activities.

(b) In carrying out this section, the Secretary may enter into contracts with, or make grants to, public or private agencies and organizations and individuals.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 212. (a) There are authorized to be appropriated for fiscal year 1976 and for each of the three succeeding fiscal years such sums, not exceeding $2,500,000 for any fiscal year, for the administration of this title (other than section 211 hereof), and for succeeding fiscal years only such sums as may be specifically authorized by law.

(b) There are authorized to be appropriated $10 million for each of the fiscal years 1975, 1976, and 1977, to carry out the purposes of section 211 of this title.

Amend the title so as to read:

A bill to authorize the construction and operation of high seas oil ports, to be located in the offshore coastal waters of the United States, in order to facilitate the importation of petroleum and petroleum products into the United States, and for other purposes.

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to authorize the issuance of licenses to eligible applicants for the construction and operation of high seas oil ports, as a means for the unloading and further handling of petroleum and petroleum products for transshipment to the United States. The high seas oil ports licensed under the Act would be located in the offshore coastal waters of the United States, where the depth of water is sufficient to accommodate Very Large Crude Carriers, and thereby take advantage of reduced transportation cost, as well as the environmental benefits resulting from a reduction in the volumes of oil which would otherwise be delivered by vessels in congested port areas.

In accomplishing the basic purpose, the Act would outline the procedures necessary to minimize any possible adverse impact on the marine environment which might result from the construction or operation of high seas oil ports and would further insure that all reasonable precautions are taken to protect the national interests of the United States in such construction and operation, and to protect both national and local interests which would be affected in adjacent coastal States.

BACKGROUND AND NEED FOR THE LEGISLATION

Energy consumption in the United States is a vital part of the nation's economy and is absolutely essential to the nation's well-being. To supply its energy needs in the past, the United States has been fortunate in its access to abundant fuels. The utilization of its available energy sources has enabled the nation to develop the world's highest industrial economy and to enjoy the world's highest standard of living. Anyone who earlier doubted the importance of energy in our national life has certainly become aware of that fact with recent developments. Without sufficient energy sources, the nation's economy will be seriously threatened, and without sufficient energy, decreases in production of food, in industrial activity, in commercial enterprises, in disposal of waste, and in adequate housing will ensue and unemployment will increase.

During recent years, the rising energy demands in the United States have been, in some part, met by increasing domestic capacity. However, today, there is little production capacity remaining and reserves in the major source of crude oil are continuing to decline. Since oil is the major energy source upon which the economy depends, the nation must look forward to increasing its oil imports unless drastic cutbacks in the national economy and substantial changes in the national standard of living are to be suffered.

While the need for additional oil imports has been apparent for sometime, it is only recently that the criticality of that need has been brought home to the nation. The policies of Mideast oil exporting nations has brought an energy crisis. Drastic measures will probably still have to be taken to solve the immediate crisis, but there is no question that if the nation is to satisfy its total energy needs, substantial oil imports will be required during the next few decades. Measures to develop new sources of energy, and to maximize presently

available sources other than oil, in order to attain national self-sufficiency, as recently proposed, will take a substantial period of time, and even when successful, it is very likely that we will continue to import petroleum and petroleum products, as they are available, in order to maintain an appropriate balance in our energy supplies. This legislation is, therefore, based on an evaluation that present restrictions on access to foreign imports will be removed and that until at least the end of the century, oil imports will furnish a substantial part of our energy sources.

If we are to import substantial quantities of crude oil and petroleum products, and if that importation is to be done in the manner most economically and environmentally desirable, we will have to look to a change in our present transportation policy. Transportation technology has changed rapidly in the last few years. Only a few short years ago, the largest tankers in the world were less than 50,000 dead weight tons, and as late as 1960, the average tanker under construction or on order was less than 40,000 dead weight tons. Today, the picture has changed dramatically. Very Large Crude Carriers of 200,000 DWT are in operation and the average size of all crude oil tankers now on order is approximately 200,000 DWT. In a few years, 500,000 DWT tankers will no longer be a rarity.

With the advent of the increasingly larger crude carriers, transportation costs of petroleum and petroleum products are substantially decreased. For instance, in comparing costs of one 500,000 DWT tanker with ten 50,000 DWT tankers necessary to transport the same amount of oil, current figures indicate that one VLCC can be built for slightly over one-half the cost of the ten smaller tankers and that the annual cost of operation, including wages, insurance, maintenance, repair, fuel, and overhead for the VLCC is slightly more than one-third of the annual cost of the ten smaller tankers. One study addressing the problem of offshore ports estimated that based on these cost differentials, there could be a net annual saving of transportation costs in utilizing a single high seas oil port (with VLCC delivery), as contrasted to importing oil into existing ports (by using smaller tankers) on the order of $250 million annually in 1985, and $500 million annually by the Year 2000.

If the savings referred to above are to be realized, either at the estimated level or even somewhat below, the construction of high seas oil ports would seem to follow as a matter of course. Existing ports in the United States are simply not capable of accommodating the Very Large Crude Carriers. Depths of approximately 100 feet are required by the largest vessels, and the possibility of dredging present ports, particularly on the East and Gulf Coasts, to that depth are simply not economically feasible, aside from the major environmental considerations involved in such large scale dredging projects. In addition to the dredging costs that would necessarily accompany the need for removing solid rock in most port areas, physical limitations exist in many harbors due to harbor landside development and transportation systems, including tunnels crossing under harbor or harbor approach areas.

In addition to the economic benefits which would attach to direct delivery of oil by Very Large Crude Carriers, such delivery at points some miles offshore would result in substantial environmental benefits.

An analysis of the pollution threat from the transportation of oil, based upon pollution incidents during the past few years, demonstrates that almost two-thirds of the pollution incidents involved groundings or collisions, and that, other than incidents of structural failures involving older vessels, only about four percent of the pollution incidents occurred at sea, as contrasted to the harbor areas and approaches. In addition to the clear indication that oil reception facilities offshore are basically safer because of lack of congestion, the increasing size of the tanker fleet would reduce that potential congestion still further. The result will be that collision incidents in harbor and harbor approach areas will be substantially reduced and that the danger of grounding by keeping the tankers in sufficiently deep water should be removed almost entirely. Finally, should a pollution incident occur, either during transfer at the high seas oil port or for some other reason, the environmental impact of a discharge of oil on the ocean waters will be substantially less severe than a discharge of like magnitude in a harbor area or in the estuarine waters of the coast where the living resources of the sea, including fish, shellfish, crustaceans, and the marine food chain components would be more adversely affected.

Based upon the economic and environmental considerations involved. the Committee believes that the need for offshore oil ports is clearly demonstrated. There is, however, no existing authority under which these oil ports can be constructed and operated. The present legislation involving structures on the Continental Shelf of the United States is limited to structures built for the purpose of exploiting the seabed and subsoil minerals of the Shelf. There is, therefore, need for the creation of a license system related to high seas oil ports if the nation is to be able to take advantage of this transportation system.

Committee Consideration

Recognizing the desirability for considering the best method of increasing our oil imports in substantial quantites, several bills have been introduced in the present Congress dealing with the problem. Two of those bills, H.R. 5091 and H.R. 5898, were introduced in March 1973, and were referred to the Committee on Merchant Marine and Fisheries. An Administration proposal on the same subject, H.R. 7501, was introduced in May 1973, and referred to the Committee on Interior and Insular Affairs. Other bills in the same subject area, H.R. 2020 and H.R. 10701, were referred to the Committee on Public Works.

The two bills referred to the Committee on Merchant Marine and Fisheries, one addressed to the environmental protection aspects of offshore structures and the other to a licensing system for the construction and operation of such structures, proposed to give the primary authority to the Secretary of Commerce, because of the National Oceanic and Atmospheric Administration involvement in environmental matters anqd the Maritime Administration involvement in transportation policy. Eight days of hearings were held on the two bills and more than 25 witnesses were heard, representing the various interested Federal departments and agencies, representatives of several States, representatives of groups interested in constructing such off-

shore ports, and representatives of environmental organizations. In addition, numerous letters and statements of policy, from various industry and public groups were received and more than ten studies on economic and environmental aspects of the problem were submitted for consideration.

During the course of Committee hearings, which were conducted by the Full Committee, it became apparent that the Committee was faced with a unique problem, and that detailed legislation would be needed to resolve that problem. Furthermore, in receiving testimony from ten Federal departments and agencies, the Administration proposals contained in H.R. 7501 necessarily became involved in the hearings. Recognizing that fact, consultations were held with the Chairman and staffs of both the House Interior and Insular Affairs Committee and the House Committee on Public Works. It was agreed that each Committee would pursue its hearings and that an attempt would be made to coordinate the three approaches in presenting legislation to the House for consideration. As subsequently developed, H.R. 5898, as amended, represents the consensus of the House Merchant Marine and Fisheries Committee and, it is believed, the House Committee on Interior and Insular Affairs. The Public Works Committee, on the other hand, while adopting some of the language contained within H.R. 5898, as amended, has elected to take a somewhat different approach and has reported a separate bill, H.R. 1071, to the House.

There were several major issues which needed to be resolved in reporting a bill. One of the first of those issues had to do with the Federal agency responsibility. While the bills pending before the Merchant Marine and Fisheries Committee proposed to give that responsibility to the Department of Commerce, and while the Administration bill proposed to give that responsibility to the Department of the Interior, the hearings developed information upon which the Committee reached a different conclusion. The testimony developed that while many Federal agencies had some interest and responsibility in off-shore activities of the Federal Government, the single department with the most direct responsibility was the Department of the Interior, with the activities attendant upon the exploration and exploitation of oil and other mineral resources, under the Outer Continental Shelf Lands Act. In addition, legislation now pending in the House, and already enacted in the other body, would place in the Department of the Interior major responsibilities related to onshore land use which will be directly affected by the establishment of offshore ports. Other than the Department of Commerce, with its responsibility for the implementation of the Coastal Zone Management Act of 1972, and the administration of legislation relating to the living resources of the sea; the Department of Transportation, through the Coast Guard and the Office of Pipeline Safety for safety measures relating to the Shelf area; and the Department of the Army, through the Corps of Engineers, for its responsibilities in connection with prevention of obstructions to navigation; the Department of the Interior has the major significant responsibilities in the area in which high seas oil ports would be located. In addition, the actual location of an oil port has most impact, as far as existing legislation is concerned, on the exploitation of Shelf resources under the Outer Continental Shelf Lands Act. Therefore, the Committee decided that the responsibility for processing licenses to construct high seas oil ports could most efficiently be handled by designating the Department of the Interior as the lead agency for such purposes. In reaching this conclusion, the Committee decided that present responsibilities and staff personnel could be utilized without creating any new institutional arrangements, and that the "lead agency" concept was compatible with the needs of the National Environmental Policy Act, which would bear heavily upon a project to construct and operate a high seas oil port.

As to the operation of the high seas oil port, once construction is completed, the Committee reached a different conclusion. After carefully considering all of the various laws of the United States which should be made specifically applicable to the oil port, it became clear that the United States Coast Guard was the agency most directly affected. Of the laws specifically referred to in section 204 of the bill, approximately three-fourths of them fall within the area of responsibility of the Coast Guard. In addition, title 14, United States Code, section 2, specifically designates the Coast Guard as the Federal agency generally responsible for the enforcement of United States laws on the high seas. Since the operation of the high seas oil port will involve primarily safety procedures and environmental protection measures related to marine transportation, the Committee believes that the Department of Transportation, as the department under which the Coast Guard operates, should be given the supervisory control over high seas oil port operations.

Another primary consideration of the Committee involved the international aspects of the proposed legislation. There is no specific international treaty or other agreement which authorizes any nation to build structures on the Continental Shelf other than those related to Shelf exploitation. Nevertheless, the hearings convincingly demonstrated that a coastal nation, in order to give full effect to its right of navigation on the high seas and to promote marine commerce necessary for its well-being, has a basic right to reasonably use the high seas as necessary for those purposes, and the only limitation on that right of reasonable use is the requirement that other reasonable uses of the high seas not be interferred with unduly. This legislation has been drafted with those principles in mind. In addition, care has been taken to insure that this legislation does not constitute an extension of the territory of the United States, but that it, in all respects, recognizes the rights of other nations, including the question of jurisdiction by other nations over their own vessels on the high seas.

A third major issue involved the role of coastal States in the area in which a high seas oil port would be licensed. While the oil port itself would be outside the jurisdiction of any State of the United States (other than the necessary connecting pipeline to shore), it is obvious that States nearby to the oil port will be affected by its presence. The purpose of the bill is to receive imports of foreign oil. That foreign oil will then be transfered, probably by pipeline, to nearby States. Land-based facilities will necessarily result in some areas. For that reason, the Committee elected to give the affected State a major role in the decision-making process. While the offshore port is a matter of general national interest, the State itself, upon whose lands new facilities must be built, or old facilities expanded, such as storage areas, pipelines, and refineries, must play a major role. The legislation, therefore, pro-

vides that where a State so directly affected has either a State program concerning land or water uses, or other legal requirements relating to such uses, the Federal Government will not issue a license for a high seas oil port involving direct impact on that State without first assuring that all State program and legal requirements are met.

An additional collateral issue involving the State role was whether the State should be eligible as a license applicant. After careful consideration of all the factors involved, it was decided to include the State as an eligible applicant, standing on the same basis as any other applicant, and eligible to apply for a license under the Act subject to the same detailed requirements that any other applicant would be subject to. The Committee decided that the State should not enjoy any preferential treatment in the issuance of a license.

Furthermore, the Committee considered, in detail, the problem of environmental protection. The provisions of the bill insure that no license can be issued without first considering its total potential impact on the environment during both the construction and operation phase. Specific criteria are required for the evaluation of any application and specific regulations are required in connection with full notice to all interested parties, including the general public, and full evaluation under an environmental impact statement. In addition, the legislation includes a provision for the establishment of a fund to be responsible, without regard to fault, for damages that may result within the United States from activities related to the oil port and occurring at the oil port, or in its vicinity.

Finally, the legislation provides for specific research authority in connection with the prevention of pollution incidents and in connection with the response to such incidents as may occur.

At the conclusion of the hearings, the Committee met in four markup sessions. H.R. 5898, as amended, was ordered reported by a unanimous voice vote on November 28, 1973.

Title I

Title I of H.R. 5898, as amended, deals with the construction of high seas oil ports. It authorizes the Secretary of the Interior to issue licenses for such construction as the Secretary, after consultation with other appropriate Federal agencies and departments, determines that the applicant is, in all respects, entitled to a license under the various provisions of the Act, that operations under the license will not result in restraint of trade, that the construction and operation of the proposed port will not pose an unreasonable threat to the integrity of the marine environment in which it is to be located, that it will not unreasonably interfere with other permitted uses of the high seas, that it is not in conflict with international obligations or national security interests of the United States, that the location designated will meet national or regional needs, or both, and that consideration be given to the economic effect that the high seas oil port may have on existing nearby ports. The license would be issued for a specific term and the Secretary would be authorized to attach any reasonable conditions to the license which he finds necessary to carry out the purposes of the Act.

Prior to issuing any license, the Secretary, after appropriate consultation, is required to establish and apply specific criteria for evaluating the potential impact of construction and operation of the specific high seas oil port on the marine environment, including the marine environment of any adjacent coastal State. In addition, the bill specifically provides that the issuance of the license is a "major Federal action" in the sense of the National Environmental Policy Act, automatically invoking the requirements of that Act related to the preparation and publication of an environmental impact statement relative to the license. Specific licensing procedures are outlined, including the authority of the Secretary to implement those procedures by pertinent rules and regulations issued in accordance with the Administrative Procedures Act. Full consultation and cooperation with other interested Federal agencies, with affected adjacent coastal States, and with the general public is required in developing the appropriate regulations. In addition, the bill requires submission by the applicant of all information necessary to evaluate the application and requires, among other things, information relating to the proposed location, the proposed design, the construction schedule, the financial and technical capabilities of the applicant, the qualifications of the applicant, and specific agreements, to which the licensee would be required to adhere. All pertinent information, with certain specific limitations, is intended to be readily available to the public so that the public may participate intelligently in the agency consideration of the application.

As to other Federal departments and agencies, the Secretary is required to furnish to those agencies with a direct interest in any aspect of the proposed construction, a copy of the application together with all the information of interest to those agencies. Each such department and agency thereafter is required to review the information received and to recommend to the Secretary the approval or disapproval of the application. Where disapproval is recommended, the agency is also required to notify the Secretary as to the exact manner in which the application is in conflict with some specific requirement within its jurisdiction and shall specify as to how the application may be amended so as to bring it into compliance. It is intended that the Secretary shall follow to the maximum extent feasible the suggestions of other agencies involved. However, there is no specific requirement preventing his approval of the application even though there may be agency opposition. Therefore, the Secretary may issue a license despite agency opposition if he determines that the policy of this Act should override a conflicting requirement which in the absence of this Act would be applicable.

The bill also requires close consultation with, and full consideration of the views of any adjacent coastal State. Where that State has an existing State program or other legislative requirements for land or water uses upon which the construction of a high seas oil port would have a direct impact, the applicant is required to include in his application a certification that, in his best judgment, the issuance of the desired license would be consistent with any State requirements. At the same time, the applicant is required to furnish a copy of his certification to the appropriate State, with all necessary information and data, and in the event that any State objections can not be resolved, the Secretary may not grant a license under that application. In addition to directly affected adjacent coastal States, the Secretary shall also, to the extent practicable, give effect to the views of any other State which will be indirectly affected because of additions to

or expansion of supporting landside facilities in that State or the expansion of services furnished by that State.

The bill aso includes specific procedures for necessary notices relating to license application to insure that all interested parties, governmental and non-governmental, are informed and given an opportunity to express their viewpoints. Public hearings are required in the case of each application to be held in the vicinity of the location site. At the conclusion of all hearings, the Secretary's decision shall be in writing and shall be made within 120 days thereafter. Judicial review of the decision shall be in accordance with the Administrative Procedures Act with a specific declaration as to the meaning of "aggrieved by agency action" as referred to in that Act.

This title also provides for the conditions under which a license granted may later be suspended or revoked, providing for full protection to both the public and to the licensee.

Upon completion of the construction of the high seas oil port in accordance with all statutory and regulatory requirements, and upon the collection of a fee amounting to three percentum of the construction cost (one-eighth to be disbursed to the United States Treasury and two-thirds to the adjacent coastal State), the Secretary shall certify to the Secretary of the department in which the Coast Guard is operating that the construction has been completed and that operations under the license may commence.

Finally, the title authorizes appropriations necessary to administer the title.

Title II

Title II of H.R. 5898, as amended, deals with the operation of high seas oil ports. First of all, the responsibility for oversight of operations is placed in the Secretary of the department in which the Coast Guard is operating. That Secretary, upon receipt of the certification by the Secretary of the Interior, required by Title I, as to the completion of construction, shall convert the license to construct to a license to operate the high seas oil port. The license, as converted or renewed, shall be limited to a reasonable period of time, taking into account certain specific factors, but shall not be for a term of more than 30 years.

The Secretary is authorized to issue reasonable rules and regulations regarding the operation of the high seas oil port, in relation to general operations concerning port procedures, movements of vessels, facility maintenance, health and safety measures, and pollution prevention and clean-up requirements. In addition, the Secretary is given specific authority with respect to lights and warning devices and other matters concerning the promotion of safety of life and property on the high seas oil ports, and the adjacent waters, as well as marking any oil port component, at the expense of the licensee, in order to protect navigation in the vicinity. He is given further authority to designate a safety zone surrounding the oil port, in which zone other uses may be restricted as necessary to protect activities within the oil port, as well as vessel traffic in the vicinity. Finally, the Secretary is given authority to establish safety zones during the construction period in order to protect navigation in the vicinity.

In addition to the regulatory authority of the Secretary, specific provisions are made as to the applicability of other laws to high seas oil ports. A specific statement is included that, in a general sense, high seas oil ports do not possess the status of islands and have no territorial seas of their own. In general, the Constitution and the laws and treaties of the United States shall apply to such oil ports in accordance with their high seas status. This provision makes clear that the United States is making no territorial claim outside its present territorial limits, and that the high seas oil ports are not to be construed as a part of the territorial jurisdiction of the United States or of any State thereof. Further provision is made that State taxation laws shall not apply to the high seas oil port or to any component thereof outside the tax jurisdiction of the State. In using the phrase "tax jurisdiction", it is intended that there should be no construction which would deprive the State of applying its tax laws to that part of the pipeline component within its jurisdiction, nor is it intended to prevent the State from applying any income tax laws applicable to the State's citizens earning income outside the State's borders.

In addition to the extent that Federal laws and regulations, in effect at the time of enactment or subsequently adopted, including this Act, do not cover a specific subject area, the civil and criminal laws of the State nearest to the high seas oil port will be assimilated as Federal law for the high seas oil port. Certain specific statutes are made applicable to the high seas oil port. These include statutes relating to vessel movements, vessel construction and standards, vessel personnel, the discharge of oil and hazardous substances, the discharge of sewage from vessels, vessel load lines, the carriage by vessels of cargo and passengers, the utilization of tugs, the transportation of material for discharge into the oceans, the regulation of movement of petroleum by pipeline, standards for pipeline construction, compensation for disability or death of oil port employees, unfair labor practices, and certain provisions of the U.S. Criminal Code relating to the high seas. The customs laws of the United States are specifically made inapplicable with special provisions for foreign articles used in construction.

In order not to violate treaty commitments of the United States concerning the exercise of jurisdiction over foreign-flag vessels on the high seas, the bill prohibits the use of the high seas oil port by a foreign-flag vessel unless the foreign-flag States involved agrees to recognize the jurisdiction of the United States for that purpose, and unless the foreign-flag vessel owner has designated an agent in the United States for service of process.

The Secretary of State is enjoined to take certain action internationally in support of the policy of the Act.

All United States officials with responsibilities in relation to laws applicable to a high seas oil port shall be afforded access to the oil port in order that they may carry out their responsibilities.

A civil penalty of $10,000 is provided for each violation of the title or of any rule or regulation issued pursuant to section 203. In addition, a criminal fine of not more than $25,000 is provided for a willful and knowing violation of the title or of a section 203 regulation. Any vessel, except a public vessel, is made liable *in rem* for any penalty or fine resulting from a violation in which the vessel was used.

The Secretary is authorized under certain conditions to take appropriate action to suspend or revoke the license to operate.

The title further provides for the establishment of a High Seas Oil Port Liability Fund which shall be responsive without regard to fault for all damages occurring within the territorial limits of the United States as a result of operation or activities related to a high seas oil port. The Fund will respond to claims rising out of any one incident up to $100,000,000. It may sue, and be sued in its own name. The Fund will be created by a fee of $.02 per barrel, collected from the owner of any oil off-loaded at the high seas oil port, the Fund shall be subrogated to the rights of any claimant whose claim is satisfied by the Fund, and finally, where necessary, the Fund may borrow money needed to satisfy claims.

The title also authorizes the Secretary to engage in certain research activities and to enter into contracts, or make grants, for that purpose.

Finally, the title authorizes appropriations for fiscal years 1976, 1977, 1978, and 1979 of not more than $2.5 million for any fiscal year for the administration of Title II, other than section 211. It also authorizes $10 million for each of fiscal years 1975, 1976, and 1977, to carry out the purposes of section 211.

Section-by-Section Analysis

SECTION 1—SHORT TITLE

This section provides for the short title of "High Seas Oil Port Act".

SECTION 2—DECLARATION OF POLICY

This section outlines the national policy involved in the enactment of the Act, by listing certain findings which outline the justification for, and declaring the specific purposes to be accomplished in, that enactment. The findings in subsection (a) relate (1) to the fact that anticipated increase in the nation's energy requirements and the conclusion that the national energy demands cannot, for the foreseeable future, be met by the domestic sources of energy supply; (2) to the fact that certain factors affecting other potential sources of energy supply may require that increased demands be met by the utilization of oil as the supply source and that a substantial part of that oil must be imported; (3) to the fact that the economic resource use, the protection of the national balance of payments position, transportation efficiency, and the maintenance of a competitive position in world trade, demand the utilization of increasingly larger tankers to transport the needed oil; (4) to the physical limitations of present port areas and port facilities which render them incapable of accommodating the needed larger tankers and the lack of feasibility, either from a cost or environmental protection viewpoint of rendering the port waters or port facilities capable of accommodating such larger tankers; (5) to the fact that importation of the additional quantities of oil in smaller tankers would constitute substantial port congestion; (6) to the fact that the construction of oil ports on the high seas in water sufficiently deep to accommodate the larger tank vessels is both economically and environmentally advantageous; (7) to the fact that there is primarily a national interest in the location, construction standards, and operational control of the high seas oil ports and that there is both national and local interest in the resultant shoreside impact which such ports necessarily will have as the oil is transferred ashore, and (2) that the construction and operation of such high seas oil ports is a reasonable use of the high seas and would be consistent with recognized principles of international law. In subsection (b), the purposes of the Act are declared to be the authorization of construction licenses by the Secretary of the Interior, the authorization of operation regulations by the Secretary of the Department in which the Coast Guard is operating, the minimization of any adverse impact which either the construction or operation would have on the marine environment, and the protection of the national interests of the United States in such construction and operation, as well as the protection of the national and local interests related to the impact on adjacent coastal States.

SECTION 3—DEFINITIONS

(a) This subsection defines "high seas oil port" or "oil port" to mean, in a structual sense, any complex consisting of a structure or structures, permanently sited, whether floating or bottom-bearing, to be located in or subjacent to, the offshore coastal waters of the United States, to be operated as a means for unloading and further transfer of petroleum or petroleum products for transshipment to the United States. In a structural sense, "high seas oil port" includes all necessary components, together with their associated equipment and appurtenances. It also includes that segment of the pipeline connection to the shore which segment, while strictly speaking, not located beyond the territorial limits of a State, is a constituent part of the permit process and is intended to be covered by the single permit issued. In addition, in a geographical sense, the high seas oil port is defined as a circular zone of not less than two and not more than four nautical miles, the center of which circular zone is described as the port reference point.

(b) "Offshore coastal waters of the United States. refers to the high seas, beyond the territorial limits of the United States, and superjacent to the Continental Shelf of the United States, as the Continental Shelf is delineated by the provisions of the Convention on the Continental Shelf, to which the United States is signatory. By virtue of this definition, the intent is made clear that the authority under this Act to construct and to operate high seas oil ports does not extend into any waters located within the territorial limits of the United States, with the single exception that where there is a pipeline connection from a permitted high seas oil port, that segment of the pipeline component within the territorial limits of the United States shall be included as a part of the overall construction and operation licenses.

(c) This subsection defines "United States" or "State" to include the several States, the District of Columbia, the territories and possessions of the United States, and the Commonwealth of Puerto Rico.

(d) This subsection defines "coastal State" to include any State, as defined above, which lies in, or borders on, the Atlantic, Pacific, or Arctic Ocean, or Gulf of Mexico.

(e) This subsection defines "adjacent coastal State" to mean, as to any high seas oil port, either existing or proposed, a coastal State, as defined above, any point of which lies within ten miles of any component of the high seas oil port. This definition is designed to include, therefore, the coastal State nearest to the high seas oil port, in its

geographical sense, as well as any State which lies within ten miles of any component, and, in particular, a pipeline segment which connects the high seas oil port to the land. This definition relates only to the actual territorial limits of the State involved, and is not intended to refer in any way to an extension of lines of demaraction beyond the territorial limits of that State.

(f) This subsection defines the "port reference point" to be designated by the Secretary of the Interior for purposes of charting and measurements for other purposes. The port reference point is to be defined by the coordinates of latitude and longitude and is to be selected as that point located as nearly as possible at the center of the high seas oil port activity. In other words, if the high seas oil port consists of one basic sea island or artificial island, the port reference point would be the center of the structure. In the case of a single buoy or multi-buoy system with associated platforms, some element of judgment for the exact reference point must be exercised.

(g) This subsection defines "person" to include private individuals or entities, and officers, employees, or instrumentalities of the Federal Government, of any State or local government, or of any foreign government.

(h) This subsection defines "eligible applicant" as meaning any citizen or group of citizens of the United States, any State as earlier defined, or any private, public, or municipal corporation or any other entity which has been created pursuant to the laws of the United States or of any State. This would include any governmental subdivision of a State and the term "laws of any State" is intended to refer to the Constitution of that State, as well as its statutory enactments.

(i) This subsection defines "marine environment" to include the offshore coastal waters of the United States, as earlier defined, the coastal waters of a State within its territorial limits, which contain a measurable amount or percentage of sea water, the resources, both living and non-living, of each of the cited bodies of water, and the economic, recreational, and esthetic values of the listed waters and the resources located therein and thereunder.

SECTION 4—ACTIVITIES PROHIBITED

This section outlines the activities prohibited under the Act. First, it specifies that, except as specifically authorized by the laws of the United States, including this Act, or pursuant to an authorized Federal program (even though that program is not authorized in specific terms by law) no person, as defined in the Act, may construct, maintain, or operate, either a high seas oil port or any other fixed structure in the waters superjacent to the Continental Shelf of the United States. "Fixed" in the sense used here refers to a permanently sited structure, whether that structure is floating or bottom-bearing.

The section also prohibits the use of the high seas oil port for purposes other than its defined purpose. It may not be utilized, except for materials or supplies to be used in the construction, maintenance, or operation of the high seas oil port, for the unloading of any commodities or materials brought to the oil port from the United States. It may not be used for transshipping to the United States any commodities or materials other than petroleum or petroleum products. It may not be used for the transshipment of petroleum or petroleum products which are destined for locations outside the United States. This would not prohibit the unloading of petroleum or petroleum products from foreign sources, the first destination of which would be the United States, even though the ultimate destination might be elsewhere. It may not be used for transportation of minerals extracted from the seabed and subsoil of the Continental Shelf in the coastal area in which the high seas oil port is located. This prohibition is intended to apply to the utilization of the high seas oil port for the transshipment of oil extracted in the same area. It would not prohibit, for instance, the reception at a high seas oil port, located off California, of oil extracted from the Continental Shelf of the Alaskan North Slope. Finally, it may not be used by any vessel which is not equipped with collision avoidance radar system meeting or exceeding such systems as are required by the United States Maritime Administration of vessels built with United States Government subsidies.

In relation to the various use prohibitions, an exception is made in that the Secretary of the Interior is authorized by rule to, in effect, waive the prohibitions. In doing so, he will be required to follow the requirements of the Administrative Procedures Act in issuing such exception rules and is expected to hold public hearings for that purpose. It is also intended that in authorizing any such exception by rule, the Secretary must follow all of the constituent elements of this Act in relation to the various economic factors, environmental protection requirements, and other conditions and restrictions attached to the issuance of an original license, including an application for the exception from the licensee.

TITLE I—CONSTRUCTION OF HIGH SEAS OIL PORTS

SECTION 101—DEFINITION

This section defines the term "Secretary" as referring to the Secretary of the Interior.

SECTION 102—LICENSE TO CONSTRUCT

This section outlines the basis upon which the Secretary may issue construction licenses, including the determination of the applicant's responsibility and general capability to comply with license conditions; the assurance of competition; the protection of the marine environment in which the port is to be located; the assurance that the port will not unreasonably interfere with other high seas uses; the assurance that the location chosen will meet national needs, or regional needs, or both, and the economic effects that a high seas oil port will have on existing nearby ports. In addition, the section provides for a license term of five years with necessary extension authority; authorizes the transfer of a construction license; and outlines the authority of the Secretary to attach conditions to the construction license including construction schedule requirements, necessary fees, environmental protection measures, assurance of nondiscriminatory access at reasonable rates; and bonding requirements to make certain that the licensee, upon termination of the license, will remove such components as may have been put in place, subject to certain waiver authority by the Secretary. In relation to fees for pipeline rights-of-way, the section

provides that one-half of any such fee shall be disbursed to the adjacent coastal State, or where more than one State fits that description, shall be divided equally between them. The pipeline right-of-way fee, which the Secretary may prescibe, is limited to that part of the pipeline lying outside the territorial limits of any State, leaving to the involved State the question of assessing right-of-way fees for the pipeline component within that State's jurisdiction. The section also requires consultation with the Secretary of the department in which the Coast Guard is operating as to any license conditions which are intended to continue after the license to construct becomes a license to operate. The license conditions referred to in this regard would include, but would not necessarily be limited to, design and construction standards as they would later relate to operating conditions. In addition, the Secretary would be expected to consult in the same manner as to any other aspect of the construction, such as the siting, which would impact on the operational authority of the Secretary of the department in which the Coast Guard is operating.

SECTION 103—ENVIRONMENTAL CONSIDERATIONS

This section provides that the Secretary, prior to the issuance of a construction license, shall establish certain criteria for evaluating the potential environmental impact of the construction on the marine environment. The criteria specifically listed relate to the various aspects of marine environment protection. Included are related land-based developments to the extent that they may impact on that environment. The other aspects of land-based developments would be considered primarily by the State under the provisions of section 104. In addition, the section defines the issuance of such a license as a "major Federal action" in the sense of NEPA, thereby automatically requiring an impact statement.

SECTION 104—LICENSING PROCEDURES

This section authorizes the issuance of rules and regulations concerning issuance of licenses; lists the information to be required in license applications; provides for public access to information related to the license application; outlines the procedures to be followed by the Secretary in consulting with other Federal agencies and adjacent coastal States prior to issuing a license; states the requirements of publication of notice; specifies the holding of public hearings; and outlines the procedures to be followed in the review of the Secretary's decision relating to the license application. As to the public access to information, it is expected that all information reasonably necessary for an intelligent participation in the decision-making process will be made readily available to the interested public. As to the consultation with other agencies, the Secretary is expected to give full and complete consideration to the comments and recommendations of those agencies, with the caveat that where objections cannot be resolved, the Secretary will have to make a decision as to whether the general need and justification for the particular license should override the objection of another agency. In any such override, the Secretary will, of course, be expected to justify his decision to the public, to the Congress, and, if court action ensues, to the court. As to the consultation with adjacent

coastal States, subsection (e) outlines the procedures therefor, and requires the resolution of the coastal State's objections before a license may be issued, when the license has a direct impact on the State. Where an adjacent coastal State's objections cannot be resolved, the Secretary may not grant a license under this title. It should be noted, however, that the State's objections must be based upon the fact that the issuance of the license and the necessary secondary impact thereof would be inconsistent with applicable State programs or other legislative requirements related to land or water uses. The controlling State objections would not be determinative of the issues unless those were so founded. In considering the views of any State which would be indirectly, rather than directly, affected, for instance, a State in whose borders the overall project could, but need not necessarily include, land-based facilities, the views of that State should be considered, but would not be dispositive of the question of issuing the license, in view of the fact that that State could grant or withhold its permission for the expansion of facilities or services in accordance with other laws. As to notice, hearing and review, the Secretary shall take every appropriate action to insure full and complete notice related to a license application. He is required to hold full public hearings and to make his decision in writing within a definite time period. The judicial review of his decision is available in accordance with the Administrative Procedures required in Chapter 7 of title 5, United States Code paragraph (3) of subsection (f) of this section, this title defines what is meant by the phrase "aggrieved by agency action within the meaning of a relevant statute", as included within title 5, United States Code, section 702.

SECTION 105—SUSPENSION OR REVOCATION OF LICENSE TO CONSTRUCT

This section outlines the Secretary's authority to suspend or revoke a construction license when the licensee fails to comply with any applicable provision of the title or any applicable rule, regulation, restriction, or condition issued or imposed by the Secretary. It is intended that the Secretary will, by rule, prescribe the conditions and time limitations under which a suspension may be terminated, and construction resumed.

SECTION 106—CERTIFICATION OF COMPLETION OF CONSTRUCTION

This section includes the provisions under which the Secretary may certify the proper completion of construction, so that the license to construct may ripen into a license to operate under Title II. After he finds that construction has been properly completed, the Secretary is required to collect from the licensee a fee equaling three percentum of the cost of construction of the high seas oil port. The construction cost involved is, of course, limited to the construction of components as licensed by the Secretary and does not extend to any construction cost of associated land-based facilities. He shall then disburse one-third of the fee to the United States Treasury and the remaining two-thirds to the adjacent coastal State, or to adjacent coastal States, in equal division. This disbursement to the States, to the extent that the amount involved will do so, is intended to reimburse those States for any associated costs related to the high seas oil port construction. The re-

quirement for a construction fee will, of course, apply when a State or other public entity is the licensee, as well as when individuals or private entities are involved.

SECTION 107—AUTHORIZATION FOR APPROPRIATION

This section authorizes not to exceed $500,000 for each of the fiscal years 1974, 1975, and 1976, for administration of the title.

Tilte II—Operation of High Seas Oil Ports

SECTION 201—DEFINITION

This section defines the term "Secretary" as referring to the Secretary of the department in which the Coast Guard is operating.

SECTION 202—LICENSE TO OPERATE

This section provides for the conversion of a license to construct to a license to operate. It also provides for the renewal of such converted license. The period of the license to operate, as converted or renewed, shall be specified for a period of years in the light of all circumstances, but for a period of no more than thirty years. In determining such duration, the Secretary shall consider various pertinent factors including cost, useful life, and the public purpose served. When any licensing period expires, and upon application of the licensee, the Secretary is required to renew the license, provided he finds at that time that the high seas oil port is in commercial operation, is operating in accordance with the public interest, and that the licensee is in compliance with license conditions, with title requirements including regulations thereunder, and with such other provisions of law as may be applicable at that time relating to the operation of the high seas oil port.

SECTION 203—RULES AND REGULATIONS

This section authorizes the Secretary to issue reasonable rules and regulations under which the oil port shall be operated, and provides specifically for regulations with respect to matters concerning safety of life and property, the protection of navigation, and the establishment of safety zones. Special regulations may also be issued by the Secretary, after consultation with the Secretary of the Interior, in order to protect navigation during the construction period of the high seas oil port.

SECTION 204—APPLICABLE LAWS

This section specifies that high seas oil ports do not possess the status of islands and have no territorial seas of their own, and makes applicable to the high seas oil port, except as specifically provided in the section, the Constitution and the laws and treaties of the United States in accordance with the high seas status of the oil port. The above provision is intended to make clear that in enacting this Act, the United States is making no territorial claims beyond its present territorial limits. The high seas oil ports are recognized as being a part of the high seas, and the extension of United States jurisdiction over them

for various purposes is restricted to the supervision of their operation and does not constitute a claim of territorial jurisdiction. State taxation laws are specifically not applicable to the high seas oil port or any part thereof located outside the tax jurisdiction of a State. There is no intention by this provision to change the right of a State to apply its tax laws to its citizens as they may otherwise be applied to those citizens while outside the State jurisdiction, nor is there any intent to preclude a State from applying its taxation laws to any pipeline segment of the high seas oil port lying within the State jurisdiction. In other respects, certain civil and criminal laws of the State nearest to the high seas oil port are declared to be the law of the United States for the oil port. Certain laws are made specifically applicable to the high seas oil port as if it were located within the United States, including Title I of the Ports and Waterways Safety Act of 1972, laws relating to merchant vessel inspection and merchant seamen, the so-called Magnuson Act relating to port security, sections of the Federal Water Pollution Control Act relating to oil and hazardous substance discharges and to sewage discharges from vessels, the International and Coastwise Load Line Acts, laws relating to the carriage of passengers and cargo and the utilization of towing vessels, Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 relating to the transportation of material for dumping into ocean waters, provisions of the Longshoremen's and Harbor Workers' Compensation Act, and the National Labor Relations Act, and provisions of law relating to pipeline movements of petroleum and petroleum products, as to regulatory authority of the Interstate Commerce Commission as to rates, and the Secretary of Transportation as to pipeline safety, the latter in relation to pipeline safety. Finally, by definition, certain Federal criminal laws, applicable to the special maritime and territorial jurisdiction of the United States are made applicable to the oil port. The customs laws of the United States will not apply to the high seas oil port, but foreign articles used in construction will be subject to applicable duties and taxes. It should be noted that some difficulty may be created in the application of some of these specific laws to a high seas oil port when a State or subdivision thereof is the licensee. This, of course, is a matter that the Secretary should consider in connection with whether the eligible applicant is capable of complying with the overall scheme of the Act.

SECTION 205—FOREIGN-FLAG VESSELS

The purpose of this section is to insure that the United States, in this Act, does not violate its treaty commitments under the Convention on the High Seas. Article 6 of that Convention specifically provides that "ships shall sail under the flag of one State only and, save in exception cases *expressly provided for in international treaties or in these Articles*, shall be subject to its exclusive jurisdiction on the high seas" (emphasis added). In order that there can be no question relating to the various laws made applicable to the high seas oil port under this title, it is considered necessary from a legal standpoint and desirable from an international relations standpoint, that any jurisdiction asserted over foreign-flag vessels is based upon clear legal authority, and is not dependent upon a theory of consent by the foreign-flag vessel owner, as contrasted to the foreign-flag nation.

SECTION 206—INTERNATIONAL COOPERATION

This section directs the Secretary of State to take appropriate action internationally relating to construction and operation of high seas oil ports, with particular regard for navigational safety measures.

SECTION 207—OFFICIAL ACCESS

This section requires reasonable access to the high seas oil port for all United States officials for the purpose of carrying out their responsibilities.

SECTION 208—PENALTIES

This section provides for a civil penalty of $10,000 per day for violations of the title, or of applicable rules and regulations. It provides in addition for a criminal penalty of not more than $25,000 per day when any such violation is committed willfully or knowingly. Finally, it subjects certain vessels to liability *in rem* for any penalty assessed or fine imposed when the vessel is used in committing the violation. The exemption of public vessels is intended to apply to those vessels entitled to sovereign immunity under international law. This would include vessels owned or bareboat chartered by the Federal Government, by a State Government, or by a foreign government, but would not include such vessels if they were being used at the time for commercial purposes.

SECTION 209—SUSPENSION OR REVOCATION OF LICENSE

This section provides for the authority to suspend or revoke licenses when the licensee fails to comply with appropriate rules, regulations, restrictions, or conditions of the license. It provides for appropriate court process and, in appropriate cases, summary action by the Secretary. In the case of summary action by the Secretary, appellate review is provided for.

SECTION 210—LIABILITY FOR DAMAGE

This section creates a High Seas Oil Port Liability Fund which shall be liable without regard to fault, for all damages, (not including clean-up costs) which may be suffered to property located within the territorial jurisdiction of the United States because of operations related to the high seas oil port and occurring at the oil port or in its vicinity. The purpose of including activities in the vicinity of the oil port is to cover pollution incidents that may occur involving a vessel approaching the port prior to its actual arrival. Claims arising from any one incident may not be settled by the Fund in an amount in excess of $100,000,000. The Fund will be established by collecting a fee of two cents per barrel, from the owner of the oil, for any oil off-loaded at the high seas oil port. After settling claims, the Fund will be subrogated to the rights of the claimant against any third party up to the amount of the claim. The Fund does not supersede the requirements of rights of recovery of damage under other law, and does not affect the clean-up requirements contained in section 311 of the Federal Water Pollution Control Act.

SECTION 211—AUTHORITY FOR RESEARCH ACTIVITIES

This section authorizes the Secretary to engage in certain research and study activities related to removal of oil and the prevention of oil spills.

SECTION 212—AUTHORITY FOR APPROPRIATIONS

This section authorizes appropriations of not to exceed $2.5 million for any of the fiscal years 1976, 1977, 1978, and 1979, for general administration and further authorizes $10 million per year for fiscal years 1975, 1976, and 1977, in order to carry out the research authority under section 211.

COST OF THE LEGISLATION

Pursuant to Clause 7 of Rule VIII of the Rules of the House of Representatives, the Committee estimates the cost of the legislation as follows:

Current fiscal year: $500,000

Next five fiscal years:

[In millions of dollars]

	Fiscal years				
	1975	1976	1977	1978	1979
Title I (administration)	0.5	0.5			
Title II (administration)		2.5	2.5	2.5	2.5
Title II (research)	10.0	10.0	10.0		
Total	10.5	13.0	12.5	2.5	2.5

The total estimated cost for the current fiscal year, plus the five succeeding fiscal years is $31.5 million. The estimate relating to the administration of Title I is to provide for additional administrative expenses not attributable to any particular oil port. Costs attributable to any individual high seas oil port in relation to processing of the license and monitoring of the construction will be recovered by a fee assessment of the Secretary. It is anticipated that the issuance of construction licenses will occur within a three year period. Any additional authorization for Title I administration will have to be specifically authorized by the Congress.

As to the administration of Title II, such costs should not commence until fiscal year 1976. Additional administrative costs after fiscal year 1979, will have to be specifically authorized by the Congress.

As to section 211 research costs, it is anticipated that all such research should be completed within a three year time span, commencing in fiscal year 1975. If additional research authorization is found to be necessary, it must be specifically enacted at a subsequent time.

The Committee has not received any specific estimates of cost from any Federal agency.

There is no authorization for appropriations in relation to the High Seas Oil Port Liability Fund in view of the fact that that Fund, including its administration, will be created and maintained by a fee of two cents per barrel for each barrel of oil off-loaded at the high seas oil port. The fee will be collected from the owner of the oil.

Changes in Existing Law

Clause 3 of Rule VIII of the Rules of the House of Representatives, as amended, does not apply, in view of the fact that the bill, as reported, would, if enacted, make no change in existing law.

Departmental Reports

H.R. 5898 and H.R. 5091 (a same subject bill), were the subjects of several departmental reports. The texts of these reports follow herewith:

Department of the Navy,
Office of Legislative Affairs,
Washington, D.C., June 13, 1973.

Hon. Leonor K. Sullivan,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

Dear Madam Chairman: Your request for comment on H.R. 5898, a bill "To amend the Merchant Marine Act, 1936, to provide authority to the Secretary of Commerce to issue permits to construct, operate, and maintain certain offshore port and terminal facilities," has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

This bill would add to the Merchant Marine Act, 1936, a new Title XIII, "Offshore Port and Terminal Facilities." Section 1301(a) of the bill would vest the Secretary of Commerce with control over construction, operation and maintenance of all ports or terminal facilities beyond the territorial waters of the United States, by prohibiting such action by "any person" without a permit therefor issued by the Secretary of Commerce under such regulation and upon such conditions as he may prescribe. Section 1301(b) prescribes the factors to be considered by the Secretary of Commerce in issuing any permit under the section.

In his energy message to the Congress in April of this year, the President proposed the development of deepwater ports in answer to the problem of importing, cheaply and with minimum damage to the environment, the large quantities of oil we will be needing in the foreseeable future. In implementation of this portion of his message, there has been transmitted to the Congress by executive communication from the Secretary of the Interior the proposed Deepwater Port Facilities Act of 1973 which has now been introduced as H.R. 7501. This is a comprehensive proposal representing the coordinated effort of the departments and agencies of the executive branch to meet the many problems associated with the regulation and construction of such facilities. In our view, the provisions of H.R. 7501 furnish a more adequate and effective means for dealing with these problems than H.R. 5898.

In view of the above, the Department of the Navy, on behalf of the Department of Defense is opposed to enactment of H.R. 5898.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee and that enactment of H.R. 7501 would be in accord with the program of the President.

For the Secretary of the Navy.

Sincerely yours,

E. H. Willett,
Captain, U.S. Navy, Deputy Chief.

Department of the Navy,
Office of Legislative Affairs,
Washington, D.C., June 13, 1973.

Hon. Leonor K. Sullivan,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

Dear Madam Chairman: Your request for comment on H.R. 5091, a bill "To amend the Marine Protection, Research, and Sanctuaries Act of 1972, and for other purposes," has been assigned to this Department by the Secretary of Defense for the preparation of a report expressing the views of the Department of Defense.

This bill would place with the Secretary of Commerce the authority for certification of the acceptability to the marine environment the siting, construction and operation of structures to be used for ports, terminals, powerplants, airports, research platforms or other purposes in the high seas beyond the territorial seas of the United States, superjacent to the Continental Shelf of the United States.

H.R. 5091 is considered objectionable for the following reasons:

a. There is the significant danger that the bill would be interpreted as providing for unilateral extension of the United States' jurisdiction beyond the 12-mile contiguous zone provided for in the 1958 Convention on the Territorial Sea and Contiguous Zone. An assertion of sovereignty over "offshore coastal waters", which is now included in the bill, would contravene international law. Also, while the United States may prohibit activities by its own citizens, even on the high seas, the bill (section 407(a)) does not limit its jurisdiction to citizens. Instead, it applies to "any person subject to the jurisdiction of the United States" and permits the assessment of a civil penalty of up to $50,000 per day for each day of the violation. It is conceivable that "any person subject to the jurisdiction of the United States" could be construed to apply to an alien who, after performing the prohibited acts, enters the territory of the United States. Additionally, a U.S. court could construe the prohibited acts as an encroachment on the territorial integrity of the United States and thus apply it to aliens who place structures on or over the Continental Shelf.

It is the policy of the United States, neither to make nor to recognize unilateral claims to sovereignty beyond the territorial sea except as provided in customary and conventional international law (9 mile fishing zone and contiguous zone for enforcement of customs, fiscal, immigration and sanitary regulations). In order to preserve a narrow territorial sea throughout the world, which is essential to our security interests, the United States has consistently protested the unilaeral extension of coastal-state sovereignty and jurisdiction by other na-

tions, and has steadfastly maintained that such matters should be dealt with on a multinational basis at the forthcoming Law of the Sea Conference. The enactment of this bill with its assertions of sovereignty over marine areas seaward of the territorial sea could erode the United States position at the Conference.

For an example of the manner in which this jurisdictional issue may be addressed without prejudice to United States Law of the Sea interests in a specific case, the Committee is referred to the proposed Deepwater Port Facilities Act of 1973 contained in H.R. 7501. The approach there taken involves first a determination that the construction and operation of superports is a reasonable use of the high seas, and second a prohibition of construction or operation of such facilities by United States nationals without a license coupled with a prohibition of the transport of commodities or other materals between the United States and an unlicensed facility. Both the scope and the relatively indefinite nature of the activities sought to be regulated by the subject bill seems to preclude a satisfactory resolution of the jurisdictional issues raised by means of a similar approach.

b. The proposed legislation makes no provision for a national defense exclusion in the certification of offshore artificial structures. While the Department of Defense does and should consider the effects of its actions on the environment, it appears inappropriate, as provided in Section 403(c), for the Secretary of Commerce to establish and apply criteria for evaluating the need of an artificial structure offshore by the Department of Defense.

c. The bill duplicates and overlaps functions and responsibilities of other agencies such as Coast Guard, Department of Defense (Navy and Corps of Engineers) and the Environmental Protection Agency (EPA).

d. A strict interpretation of the definition of "structure" (page 3, line 12) might well include research vessels, platforms and buoys anchored, moored or employed in the coastal waters. In the case of military platforms to be constructed in the applicable coastal waters, the requirement contained in Section 403(b) to submit "reasonably detailed plans at least two years prior to the expected date of the beginning of construction" could be unbearably restrictive depending, of course, on the interpretation of the word "reasonable". In most cases it would be highly improbable that detailed plans would be in hand two years ahead of time.

e. The bill, in effect, provides a single department veto power over offshore structures based upon marine environment protection as the sufficient condition upon which to exercise such power regardless of other considerations. Thus the bill could well block the best solution to complex, interdependent problems involving the Nation's security economic development, energy and natural resource supplies and transportation systems as well as those of the environment.

In his energy message to the Congress in April of this year, the President proposed the development of deepwater ports in answer to the problem of importing, cheaply and with minimum damage to the environment, the large quantities of oil we will be needing in the forseeable future. In implementation of this portion of his message, there has been transmitted to the Congress by executive communication from the Secretary of the Interior the proposed Deepwater Port Facilities Act of 1973 which has now been introduced as

H.R. 7501. This is a comprehensive proposal representing the coordinated effort of the departments and agencies of the executive branch to meet the many problems associated with the regulation and construction of such facilities. In our view, the provisions of H.R. 7501 furnish a more adequate and effective means for dealing with these problems than H.R. 5091.

In view of the above, the Department of the Navy, on behalf of the Department of Defense is opposed to enactment of H.R. 5091.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee and that enactment of H.R. 7501 would be in accord with the program of the President.

For the Secretary of the Navy.

Sincerely yours,

E. H. Willett,
Captain, U.S. Navy, Deputy Chief.

Federal Maritime Commission,
Office of the Chairman,
Washington, D.C., August 22, 1973.

Hon. Leonor K. Sullivan,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives,
Washington, D.C.

Dear Madam Chairman: This is in response to your request for the views of the Federal Maritime Commission with respect to H.R. 5091, a bill to amend the Marine Protection, Research, and Sanctuaries Act of 1972, and for other purposes.

Inasmuch as the bill does not affect the responsibilities or jurisdiction of the Commission, we express no views as to its enactment.

The Office of Management and Budget has advised that there would be no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

Helen Delich Bentley,
Chairman.

Enclosure.

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., June 12, 1973.

Hon. Leonor K. Sullivan,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives,
Washington, D.C.

Dear Madame Chairman: This responds to your request for this Department's views on H.R. 5091 and H.R. 5898, bills to authorize the siting of offshore structures.

We recommend that neither bill be enacted but that the Administration's proposed "Deepwater Port Facilities Act of 1973," H.R. 7501, be enacted instead.

All three bills would establish a licensing system for deepwater ports of the United States Coast beyond the territorial sea. A principal element in evaluating license applications under all three bills is the consideration of the environmental impact. On this point the Administration's bill contains significantly more detail and we prefer it for that reason.

A principal difference between the Administration's bill and the ones pending before this Committee is that our bill gives Federal jurisdiction to the Department of the Interior, whereas H.R. 5091 and H.R. 5898 give jurisdiction to the Department of Commerce. Three factors led to the Administration's decision: First, Interior has the fundamental federal responsibility for assuring the Nation an adequate supply of energy. This entails supervising the oil import program, administering all emergency fuel supply programs and providing analytical support for the Oil Policy Committee. We also lease all energy resources on public lands and the outer continental shelf. At the President's direction we have recently created an Office of Energy Conservation.

The second factor is the expertise we have developed in supervising the construction and operation of oil drilling platforms on the outer continental shelf. These platforms, connected to the mainland by pipeline, are very similar to the type of facility we expect to license under this new legislation.

The third factor is the requirement in our proposal which we feel is extremely important, that the Secretary consult with the Governors of States off whose coast a facility is proposed to be located "to ensure that the operation of the facility and directly related land-based activities would be consistent with the State land use program." Since the Administration's Land Use Planning proposal gives Interior federal responsibility for approving State land use programs, it was felt that Interior was in the best position to coordinate deepwater port licensing with State land use plans.

The Office of Management and Budget has advised that there is no objection to the presentation of this report and that enactment of H.R. 7501 would be in accord with the program of the President.

Sincerely yours,

JACK O. HORTON,
Assistant Secretary of the Interior.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., August 14, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR CHAIRMAN SULLIVAN: Thank you for your recent letter requesting our views on H.R. 5898, a bill, to amend the Merchant Marine Act, 1936, to provide authority to the Secretary of Commerce to issue permits to construct, operate, and maintain certain offshore port and terminal facilities.

Upon analysis of the proposed legislation, we have concluded that its provisions do not directly affect any functions of the Interstate Commerce Commission under existing law. Therefore, we have no comment to make on this legislation.

Sincerely yours,

GEORGE M. STAFFORD, *Chairman.*

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., August 14, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR CHAIRMAN SULLIVAN: Thank you for your recent letter requesting our views on H.R. 5091, a bill, "To amend the Marine Protection, Research, and Sanctuaries Act of 1972, and for other purposes".

Upon analysis of the proposed legislation, we have concluded that its provisions do not directly affect any functions of the Interstate Commerce Commission under existing law. Therefore, we have no comment to make on this legislation.

Sincerely yours,

GEORGE M. STAFFORD,
Chairman.

DEPARTMENT OF STATE,
Washington, D.C., June 13, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: The Secretary has asked me to reply to your letter of March 22, 1973, requesting comment on H.R. 5898, a bill to amend the Merchant Marine Act, 1936, to provide authority to the Secretary of Commerce to issue permits to construct, operate, and maintain certain offshore port and terminal facilities.

The Department notes that H.R. 5898 would amend the Merchant Marine Act, 1936 (Chapter 27 of Title 46, United States Code) by adding at the conclusion thereof the following new Title: "Title XIII—Offshore Port and Terminal Facilities." The Administration forwarded to Congress on April 18, 1973, a draft bill (H.R. 7501) "To amend the Outer Continental Shelf Lands Act and to authorize the Secretary of the Interior to regulate the construction and operation of deepwater port facilities." The Department supports the Administration's bill which provides a comprehensive legislative approach for the construction and operation of deepwater port facilities. Consequently, we are opposed to H.R. 5898.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of H.R. 7501 would be in accord with the program of the President.

Sincerely yours,

MARSHALL WRIGHT,
Assistant Secretary for Congressional Relations.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., June 20, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 5898, a bill to amend the Merchant Marine Act, 1936, to provide authority to the Secretary of Commerce to issue permits to construct, operate, and maintain certain offshore port and terminal facilities.

The bill would add a new title XIII to the Merchant Marine Act, 1936 to require that no port or terminal facility shall be constructed, operated, or maintained by any person beyond the territorial waters of the United States, unless he has obtained a permit from the Secretary of Commerce.

In lieu of H.R. 5898 the Department recommends enactment of H.R. 7501, "To amend the Outer Continental Shelf Lands Act and to authorize the Secretary of the Interior to regulate the construction and operation of deepwater port facilities," which was included in the President's April 18, 1973 Message to the Congress on Energy Policy.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee and that enactment of H.R. 7501 would be in accord with the program of the President.

Sincerely yours,

EDWARD SCHMULTS,
General Counsel.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., June 14, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 5091, a bill to amend the Marine Protection, Research, and Sanctuaries Act of 1972, and for other purposes.

The bill would provide that no person could construct or operate an artificial island or other stationary structure in the offshore coastal waters of the United States until the Secretary of Commerce had certified that the activity involved would not result in an unacceptably adverse impact on the marine environment. The bill also provides a civil penalty of not more than $50,000 for each violation of the certification requirement, with each day of a continuing violation constituting a separate offense.

In lieu of H.R. 5091 we recommend enactment of H.R. 7501, "To amend the Outer Continental Shelf Lands Act and to authorize the Secretary of the Interior to regulate the construction and operation of deepwater port facilities," which was included in the President's April 18, 1973 Message to the Congress on Energy Policy.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee and that enactment of H.R. 7501 would be in accord with the program of the President.

Sincerely yours,

EDWARD SCHMULTS,
General Counsel.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 28, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This will acknowledge receipt of your letter of November 12 asking this Department's views on the committee printed dated October 17, 1973, of H.R. 5898.

I do not believe I need to dwell on the factors which make this legislation so important. All of the committees of Congress which have studied this legislation seem to agree on the necessity of a system to license the construction of deepwater ports beyond the United States territorial sea.

During the deliberation, the primary issue which has emerged is the proper role of the various Federal agencies and the States in the licensing and regulatory process, particularly with regard to protecting the environment.

The Administration's proposal was very carefully drafted in these regards, after lengthy consultation with all interested Federal agencies. The formula arrived at was that each Federal regulatory agency would exercise its jurisdiction over the facility as if it were located in territorial waters. This would avoid the necessity for any Federal agency to create a regulatory program that might duplicate one already in operation in another agency. To expedite and facilitate the licensing it was decided to designate a single agency to act as a clearinghouse, receiving a single application and distributing it among the Federal agencies which have statutory authority over some aspect of the project. The lead agency would issue the license only after being notified by these other Federal agencies that the application meets the requirements of the laws which each agency administers.

While we would have preferred the Administration's proposal, H.R. 7501, we feel that the October 17, 1973, print of the bill, H.R. 5898 captures the essence of that approach by designating the Interior Department as the licensing authority and by giving the Coast Guard the primary responsibility for monitoring the operation after the facility is constructed.

We have noted that the Subcommittee on the Environment of the House Committee on Interior and Insular Affairs has voted to report a bill to the full committee which is very similar to the October 17 print of H.R. 5898. A major departure is a provision which requires that before issuing any license, the Congress must be notified of the intent to issue a license and given a fixed period of time in which to disapprove it by joint resolution. The criteria for issuance of licenses are spelled out in considerable detail in the legislation. Evaluating a specific application against these criteria will involve the technical expertise of at least six agencies of the Federal Government. The environmental impact statement will be comprehensive. To add to this process a requirement that Congress review individual applications is we feel unnecessary and unwise. It will interject a note of uncertainty into the process which might well discourage companies from investing the time and effort necessary in submitting an application for a license.

In conclusion, we believe that the committee print of H.R. 5898 will achieve the major objective of authorizing the building of deepwater ports under a system designed to assure the protection of the environment and other important national interests.

We do have some reservations on specific wording and a few minor provisions to add but it is my understanding that our respective staffs have been discussing these matters and no major problems are envisaged.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 29, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives,
Washington, D.C.

DEAR MADAM CHAIRMAN: This responds to your request for this Department's views on H.R. 5898 as reported yesterday by your Committee and specifically whether the Administration prefers that bill to H.R. 10701.

The Administration has, of course, proposed a bill, H.R. 7501, which it hoped would form the basis of a bill which the three committees in the House, Merchant Marine and Fisheries, Interior and Public Works, could all agree upon. We understand that agreement between all three committees now appears unlikely.

Enclosed is a letter dated November 13, 1973 to the House Public Works Committee recommending against enactment of H.R. 10701 because of eight major differences between that bill and the Administration's proposal. The Committee has eliminated some of these differences but not the most significant ones.

While there are some points of difference between H.R. 5898 and the Administration's proposal, we feel that H.R. 5898 meets the basic objectives of the Administration and that it is far more acceptable than H.R. 10701.

Under separate cover we are forwarding our comments on H.R. 5898.

Sincerely yours,

JOHN C. WHITAKER,
Acting Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 13, 1973.

Hon. JOHN A. BLATNIK,
Chairman, Committee on Public Works,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for this Department's report on H.R. 10701, a bill "To amend the Act of October 27, 1965, relating to public works on rivers and harbors to provide for construction and operation of certain port facilities."

We recommend that H.R. 10701 not be enacted, but that H.R. 7501, the Administration's proposed Deepwater Port Facilities Act of 1973 be enacted instead.

The two bills address the very pressing problem of developing a means of handling the high levels of imported crude oil which we will need in years ahead with the minimum adverse impact on the environment. We believe there is general agreement that carrying this oil in large tankers and unloading these tankers in deepwater offshore is far preferable, environmentally and economically, to the only reasonable alternative of bringing a great many more small tankers into our already crowded shoreside ports.

There are several important differences between the Administration's proposal and H.R. 10701 which we cannot support.

1. *Charge by Adjacent State.* Section 411(d) of H.R. 10701 allows an "adjacent state," to fix "reasonable fees, tolls, or charges for the use of any deepwater port facility located on or off its shores." We strongly oppose this provision and believe it is contrary to the national interest and the general scheme for handling imports reflected in the U.S. Constitution.

The Constitution, in Article 1, Section 8, gives Congress the exclusive right to regulate interstate and foreign commerce and to charge duties on imports and requires that duties shall be uniform throughout the United States. Moreover, Article 1, Section 10 provides that even when Congress allows a State to place a duty or impost on imports in an amount greater than necessary to enforce the State's inspection laws, the "net produce" of such duty or impost shall be for the U.S., not the State, Treasury. This general constitutional scheme was designed in part to prevent those States with seaports from capitalizing on their geographic advantage, to the economic disadvantage of the rest of the country. And, without regard to the question whether section 411(d) of H.R. 10701 would be legal, we believe it would be bad policy because it would permit the very type of economic discrimination the Consti-

tution attempted to avoid. We know of no reason why Congress should allow this discriminatory action.

"Adjacent state" is defined in section 402(1) as a coastal State off whose coast a deepwater port facility is to be located and in which all or part of the directly related land based facilities will be located. Unless the phrase "off whose coast a deepwater port facility is to be located" has the effect of limiting the possible number of adjacent States to one, as we would urge, then the taxing power in 411(d) could extend to two or more coastal States with respect to the same deepwater port, thereby greatly compounding the problems I have already mentioned.

Because section 403(c) gives the governor of an "adjacent state" a veto over a deepwater port, it is also possible that H.R. 10701 will have the effect of allowing a neighboring State to preclude a facility desired by another State.

2. *Licensing Commission.* Section 404(a) would create a licensing commission composed of representatives of several agencies.

The Administration's proposal H.R. 7501 would vest licensing authority in a single Federal agency—the Department of the Interior—but preserve the interests of other Federal agencies by requiring that the Secretary of the Interior shall not issue a license if he is notified by any agency that the application fails to meet the requirements of any law which that agency administers. He may also not issue a license where the President determines that it would be contrary to the National interest. We feel that this is a far better administrative mechanism than the 5 Agency Commission approach of H.R. 10701. Inter-agency groups, because of their lack of centralized authority, are invariably less efficient than a single agency for purposes of administering a licensing program. Since the interests of all Federal agencies are adequately provided for in the Administration proposal, we see no reason to resort to this cumbersome approach.

3. *State Preference as Licensee.* Section 403(b) would give adjacent States exclusive, preferential rights to obtain a license for a deepwater port off their shores, and allow that State to assign the license on such terms as it chooses, provided the basic provisions of the Act are met. This could amount, in effect, to making the adjacent States conduits through which Federal licenses will flow.

We recognize that adjacent States have many legitimate concerns connected with the licensing of deepwater ports. These concerns relate to the impact of the facility on the State's land and water resources. We have provided for these concerns in the Administration bill by section 103(e) which insures that the siting of the facility will be consistent with the State's land use program and we have provided that a State, or subdivision of the State, may be a licensee. H.R. 10701 goes beyond this, however, in allowing the State to exercise authority beyond its territorial jurisdiction, and in allowing it to establish a monopoly position for itself.

4. *Prohibition for Foreign Corporations.* Section 103(a) of the Administration's bill prohibits any commodities from being shipped to the United States from a deepwater port which is not licensed. This was included to prevent foreign corporations from operating deepwater ports off the U.S. coast without a license. Section 403(a) of H.R. 10701 has not included such a prohibition.

5. *State Exemption.* Section 403(b) would exempt States applying

for licenses from certain provisions until construction begins. Those provisions relate to the effect of the construction on international navigation and on the environment and on other interested parties. To require compliance with these provisions prior to issuing a license is a very much more effective way of assuring their observation than deferring them until construction commences. While it would be argued that a State licensee could more readily be relied upon to comply with these statutory requirements than a private party—thereby justifying this discrimination—section 403(b) would allow the State to pass on its preferred position to a private assignee. In any event, we see no sound basis for this exemption and we strongly oppose it.

6. *Effect on Nearby Ports.* Section 403(h) of H.R. 10701 requires the Commission to consider the effect of the deepwater port on nearby existing ports. This intrudes the Federal Government into the broad questions of economic planning on a regional basis and raises issues of such scope and complexity that it is doubtful that any licenses could be issued in time to meet the pressing need for these facilities. Moreover, if the intent of this section is to deny deepwater port licenses where small tankers are already bringing in crude to shoreside ports, then we would be foregoing the environmental and economic benefits available from deepwater ports. The Administration's proposal would leave the economic decisions involved in siting these facilities to private industry and to market forces and free competition.

7. *Time Requirements.*—Section 404(d) provides that Federal agencies with jurisdiction over the construction and operation of a deepwater port facility have 60 days to certify to the Commission their approval or disapproval of an application. The Commission then has 60 days after receipt of the certifications to issue or deny the license. To fulfill this requirement, we would have to ignore the spirit of the National Environmental Policy Act because the 120 days between receipt of the application and the requirement of the Commission to approve or deny will probably not provide time for the preparation of an environmental impact statement, much less meaningful public review. We would expect that preparation of an Environmental Impact Statement would proceed concurrently with the review of the application, and we fully intend to act upon applications in the shortest practicable time. However, we do not believe that specific time periods—particularly those as short as in section 404(d)—will be beneficial.

8. *Federal Subsidy.* We see no reason to provide a Federal subsidy, in the form of tax free bonds, to deepwater port licenses. H.R. 10701 would do this in section 411 (b) and (c). Industry has given every indication of its willingness to finance the construction of these facilities without Federal assistance and will undoubtedly do so absent the threat of heavy charges from the adjacent State.

The Office of Management and Budget has advised that there is no objection to the presentation of this report and that enactment of H.R. 7501 would be in accord with the Administration's program.

Sincerely yours,

JOHN C. WHITAKER,
Acting Secretary of the Interior.

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93d Congress } HOUSE OF REPRESENTATIVES { Report
1st Session } { No. 93-668

DEEPWATER PORTS

November 28, 1973.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Blatnik, from the Committee on Public Works, submitted the following

REPORT

together with

SUPPLEMENTAL VIEWS

[To accompany H.R. 10701]

The Committee on Public Works, to whom was referred the bill (H.R. 10701) to amend the act of October 27, 1965, relating to public works on rivers and harbors to provide for construction and operation of certain port facilities, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause and inserts a substitute text which appears in italic type in the reported bill.

Statement

This Nation presently faces the possibility of a long-term energy shortage unless steps are taken to conserve the energy available, develop new sources of energy, and attain self-sufficiency in energy. These measures, however, will take time. And even when the capability for energy self-sufficiency is attained, it can be anticipated that we will be importing significant amounts of crude oil and petroleum products. If the crude oil and petroleum products are to be imported efficiently and economically, it is necessary that deepwater port facilities be constructed which can accommodate the new very large cargo carriers. H.R. 10701 is designed to meet this need, and enable this Nation to continue necessary imports of oil.

Potential economic savings from the use of supertankers are of a scale that will effectively compel the use of such tankers for the ocean transport of crude petroleum imports. If deepwater port facilities are not available in the United States, some form of transshipment, with

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delivery of crude petroleum or petroleum products to U.S. ports in smaller vessels, will be used. This includes the lightering of deep-draft ocean-going vessels by transfer to barges at locations where naturally deep water is available; the transshipment of crude petroleum from deepwater ports in the Maritime Provinces of Canada and in Carribbean islands; and the refining of petroleum products for shipment to the United States at Canadian and Caribbean locations. These alternative solutions will involve higher economic, and possibly environmental, costs.

Port, harbors, and entrance channels serving existing refineries do not have sufficient depths to accommodate supertankers. New supertankers vary in size up to 540,000 dead weight tons. Such tankers can carry as much as 5 million barrels or over 210 million gallons of oil. Maximum permissible vessel drafts are typically in the 36–40 foot range, whereas supertankers require drafts of 60 feet or more.

Existing studies of dredging in New York Harbor and Delaware Bay and River indicate that the economic and environmental costs of required dredging and spoil disposal are higher than other possible solutions to deepwater port needs.

Similar conclusions are indicated at relevant gulf coast and Mississippi River ports, and in the San Francisco Bay area.

Offshore facilities for discharging crude petroleum would permit direct delivery to the United States in oceangoing supertankers, obviating all or most of the economic and environmental costs of dredging channels with direct access to existing refinery locations. They also offer a greater degree of flexibility in the location of ports and new refinery capacity, as well as a range of design and engineering concepts with varying economic and environmental characteristics.

A report submitted to the U.S. Army Engineer Institute for Water Resources by Robert R. Nathan Associates concludes that deepwater port facilities on the East Coast would have benefit-cost ratios of up to 8:1, and those in the Gulf up to 11:1.

No aspect of the import and export of bulk commodities ranks with the danger of petroleum spills as a potential source of environmental and ecological damage. The danger of the uncontrolled release of petroleum into the environment arises primarily from the possibility of accidental collisions and groundings of vessels, resulting in rupture of tanks; from the transfer of petroleum from oceangoing vessels either to other vessels or into pipelines and into storage tanks; and from the possibility of leakage from the tanks themselves. The degree of hazard is partly a function of the volume of petroleum to be imported and partly a function of the delivery system to be employed, including the size, design, operation, and control of vessel movements, and the design and control of all other equipment and operations related to the transfer and storage of petroleum. There is no scientific evidence that supertankers present, or need to present, a greater risk than do smaller ships. The size of a potential spill can be controlled irrespective of ship size. Studies indicate that the probability of spills increases drastically with the greater congestion of waterways associated with the use of smaller vessels. The employment of large vesels and deepwater port facilities will have the effect of reducing the possibility of environmental damage from spills.

Adequate authority exists for the regulation of the construction and operation of deepwater port facilities within the territorial seas of the United States. Any construction, dredging, or deposition of materials in the navigable waters of the United States requires the approval of the Secretary of the Army and the Chief of Engineers. The navigable waters of the United States include the coastal waters within the territorial bounds of the United States but do not include the waters beyond this point.

There are authorities which could be employed to regulate deepwater port facilities beyond the territorial sea, such as the Department of the Interior's pipeline regulation and leasing authority under the Outer Continental Shelf Lands Act and the Department of the Army's authority under section 4(f) of that Act which extends the above mentioned authority of the Army in the navigable waters of the United States to artificial islands and fixed structures located on the Outer Continental Shelf. However, these and other possible authorities do not provide the type of comprehensive, coordinated, and centralized program that is necessary to permit and regulate the construction and operation of deepwater port facilities beyond the territorial sea. Additional legislation is required to ensure adequate Federal regulatory authority over such facilities, and to minimize the possibility of jurisdictional conflicts among Federal agencies or between Federal and State agencies.

Because of the many Federal agencies properly concerned with and involved in the construction and operation of these facilities, it is not practical to assign the licensing responsibility to just one agency and expect it to effectively coordinate and consider the views and responsibilities of other agencies. On the other hand, the Committee feels strongly that only one permit should be required from the Federal Government for one of these facilities. Accordingly, the solution was arrived at of establishing a Commission, composed of the heads of the directly interested agencies, to issue the licenses. The members of the Commission are the Secretary of Transportation, the Secretary of the Interior, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and the Secretary of the Army, acting through the Chief of Engineers.

Deepwater port facilities are, essentially, a link in a transportation chain which brings petroleum into the United States. The underlying concept with which we are dealing is the economic and efficient transportation of crude oil and petroleum products. For this reason the Secretary of Transportation is designated as the Chairman of the Commission.

Analysis of the Bill

Among the most basic and important concepts in the bill are those of "adjacent State" and "significantly affected State."

A State must meet two requirements to qualify as an adjacent State. Its coast must be nearer than that of any other State to the point of connection for unloading crude oil and petroleum products between vessels and a deepwater port facility; and all or a major part of the land based facilities directly related to that deepwater port must be located in the State. There can be only one adjacent State with respect

to each deepwater port facility. If a State meets these requirements, then its interest in the facility and the facility's potential effect on the State are such that the State is given three special considerations by the legislation. These are (1) a preferential right to be granted a license for the construction or operation, or both, of the facility; (2) no license may be granted to any person to construct or operate such a facility unless the adjacent State has an environmental program which includes construction of deepwater port facilities off its coast and the proposed facility and directly related land based facilities are consistent with that program; and (3) the adjacent State may charge fees for the use of the facility and its directly related land based facilities, such fees to be limited to the State's economic, environmental, and administrative costs attributable to the facilities, as approved by the Commission. The intent of this section is to allow compensation for costs that would not otherwise be recovered pursuant to other State cost recovery provisions such as ad valorem taxes.

In addition, any other State in which land-based facilities directly related to deepwater port facility or located may charge such fees for such land-based facilities.

There may conceivably be cases where there would be no adjacent State associated with a proposed deepwater port facility for which a license is issued under this legislation. Such a situation could occur if the facility were closest to the coast of one State but the major part of the directly related land based facilities were located in another State. In such a case neither State would have the requisite involvement to qualify as an "adjacent State," but each could qualify as a "significantly affected State."

A "significantly affected State" is defined as a State whose shorelines might suffer environmental harm as a result of the activities of a deepwater port facility. Such a State is also given special consideration by the legislation in that the Deepwater Port Facilities Commission cannot issue a license for a deepwater port facility unless it has first considered the economic, environmental, esthetic, and regional effects of the construction and operation of the facility on all significantly affected States.

A "deepwater port facility," as defined in the bill, means a facility constructed off the coast of the United States and beyond the territorial sea, for the purpose of providing for the unloading of crude oil and petroleum products. This definition includes all associated equipment and structures (other than vessels) beyond the territorial sea and all connecting pipelines within the territorial sea. This includes pump stations and platforms.

Connecting pipelines within the territorial sea are specifically included in the definition to make it clear that they come under the licensing provisions of the bill and do not need a license from other Federal agencies such as the Corps of Engineers. The exclusion of vessels refers to those vessels used as vessels for patrol, maintenance, transport of personnel and equipment, and the like. It is not considered appropriate to subject the operation of these to the licensing requirements of the bill. However, their employment would be a relevant part of the construction and operation plan for a deepwater port facility presented as part of a license application to the Commission.

The bill establishes a Deepwater Port Facilities Commission to grant licenses for the construction and operation of deepwater port facilities. The Commission consists of the Secretary of Transportation, the Secretary of the Interior, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and the Secretary of the Army, acting through the Chief of Engineers. The Secretary of Transportation is designated Chairman of the Commission.

All administrative personnel and related facilities necessary to carry out the functions of the Commission are to be provided by the Secretary of Transportation.

The Commission is authorized to issue reasonable rules and regulations necessary to carry out its functions.

The Commission is directed to develop an application form which is to be the sole form used to apply for a license for a deepwater port facility. With regard to other Federal licenses or permits which might otherwise be required for the facility, the bill provides a procedure whereby these requirements will be met. The Commission must promptly forward a copy of each application it receives to those Federal agencies with jurisdiction over any aspect of the construction and operation of a facility. No license may be issued until those agencies have certified to the Commission that the aspect of the facility under their jurisdiction meets the requirements of the laws which they administer. A single environmental impact statement is to be prepared by the Commission in granting or denying a license, if such a statement is required by the National Environmental Policy Act of 1969. The certifying agencies will provide input to the Commission for the environmental impact statement.

The certification must be issued or denied within 120 days following transmittal of a copy of the application to the agencies. The Commission must issue or deny the license as soon as practicable after receipt of the certifications of all of the Federal agencies involved.

A license may be for construction only, for operation only, or both. The construction licensee need not necessarily be the operation licensee. Likewise, even though the same person may construct and operate, a two-step licensing procedure—construction and operation—may be employed. Flexibility in this matter is left to the Commission. The type of license given, as well as the procedures, including appropriate charges, for the submission and consideration of license applications, will be established by regulations promulgated by the Commission.

The Commission will be expected to consider various new methods and technology of oil transfer including self-propelled, unmoored terminals of advanced design with the capability of relocation and storm avoidance which offer possible lead time and cost effectiveness advantages. The determination of the need for a license under this legislation for this type of terminal will depend upon the specifics of the design and operation.

A new license is not required by the legislation for a modification to the facility. It is expected that the Commission will establish procedures by regulation for approving or denying modifications to the facility. The Committee recognizes, of course, that some modifications may be so extensive as to constitute, in effect, a new facility requiring a new license. This would be a matter for the determination of the Commission.

The Commission is authorized to include in any license any conditions which it deems necessary to carry out the purposes of the legislation. Certain important conditions are required to be included in the license. Among these are conditions which will assure that the operation of the deepwater port facility will not substantially lessen competition or tend to create a monopoly, and which require nondiscriminatory access to the facility at reasonable rates.

Provisions must also be included requiring that, if a license is revoked or expires and is not reissued, or the licensee abandons the facility, the licensee shall render the facility harmless to navigation and the environment. The Committee expects that the Commission will require a bond to the extent feasible to ensure the performance of this condition.

The license is also to provide for such fees as the Commission may prescribe as reimbursement for the cost of Federal activities occasioned by the application for licensing, development, and operation of the deepwater port faciilty.

An adjacent State is given a preference in the granting of license for a deepwater port facility if it applies for a license and meets all the requirements of this legislation. This does not preclude the granting of a license to another person if the adjacent State does not qualify or if it does not apply for a license prior to the granting of a license to another person.

Licenses are for a term of no longer than 30 years, with preferential right in the license to renew. The Committee wishes to point out that this is not an absolute right to renew—it is merely a preference.

Section 412 of the bill is a true consent in advance by the Congress to two or more States to negotiate or enter into agreements on compacts, not in conflict with any law or treaty of the United States, for the construction and operation of deepwater port facilities, and the establishment of agencies to implement the compacts.

Section 501 of the legislation provides that no person shall on the ground of sex be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity (1) carried on or receiving assistance under the Act of October 27, 1965, (2) under the jurisdiction of the Deepwater Port Facilities Commission, and (3) the water resources program of the Secretary of the Army acting through the Chief of Engineers.

The Committee wishes to emphasize the many environmental protections contained in the legislation. A deepwater port facility cannot be located off the coast of an adjacent State unless that State has an environmental program which includes construction of such facilities off its coast, and unless the proposed facility and directly related land based activities are consistent with the environmental program. Prior to granting a license the Commission must first consider the economic, environmental, esthetic, and regional effects of the construction and operation of the facility on all other significantly affected States. Also, before granting a license, the Commission must determine that the facility will be located, constructed, and operated in a manner which will minimize or prevent any adverse significant environmental effects. And the license must contain provisions for rendering the facility harmless to the environment if it is abandoned or the license expires and is not renewed.

It is a fact that there will be a minimum number of deepwater ports constructed in the United States. This may vary from a minimum of 3 or 4 to a maximum to approximately 10. Therefore, the Committee expects deepwater ports to be located and sized to handle the total requirement for each port area or refining center for which a deepwater port is constructed.

Costs of the Legislation

Rule XIII(7) of the Rules of the House of Representatives requires a statement of the estimated costs to the United States which would be incurred in carrying out H.R. 10701, as reported, in fiscal year 1974 and each of the following 5 fiscal years. It is impossible to estimate at this time the number of applications which may be filed and the administrative costs in connection with the processing of such applications. However, the Deepwater Port Facilities Commissioni s authorized to recapture from applicants and licensees expenditures involved in carrying out the Federal responsibility with respect to individual deepwater port facilities under this legslation.

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF OCTOBER 27, 1965

AN ACT Authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE IV

Sec. 401. As used in this title the term—

(1) "Adjacent State" means the State whose coast is nearer than that of any other State to the point of connection for unloading crude oil and petroleum products between vessels and a deepwater port facility, and in which all or the major part of the directly related land-based facilities will be located.

(2) "Application" means any application filed under this title for a license to construct or operate a deepwater port facility, or for a renewal or modification of such license.

(3) "Deepwater port facility" means a facility constructed off the coast of the United States, and beyond the territorial seas of the United States, for the purpose of providing for the unloading of crude oil and petroleum products. It includes all associated equipment and structures (other than vessels) beyond such territorial seas, and all connecting pipelines within such territorial seas.

(4) "*Commission*" *means the Deepwater Port Facilities Commission provided for in this title.*

(5) "*Person*" *means any citizen of the United States, any State or political subdivision of a State, or any private, public, or municipal corporation or other entity created by or existing under the laws of the United States or of any State.*

(6) "*Significantly affected State*" *means a State whose shorelines might suffer environmental harm as a result of the activities of a deepwater port facility.*

(7) "*State*" *means each of the several States, the District of Columbia, each territory or possession of the United States, and the Commonwealth of Puerto Rico.*

(8) "*United States*" *mean the several States, the District of Columbia, the territories and possessions of the United States, and the Commonwealth of Puerto Rico.*

Sec. 402. (a) No person shall construct or operate a deepwater port facility without first receiving a license as provided under this title.

(b) If an adjacent State applies for a license to construct a deepwater port facility and meets all of the requirements of this title, that State shall be granted a license to the exclusion of all other applicants for a license to construct that facility.

(c) All applications for a license to construct or operate a deepwater port facility shall be filed with the Commission. The Commission is authorized to issue a license to any person if it first determines that—

(1) the applicant is financially responsible and has demonstrated his ability and willingness to comply with applicable laws, regulations, and license conditions;

(2) the construction and operation of the deepwater port facility will not unreasonably interfere with international navigation or other reasonable uses of the high seas, and is consistent with the international obligations of the United States; and

(3) the facility will be located, constructed, and operated in a manner which will minimize or prevent any adverse significant environmental effects. In making the determination required by this paragraph, the Commission shall consider all significant aspects of the facility, including, but not limited to, its relation to—

(A) effects on marine organisms;

(B) effects on water quality;

(C) effects on ocean currents and wave patterns and on nearby shorelines and beaches;

(D) effects on alternative uses of the oceans such as fishing, aquaculture, and scientific research;

(E) susceptibility to damage from storms and other natural phenomena;

(F) effects on other uses of the subjacent seabed and subsoil such as exploitation of resources and the laying of cables and pipelines; and

(G) effects on esthetic and recreational values.

(d) Licenses issued under this section shall be for a term of no longer than thirty years, with preferential right in the license to renew under such terms and for such period not to exceed thirty years as the Commission determines is reasonable. Licenses to construct such facilities shall include conditions to assure that a bona fide effort to construct is made. These conditions shall include but not be limited to schedules for design and construction of such facilities. In the absence of such bona fide effort, as determined by the Commission after hearings, a license to construct may be revoked by the Commission.

(e) No license shall be granted under this title to construct a deepwater port facility unless—

(1) the adjacent State has an environmental program which program includes construction of deepwater port facilities off its coast, and

(2) the deepwater port facility proposed to be licensed and the directly related land-based activities are consistent with such environmental program.

(f) The Commission shall not issue a license under this title unless it shall first have considered the economic, environmental, esthetic, and regional effects of the construction and operation of a deepwater port facility on all other significantly affected States.

(g) Licenses issued under this title may be transferred after the Commission determines that the transferee meets the requirements of this title.

(h) The Commission shall not issue a license hereunder unless it shall first have considered the economic effects of the construction and operation of a deepwater port facility on existing nearby ports.

Sec. 403. (a) There is hereby established a Deepwater Port Facilities Commission. The Commission shall consist of the Secretary of Transportation, the Secretary of the Interior, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and the Secretary of the Army, acting through the Chief of Engineers. The Secretary of Transportation shall be Chairman of the Commission. All administrative personnel and related facilities necessary to carry out the functions of the Commission shall be provided by the Secretary of Transportation.

(b) The Commission is authorized to issue reasonable rules and regulations governing application for, and issuance of, licenses for the construction and operation of deepwater port facilities under this title. Such rules and regulations shall be issued in accordance with section 553 of title 5 of the United States Code without regard to the exceptions contained in subsection (a) thereof.

(c) In carrying out all of its functions under this title, the Commission shall consult with interested Federal agencies, and the Commission shall be required to expedite and coordinate all Federal reviews of applications required under this title.

(d) The Commission shall develop an application form, which shall be the sole form used to file an application for a license under this title. An application for a license filed under this title shall constitute an appication for all Federal authorizations required for a deepwater port facility. The Commission shall consult with interested Federal agencies to insure that applications contain all information required by the agencies. The Commission will forward promptly a copy of each application to those Federal agencies with jurisdiction over any aspect of the construction and operation of a deepwater port

facility and will not issue a license under this title until such agencies have certified to the Commission that, except as provided in subsection (e) of this section, that aspect of the facility under their jurisdiction meets the requirements of the laws which they administer. The granting of a license under this title shall be deemed to satisfy all of the requirements of any other law of the United States with respect to which a certification has been issued by a Federal agency under this subsection, and no other permit or license shall be required under such law in connection with the construction or operation of such facility. Such certification shall be issued or denied within 120 days following transmittal of a copy of the application to the agencies. Hearings held pursuant to this title shall be consolidated insofar as practicable with hearings held by other agencies. The Commission shall issue or deny the license as soon as practicable after receipt of the certifications of all of the Federal agencies involved.

(e) The provisions of this title shall in no way alter or otherwise affect the requirements of the National Environmental Policy Act of 1969, except that a single detailed environmental impact statement shall be prepared in connection with each license proposed to be issued by the Commission. The Commission shall be responsible for the preparation of such statement. Such statement shall fulfill the responsibilities under section 102(2)(C) of the National Environmental Policy Act of 1969 of each Federal agency with respect to each certification made by it under subsection (d) of the section.

SEC. 404. (a) The Commission shall prescribe by regulation the procedures, including appropriate charges, for the submission and consideration of applications for licenses.

(b) Upon application for any license the Commission shall publish in the Federal Register a notice containing a brief description of the proposed facility, and information as to where the application and supporting data required by subsection (a) may be examined and giving interested persons at least ninety days for the submission of written data, views, or arguments relevant to the granting of the license, with or without opportunity for oral presentation. Such notice shall also be furnished to the Governor of each State which may be affected significantly by the proposed facility, and the Commission shall utilize such additional methods as it deems reasonable to inform interested persons and groups about the proposed facility and to invite comments from them.

(c) The Commission shall hold at least one public hearing on each application for a license for a proposed facility. At least one such hearing shall be held in the vicinity of the proposed site.

(d) When the Commission determines from the comments and data submitted pursuant to subsections (b) and (c) that there exist one or more specific and material factual issues which may be resolved by an evidentiary hearing, it may direct that such issues be submitted to a supplemental hearing before a presiding officer designated for that purpose. Such officer shall have authority to preclude repetitious and cumulative testimony, to require that direct testimony be submitted in advance in written form, and to permit cross-examination to the extent necessary and appropriate. After the hearing the presiding officer shall submit to the Commission a report of his findings and recommendations, and the participants in the hearing shall have an opportunity to comment thereon.

(e) The Commission's decision granting or denying a license shall be in writing and shall include or be preceded by an environmental impact statement, if required; a discussion of the issues raised in the proceeding and the Commission's conclusions thereon; and, where a hearing was held pursuant to subsection (d), findings on the issues of fact considered at such hearing.

(f) The provisions of sections 554, 556, and 557 of title 5, United States Code, are not applicable to proceedings under this section. Any hearing held pursuant to this section, shall not be deemed a hearing provided by statute for purposes of section 706(2)(E) of title 5, United States Code.

SEC. 405. (a) Any person adversely affected by an order of the Commission granting or denying a license may, within sixty days after such order is issued, seek judicial review thereof in the United States Court of Appeals for the circuit nearest to which the facility is sought to be located. A copy of the petition shall forthwith be transmitted by the clerk of the court to the Commission or an officer designated by it for that purpose. The Commission thereupon shall file in the court the record of the proceedings on which the Commission based its order, as provided in section 2112 of title 28 of the United States Code. This record shall consist of—

(1) the application, the notice published pursuant to section 404(b), and the information and documents to which reference is made therein;

(2) the written comments and documents submitted in accordance with the agency rules by any person, including any other agency and any agency advisory committee, at any stage of the proceeding;

(3) the transcript of any hearing held pursuant to section 404 (c) or (d); and the presiding officer's report, if any; and

(4) the Commission's decision and accompanying documents as required by section 404(e).

(b) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material, and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Commission, and to be adduced in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence.

(c) Upon the filing of the petition referred to in subsection (a), the court shall have jurisdiction to review the order in accordance with section 706 of title 5, United States Code, and to grant appropriate relief as provided in such section.

SEC. 406. (a) The Commission is authorized to include in any license granted under this title, any conditions which it deems necessary to carry out the purposes of this title. Such conditions shall include but need not be limited to:

(1) Conditions designed to assure that the operation of the deepwater port facility will not substantially lessen competition or tend to create a monopoly. Such conditions shall include a requirement of nondiscriminatory access at reasonable rates.

(2) Provisions requiring that, if a license is revoked or expires and is not reissued, or the licensee abandons the deepwater port facility, the licensee shall render such facility harmless to navigation and the environment.

(3) Such fees as the Commission may prescribe as reimbursement for the cost of Federal activities occasioned by the application for licensing, development, and operation of the deepwater port facility.

(4) Such measures as the Commission may prescribe to meet United States international obligations.

(5) Such measures as the Commission may prescribe to prevent or minimize the pollution of the surrounding waters.

(6) Such provisions as the Commission may prescribe for the temporary storage of hazardous substances.

(b) If a licensee becomes bankrupt and unable to render the deepwater port facility harmless to navigation and the environment, the United States shall render such facility harmless and bear all costs in connection therewith to the extent that such costs are not covered by a bond, as may have been required in the license by the Commission.

SEC. 407. (a) Any licensee who violates any condition of his license, or any rule or regulation of the Commission issued under this title, may be assessed a civil penalty by the Commission, in a determination on the record after opportunity for a hearing, of not more than $25,000 for each day during which such violation occurs.

(b) A licensee aggrieved by a final order of the Commission assessing a penalty under this section may, within sixty days after such order is issued, seek judicial review thereon in the United States district court for the judicial district nearest to which the licensee's facility is located, and such court shall have jurisdiction of the action without regard to the amount in controversy. Judicial review of the Commission's determination shall be in accordance with section 706 of title 5, United States Code.

(c) Penalties assessed pursuant to this section may be collected in an action by the United States, but the order of the Commission shall not be subject to review otherwise than as provided in subsection (b).

SEC. 408. Whenever the holder of a license fails to comply with any proviso of this title or any rule, regulation, restriction, or condition made or imposed by the Commission under the authority of this title, or fails to pay any civil penalty assessed by the Commission under section 407 (except where a proceeding for judicial review of such assessment is pending), the Commission may file an appropriate action in the United States district court for the judicial district nearest to to which the licensee's facility is located (1) to suspend operations under the license, or (2) to revoke such license if such failure is knowing and continues for a period of thirty days after the Commission mails notice of such failure by registered letter to the licensee at his record post office address. When such failure would, in the judgment of the Commission, create a serious threat to the environment, it shall have the authority to suspend operations under the license forthwith.

The licensee may seek judicial review of the Commission's action in such district court within sixty days after the Commission takes such action.

SEC. 409. (a) The Constitution and the laws and treaties of the United States shall apply to deepwater port facilities licensed under this title in the same manner as if such facilities were located in the navigable waters of the United States. Foreign-flag vessels and those others who are not nationals of the United States using such facilities shall be deemed to consent to the jurisdiction of the United States for the purposes of this title. To the extent that they are applicable and not inconsistent with this title or other Federal laws and regulations, the civil and criminal laws of the adjacent State are declared to be the law of the United States for such facility. All laws applicable to a deepwater port facility shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to such facility, but this shall not affect the right of a State to tax its own citizens or residents.

(b) Except as otherwise provided in this title, the United States district courts shall have jurisdiction of cases and controversies arising out of, or in connection with, the construction, operation, or use of deepwater port facilities. Proceedings with respect to any such cases or controversies may be instituted in the judicial district in which any defendant may be found or the judicial district nearest the place where the cause of action arose.

(c) Notwithstanding any other provision of this title, an adjacent State may fix reasonable fees for the use of any deepwater port facility located on or off its coast, and the adjacent State and any other State in which land-based facilities directly related to a deepwater port facility are located may set reasonable fees for the use of such land-based facilities; except that any fees under this subsection shall not exceed each such State's economic, environmental, and administrative costs attributable to the construction and operation of such facilities. Such fees shall be subject to the approval of the Commission.

(d) The Commission is authorized to promulgate such regulations governing health and welfare of persons using deepwater port facilities licensed under this title as it deems necessary.

SEC. 410. Directly related land-based activities and facilities connected to a deepwater port facility licensed under this title such as pipelines, cables, and tank farms, which are located within the geographic jurisdiction of a State, shall be subject to all applicable laws or regulations of such State. Nothing in this title shall be construed as precluding a State from imposing within its jurisdiction more stringent environmental or safety regulations when otherwise not prohibited by Federal law.

SEC. 411. The customs and navigation laws administered by the Bureau of Customs shall not apply to any deepwater port facility licensed under this title except for the following: Sections (a) and (b) of Revised Statute 4370 as amended, Revised Statute 5294 as amended, sections 7, 8, and 9 of the Act of June 19, 1886, as amended (24 Stat. 81), section 27 of the Merchant Marine Act of 1920 (41 Stat. 999, as amended, 46 U.S.C. 7, 289, 316(a), 316(b), 319, 320, and 883); but all materials used in the construction of any such deepwater port facility

and connected facilities, such as pipelines and cables, shall first be made subject to a consumption entry in the United States and duties deposited thereon. However, all United States officials, including customs officials, shall at all times be accorded reasonable access to deepwater port facilities licensed under this title, for the purpose of enforcing laws under their jurisdiction or carrying out their responsibilities.

Sec. 412. The consent of Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) the construction and operation of deepwater port facilities, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts. Such an agreement or compact shall be binding and obligatory upon any State or party thereto without further approval by Congress.

Sec. 413. The Secretary of State, in consultation with appropriate Federal agencies, shall seek appropriate international measures regarding navigation in the vicinity of deepwater port facilities.

TITLE V—SEX DISCRIMINATION

Sec. 501. No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving assistance under this Act, under the jurisdiction of the Deepwater Port Facilities Commission, and under the jurisdiction of the Secretary of the Army, acting through the Chief of Engineers. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.

SUPPLEMENTAL VIEWS

We believe the need for deepwater ports for the U.S. is irrefutable. The necessity is so pronounced in our view that legislation that weakens or denigrates against their construction is, we feel, not in the best interest of the country. H.R. 10701 provides a means for the licensing and control of deepwater ports. As such, we support it. However, we feel we could support this bill with greater fervor if it did not contain a provision that permits the adjacent states to veto construction of a needed deepwater port facility that would be located off its coast. Section 402(e) removes, in our view, a good deal of the effectiveness of H.R. 10701 by permitting the adjacent state to prevent the construction of a deepwater port facility by not including it in an environmental program.

Accordingly, we supported the following amendment in the Committee.

> Insert on page 4 after line 26 a new paragraph at the end of subsection 402(e).
>
> If, however, the Commission makes a determination based upon all the facts before it, that there is compelling national interest which requires the issuance of a license despite state objections based upon such land-use plan or environmental program, the Commission shall transmit its determination, with supporting documentation, to the Congress, to be delivered to both Houses on the same day and to each House while it is in session. Thereafter the license shall become effective, consistent with the procedural requirements of this Act, and the procedural requirements contained in section 906 and sections 908–913, of Title 5, United States Code, for the consideration by the Congress of a reorganization plan submitted by the President.

This amendment was defeated. Nevertheless, we feel that it is necessary to protect the interest of the citizens of the U.S. who reside in other than coastal states and who could if not protected by this sort of language find themselves at the mercy of those states fortunate enough to possess a coastline. The rights to construct deepwater ports given by this legislation are given by the U.S. as a Nation. They are given on behalf of all the citizens of this country, not merely those who reside in coastal states, and consequently the overriding interest should be in protecting all the citizens of the U.S. rather than those merely of a coastal state.

Gene Snyder,
Roger H. Zion,
Robert P. Hanrahan,
Gene Taylor,
Lamar Baker,
James Abdnor,
E. G. Shuster,
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DEEPWATER PORT ACT OF 1974

JOINT REPORT

OF THE

COMMITTEES ON COMMERCE; INTERIOR AND INSULAR AFFAIRS; AND PUBLIC WORKS

UNITED STATES SENATE

TOGETHER WITH

ADDITIONAL VIEWS

TO ACCOMPANY

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EXPLANATORY NOTE

This is a joint report of the Committees on Commerce, Interior and Insular Affairs, and Public Works.

As discussed in Chapter IV the Deepwater Port Act of 1974 is the result of over a year of deliberation by the Senate Special Joint Subcommittee on Deepwater Ports. The Subcommittee consisted of members from each of the three full committees sharing jurisdiction over this issue. By agreement of the respective Chairmen the Deepwater Port Act of 1974 has been reported to the Senate by the three full Committees in the same form as it was reported from the Subcommittee. As discussed in Chapter V, the reported bill is accompanied by amendments that will be separately offered on the floor.

Statements of the intent of the reporting Committees throughout this report are subject to the reservations expressed by each full Committee in Chapter V.

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93d Congress, 2d Session | SENATE | Report No. 93-1217

DEEPWATER PORT ACT OF 1974

October 2, 1974.—Ordered to be printed

Mr. Magnuson, on behalf of the Committees on Commerce; Interior and Insular Affairs; and Public Works, submitted the following

JOINT REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 5.]

The Committees on Commerce; Interior and Insular Affairs; and Public Works report the bill (S. 5.) 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, and recommend that the bill do pass.

I. Purpose and Description

The purpose of the Deepwater Port Act of 1974 is to establish a licensing and regulatory program governing offshore deepwater port development beyond the territorial limits and off the coast of the United States. Such facilities would be used to transfer oil and natural gas supplies transported by tanker to and from States of the United States.

1. FEDERAL COORDINATION

The Deepwater Port Act of 1974 authorizes the Secretary of the Department in which the Coast Guard is operating (currently the Department of Transportation) to issue licenses to own, construct and operate deepwater ports. The Secretary exercises this authority in consultation with other Federal agencies having jurisdiction or expertise over various aspects of deepwater port development. Before a license is issued, the Secretary must provide an opportunity for all interested Federal agencies including the Department of the Interior,

the Department of State, the Environmental Protection Agency, and the Corps of Engineers to comment on the effect issuance of a license would have on the laws and programs they administer. Such agencies would also assure that issuance of a license meets the requirements of the laws they administer.

The Federal Trade Commission and the Attorney General are required to comment on whether issuance of a license would adversely affect competition, restrain trade, promote monopolization, or otherwise create a situation in contravention of the antitrust laws. It is intended that the Secretary will give serious consideration to the views of the Federal Trade Commission and the Attorney General in making his determination to approve or disapprove an application.

In addition, the Administrator of the Environmental Protection Agency may veto the issuance of a license if he finds that deepwater port development, as proposed in an application, would result in violation of the Clean Air Act, the Federal Water Pollution Control Act, or the Marine Protection, Research and Sanctuaries Act.

The Secretary, in coordination with all other Federal agencies, must also prepare a detailed environmental impact statement to satisfy the requirements of section 102(2)(c) of the National Environmental Policy Act.

2. PREFERENCES

Section 5(d) of the Act requires the Secretary to establish a geographic application area encompassing the site of a deepwater port as proposed in an application and to publish a description of the area, giving time for competing applications to be filed.

Section 5(h) requires the Secretary first to consider competing applications within any application area on the basis of which will "best" serve the nation. Such a consideration shall include a comparison of such factors as the environmental, technological, economic and timing aspects of the various applications.

If the Secretary finds that competing applications are relatively equal under that test, then the Secretary is required to give preference to an application from a State or local governmental unit. In the absence of an application by such a governmental entity, the Secretary must then give an applicant who is independent of the petroleum or natural gas producing, refining, or marketing industry preference over the application of any other person.

3. STATE COORDINATION

Section 4(c)(9) of the bill prevents the Secretary from issuing a license unless the Governor of the coastal States adjacent to the proposed deepwater port site approves or is presumed to approve the issuance of the license.

As defined by section 3(1) of the Act, an "adjacent coastal State" is any State which would be (A) connected by pipeline to a deepwater port, (B) located within 15 miles of any component of a deepwater port, or (C) would in the opinion of the Administrator of the National Oceanic and Atmospheric Administration experience substantial environmental risk should an oil or natural gas discharge occur from the deepwater port or from a vessel operating in the safety zone around the port.

According to section 9 of the Act, the Secretary must forward a copy of an application to any State designated as an adjacent coastal State with respect to the deepwater port proposed in the application. The Governor of the State must notify the Secretary if he approves or disapproves the application within 45 days after the last public hearing on the application. If the Governor fails to notify the Secretary within that period the Governor's approval of the application is presumed. The Secretary must incorporate as conditions of the license, any reasonable terms that an adjacent coastal State requests in order to make deepwater port development compatible with the environmental programs of the State.

In addition to receiving the approval of the adjacent coastal States, the Secretary must also consider the views of any other interested coastal States concerning the conditions of the license.

4. LIABILITY

Section 18 of the bill establishes levels of liability for damages if oil or natural gas is discharged from a deepwater port or from a vessel operating in a deepwater port's safety zone.

The procedure for reporting and cleaning up discharges of oil or natural gas, and the civil and criminal penalties for violations thereof, are patterned after the Federal Water Pollution Control Act, as amended.

In the event of gross negligence or willful misconduct on his part, a licensee or a vessel's owner and operator (whoever is responsible) bears unlimited liability to all parties damaged by the discharge of oil or natural gas. Under the principle of strict liability, the deepwater port licensee is otherwise held liable to a limit of $100,000,000 if a discharge emanated from a deepwater port or from a vessel moored at a deepwater port. The owner and operator of a vessel which discharges oil or natural gas while operating in a safety zone around a deepwater port (but not moored at the port) are jointly and severally liable to a limit of $150 per gross ton of the vessel or $20,000,000, whichever is the lesser.

This section also establishes a $100,000,000 Deepwater Port Liability Fund. The Fund receives moneys from a 2 cents per barrel charge on each barrel of oil (or its metric volume equivalent of natural gas in a liquefied state) flowing through any deepwater port licensed under the Act. The Fund will be administered by the Secretary and is liable to pay all damages, including clean-up and third party damages, in excess of the limits of liability of the licensee or the vessel owner or operator.

The Secretary may act on behalf of any class of citizens in recovering damages. In addition, the United States is authorized to sue for damages to fisheries, beaches, and other public resources and to use the amounts recovered to restore the resources. The bill mandates a study by Executive Agencies of the issues and alternatives for designing a comprehensive liability system to aid the Congress in establishing a single inclusive system of liability for all ocean-related oil operations.

5. APPLICABLE LAW

Section 19 of the Act makes the Constitution and the laws and treaties of the United States applicable to deepwater port development. Thus, deepwater port development will be regulated in the same manner as resource exploitation on the Outer Continental Shelf. Under this system of regulation, several Federal agencies would share jurisdiction over deepwater ports. In addition, State laws, to the extent they are not inconsistent with Federal law, are made applicable to deepwater ports and will be enforced by the appropriate officials and courts of the United States.

Section 8 makes deepwater ports subject to regulation as common carriers by the Interstate Commerce Commission and the Federal Power Commission, and prohibits discrimination against any shipper of oil or natural gas.

6. ADDITIONAL PROVISIONS

Other significant provisions of the Deepwater Port Act include the following:

Section 4(d) allows the Secretary to examine and compare the economic, social and environmental impacts of a proposed offshore deepwater port with those of a proposed near-shore harbor and channel expansion and deepening project under specified circumstances before issuing a license for the deepwater port.

Section 10 requires the Secretary to establish a safety zone around a deepwater port in which activities or structures incompatible with the construction or operation of a deepwater port are prohibited. The Secretary must also prescribe procedures to promote navigational safety and protection of the marine environment. This section also requires any oil carrying vessel using a deepwater port to comply with regulations established pursuant to the Ports and Waterways Safety Act of 1972 as amended. The Secretary is further authorized to issue rules and enforce regulations concerning lights and other warning devices and equipment in order to promote safety of life and property at and around a deepwater port and to appropriately mark any component of a deepwater port if the licensee fails to do so.

Section 11 encourages the Secretary of State to pursue international agreements concerning deepwater port related activities and operation.

Section 21 directs the Secretary of Transportation and the Secretary of the Interior to conduct a study of laws, procedures, and methods of resolving jurisdictional conflicts involved in regulating the safety of pipelines on the Outer Continental Shelf and to report their findings and recommendations to Congress.

7. PROCEDURAL REQUIREMENTS

As provided in this bill, the procedural requirements for consideration of applications and issuance or denial of a license cover a maximum period of 356 days. Judicial review of the Secretary's final decision must be requested no later than 60 days after such a decision is made. The application review process can be summarized as follows:

0 days: An application for a deepwater port license is filed.

21 days: The Secretary ascertains if all the necessary information is included.

26 days: If the necessary information is included, the Secretary publishes notice and a summary of the proposal, designates the application area, and designates adjacent coastal states under Sec. 9(a)(1). Copies of the application are sent to all Federal agencies involved in the review process.

36 days: Copies of the application are sent to the Governor of those designated adjacent coastal States.

56 days: (30 days after publishing notice of application): The Secretary designates a safety zone around the proposed port. Thereafter, a safety zone is designated for each subsequent, competing application within 30 days after notice.

86 days: (60 days after notice): Notice of intent to file competing applications must have been received. The Administrator of NOAA must designate any additional adjacent coastal State based on a determination of substantial pollution risk from a proposed deepwater port, notify the Secretary, and publish notice of the designation.

96 days: A copy of the application is forwarded to the Governor of each adjacent coastal State designated by NOAA.

116 days: (90 days after notice): All competing applications must have been received. Reports of Federal Trade Commission and the Attorney General must be transmitted to the Secretary.

266 days: (240 days after notice): All public hearings must be concluded.

311 days: (45 days after the final public hearing): Agency comments must be transmitted to the Secretary. Each adjacent coastal State Governor must notify the Secretary as to whether he approves or disapproves issuance of a license. It is assumed the Governor approves of the application if he does not respond within this time.

356 days: (90 days after the final public hearing): The Secretary makes his decision.

II. BACKGROUND AND NEED

In 1973, four-fifths of U.S. petroleum imports arrived by tanker. The average size of tankers now used to transport oil to the United States is 30,000–35,000 deadweight tons (dwt). However, on a world scale the need to transport ever larger volumes of oil over long distances between producing and consuming nations has led to the development and increasing use of larger capacity tankers. These supertankers or Very Large Crude Carriers (VLCC) range in size from 200,000 to 500,000 dwt. Such vessels may be 1,200 feet long, have a draft from 60 to 80 feet, and have 4 to 12 times the capacity of tankers of conventional size. This increased capacity enables them to transport oil over long voyages at a lower per barrel cost than vessels of a smaller size.

Large capacity vessels now represent a substantial segment of the world tankship fleet. While only 10 percent of the 4,336 tankers operating around the world today are 100,000 dwt or larger, that 10 percent represents almost 40 percent of the total capacity.

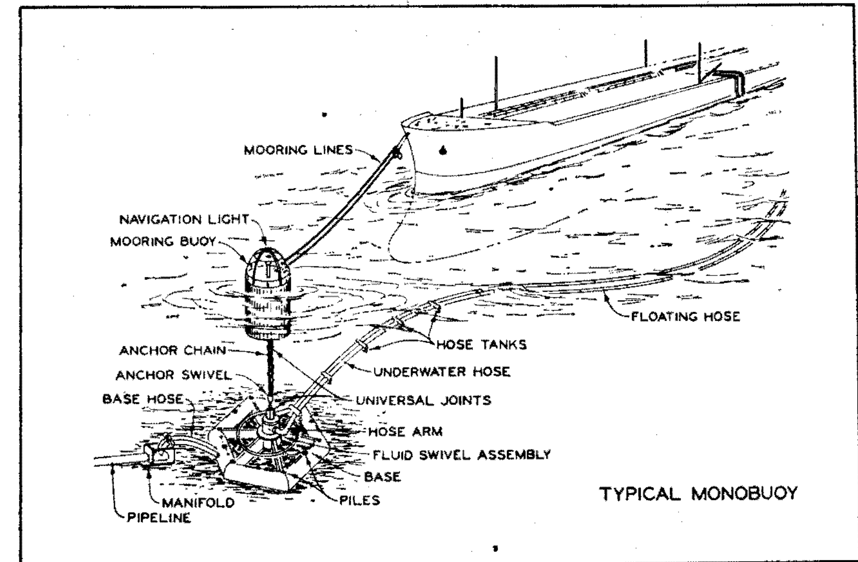
Close to half of the tankers under construction are in the 200,000 to 500,000 dwt class. At least ten of these vessels are being constructed in American shipbuilding yards under the Merchant Marine Act of 1970, which provides a construction differential subsidy. However, the substantial water depths (90 to 100 feet) required for supertankers to operate safely prevents them from entering most U.S. ports. Except for two ports on the West Coast, domestic ports close to the major refining centers are too shallow to receive tankers larger than 80,000 dwt; most ports are restricted to tankers half that size. While many existing channels, harbors, and ports might be dredged to create deepwater ports, an alternative is to construct supertanker terminal facilities in natural deepwater offshore.

Proposals to develop deepwater ports in the United States were originally based on projections that this country would progressively increase its dependence on the Middle East nations for increasing volumes of crude petroleum imports. Accordingly, it was argued that:

1. Deepwater ports offer a cheaper means of transporting imported petroleum supplies and can stimulate beneficial economic growth in adjacent coastal areas;
2. In addition to cost advantages, environmental advantages are associated with the use of supertankers. Supertankers would reduce the risks of groundings, collisions, and oil spills by reducing the number of ships operating in U.S. coastal waters;
3. Failure to build deepwater ports in the United States would encourage the construction of refinery capacity at foreign sites. This "exportation" of refinery capacity would result in an adverse impact on U.S. balance of payments and reliance on the more costly and environmentally hazardous practice of transshipping petroleum in smaller vessels from foreign deepwater ports. It could also lead to a loss of employment and other economic benefits associated with domestic deepwater ports, refineries, and petrochemical industrial development.

Circumstances have changed since deepwater port development was first proposed in the United States. As a result of the Arab oil embargo, which began in October of 1973 and continued to March, 1974, it has become a national goal of high priority to reduce American reliance on foreign petroleum supplies and attain domestic energy self-sufficiency. Nevertheless, all available evidence suggests that the United States will need to import substantial quantities of oil for the next decade at least. As a result, State and Federal government interest in deepwater port development remains strong. In addition, according to current plans, oil produced on Alaska's North Slope will be carried to West Coast ports by tankers ranging up to 150,000 dwt. While a 150,000 dwt tanker is not properly considered a "supertanker", it can carry close to 900,000 barrels of oil. Even though ports on the West Coast are deep enough to accommodate 150,000 dwt tankers, officials and residents of West Coast States have expressed growing concern over unloading large volumes of oil close to shore. There is a popular view on the West Coast that offshore deepwater ports should be used to unload oil transported from the Alaskan North Slope.

There are a wide range of offshore terminal designs. However, the one which appears to be most widely used and which has been proposed for installation off U.S. shores, is a monobuoy structure known as the single point mooring buoy (SPM). (See illustration which appears on page 7.) Such facilities usually consist of mooring buoys



TYPICAL MONOBUOY

which are anchored to the ocean bottom and feed into a submarine pipeline to shore. According to owners and operators such structures have handled large volumes of oil with relatively little operational difficulties or damage to the environment.

Several industry groups and a number of State governments have developed plans to construct deepwater ports off the coast of the United States. However, such plans involve the installation of structures in natural deep water several miles beyond the territorial limits of the United States where a clear legal framework to either license or regulate the construction and operation of such facilities is lacking.

If the United States is to benefit from the economic and environmental advantages associated with supertankers and deepwater ports and to control such development in an effective manner, Federal legislation is needed to establish a licensing and regulatory program to govern the construction and operation of deepwater ports.

III. Major Issues

1. International Legal Basis

As far as can be determined, a U.S. deepwater port constructed in international waters would be the first such facility located outside a nation's territorial limits anywhere in the world. A nation exercises nearly absolute sovereignty over its territorial waters by virtue of the International Convention on the Territorial Sea and Contiguous Zone. In addition, the Convention on the Continental Shelf authorizes a coastal nation to erect structures on its continental shelf for the purpose of exploring and exploiting the mineral and non-living resources, and provides coastal nations with jurisdiction over sedentary living species on or under the seabed. No existing international law, treaty, or agreement specifically recognizes the construction and operation of

deepwater ports as a permissible use of international waters. However, the freedom of all nations to make reasonable use of waters beyond territorial boundaries is recognized by the International Convention on the High Seas.

Testimony presented to the special joint subcommittee indicated that constructing and operating deepwater ports beyond a nation's territorial limits would constitute a "reasonable use" as contemplated by Article 2 of the Convention on the High Seas. As adopted by the United Nations Conference on the Law of the Sea, April 29, 1958 (U.N. Doc. A/Conf. 13/L.53) Article 2 of that Convention provides:

> The high seas being open to all nations, no state may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by the articles and by the other rules of international law. It comprises, *inter alia,* both for the coastal and noncoastal States:
> (1) Freedom of navigation;
> (2) Freedom of fishing;
> (3) Freedom to lay submarine cables and pipelines; and
> (4) Freedom to fly over the high seas.
>
> These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all states with reasonable regard to the interests of other states in their exercise of the freedom of the high seas.

Under the authority of this Convention, a nation might properly execute jurisdiction on the High Seas in order to license and regulate such facilities. According to the U.S. Department of State and several academic experts, the phrase *inter alia* implies that the authors of the Convention on the High Seas foresaw a need to permit a broader range of uses than the four specified in Article 2.

However, although they consider development of deepwater port facilities to be a reasonable use of the high seas under international law, the State Department also believes that it is necessary to seek multilateral agreement as encouraged in section 11 of the bill. The United States is presently seeking clarification of the legal status of deepwater ports in the United Nations Law of the Sea Conference now underway. In addition, section 22 of the bill authorizes the pursuit of international agreements with Canada and Mexico, especially with respect to environmental concerns, since the resources of those two nations will be most immediately affected by development of deepwater ports off the coast of the United States.

2. FEDERAL ADMINISTRATIVE ORGANIZATION

No Federal agency has sufficient legal jurisdiction to authorize and regulate the construction and operation of such facilities beyond the territorial limits of the United States. The type of jurisdiction and expertise which could be applied to various aspects of deepwater port development reside in a number of Federal agencies, including the Departments of Transportation, Interior, and Commerce, the Environmental Protection Agency, and the Corps of Engineers.

The Committees believe that the division of responsibilities among these Federal agencies should be preserved insofar as the regulation of

deepwater ports was concerned. The necessary extension of Federal regulatory authorities is achieved in Section 19 of the Deepwater Port Act which makes the Constitution and laws of the United States applicable to deepwater ports. However, a similar extension of existing Federal licensing authorities would make deepwater port development subject to at least four different application and permit procedures. The Committees believe it imperative to establish a single efficient and comprehensive licensing procedure.

While the possibility of establishing an interagency task force or interagency commission to carry out a "one-window" licensing procedure was considered, the Committees decided in favor of consolidating deepwater port licensing authority in one Federal agency. This lead agency would then coordinate its activities with those of other Federal agencies having jurisdiction and expertise related to deepwater ports.

The Committees found that of those agencies expected to have some involvement in the deepwater port development process, the U.S. Coast Guard would have the predominant role in regulating the construction and operation of deepwater ports regardless of which Federal agency issued the license.

Because they viewed navigational safety and marine environmental protection as major features of the deepwater port development process, the Committees agreed that the Coast Guard should play the major role in licensing and regulating deepwater ports.

Site location is also an important aspect of the deepwater port development process. Site location of the facility should include an assessment of environmental impact, alternative uses of the area and physical suitability of the location. The Coast Guard has its own oceanographic unit capable of evaluating probable marine environmental impacts. Moreover, the Committees would expect that the Coast Guard would develop a close liaison with the National Oceanic and Atmospheric Administration and the Environmental Protection Agency to utilize their expert capabilities with regard to marine environmental impacts as well as the impact of developments within the coastal zone. The Coast Guard has had ample prior experience in siting offshore structures similar to those contemplated for use in deepwater ports. And NOAA's new office of Coastal Zone Management will be able to offer additional assistance in examining the landside impacts of such port development.

The Committees concluded that since the Coast Guard would have a major role in regulating deepwater ports, they should also have primary involvement in licensing such facilities. The Committees also felt, however, that a deepwater port license should be issued from the Secretarial level and that the office of a Department Secretary should serve as the focus for coordinating with other Federal agencies concerning deepwater port development. Thus, the Deepwater Port Act of 1974 as reported authorizes the Secretary of the Department in which the Coast Guard is operating to issue, transfer, renew, suspend or revoke licenses for the ownership, construction and operation of deepwater ports.

The Department of Transportation will also have a major involvement in the deepwater port development process through other programs and policies administered by the agency.

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Thus, much of the authority and expertise required to oversee the siting, construction and operation of deepwater ports will reside in one agency, enabling the deepwater port development to proceed with the greatest possible coordination of Federal responsibilities and interests.

3. STATE ROLE

The Deepwater Port Act of 1974 describes as an adjacent coastal State any State which would be or is connected by pipeline to a deepwater port, located within 15 miles of the port, or faces a substantial environmental risk because of prevailing winds and currents from a deepwater port. Pursuant to Section 9 of the bill an adjacent coastal State must approve deepwater port development off its shores before a license can be issued. Furthermore, if the adjacent coastal States approve deepwater port development, the Secretary must incorporate in the license any reasonable conditions necessary to make such development compatible with State environmental or land use policies and programs.

The Committees believe that such provisions are necessary to protect the interests of coastal States in the deepwater port development process.

States and localities will ultimately experience economic and environmental impacts as a result of deepwater port development. While some States expect to benefit from such impacts, others believe that their economic and environmental interests will be adversely affected by deepwater port development and, therefore, will oppose the location of a deepwater port off their coasts.

Petroleum related industrialization generated by a deepwater port may increase employment and yield additional revenues and other economic benefits in some areas. However, the anticipated environmental impacts of such growth include:

1. Land requirements for petroleum storage facility refinery and petrochemical industry sites;
2. Degradation and despoliation of wetlands, estuarine areas, wildlife habitats and recreation values;
3. Increased burdens on water supply from both industrial and residential growth;
4. Increased potential for air and water pollution;
5. Increased pressures for land development to provide roadways, housing, and municipal services such as schools and hospitals to accommodate population increases induced by industrial growth.

The Committees believe that any coastal State which chooses to forego benefits associated with deepwater ports to avoid potentially adverse environmental impacts should be allowed to veto the issuance of a license for deepwater port development off its shores. The Deepwater Port Act of 1974 creates this explicit veto power in section 4(c)(9) and section 9(b) because a State would not otherwise have such authority over a Federal license. Existence of this veto authority will not, in the opinion of the Committees, preclude the construction of deepwater ports since several States are actively encouraging the construction of these facilities, notably States bordering the Pacific Ocean and the Gulf of Mexico.

States clearly have regulatory control over construction of onshore port-related facilities. And, under the Submerged Lands Act and pursuant to the U.S. Constitution (10th Amendment), the States have either exclusive or concurrent authority with the Federal government over most activities within the 3-mile limit. Such authority, however, is not unlimited, as the Federal Government has been delegated certain powers for the purposes of "commerce, navigation, national defense and international affairs" (U.S. Constitution, Art. 1, sec. 8, clause 3). Waters beyond the 3-mile limit are high seas, although the seabed on the continental shelf is subject to the exclusive jurisdiction of the Federal government.

Therefore, without Federal legislation, a State may not exercise any control over the selection of a deepwater port site beyond the 3-mile limit. Further, State powers over territorial waters could be preempted by the Federal Government for the purposes of licensing and regulating necessary components of a port (i.e., pipelines).

It has been argued that State veto power is unnecessary because (1) State land use and environmental controls (including coastal zone management programs) can serve as a vehicle for dealing with secondary growth; (2) the Federal government would not, as a matter of policy, authorize a deepwater port over the objection of the adjacent coastal State; and (3) the State could effectively prevent deepwater port development off its coast by denying pipeline and other permits for deepwater port facilities located within State jurisdiction.

However, the Committees were not reassured by these arguments. From the industry point of view, the economics of the deepwater port site selection process makes those areas where secondary petroleum development already exists prime locations for deepwater ports. While proper environmental and land use controls might effectively mitigate the adverse impacts of secondary development associated with deepwater ports, in many cases patterns of industrial development may have already taxed a coastal State's environment to its limits. In areas which have already experienced significant industrial development, the incremental burdens placed on the environment by land requirements and air and water effluents associated with petroleum-related industrialization could be particularly severe.

According to the Department of the Interior:

> . . . location of deepwater port facilities in areas where there are existing refineries and petrochemical industries might only initially require expansion of existing storage, handling, and refining facilities to process the incoming crude . . . The essence of the situation lies in the fact that even minor incremental refinery production could add pollutants to an environment that may already be stressed to its limits by previous industrial and commercial activity. For example, concentration of a high level of oil imports through one site in the highly developed and densely populated Mid-Atlantic area could be expected to result in significant environmental impacts.[1]

Affording adjacent coastal States an opportunity to veto deepwater port development will provide absolute protection against such impacts.

[1] U.S. Department of the Interior, *Draft Environmental Impact Statement: Deepwater Ports*, June 1973, pp. IV-87.

In order to afford further protection against potentially adverse impacts of deepwater port development, section 9(c) of the bill requires a State which would be connected by pipeline to a deepwater port, to have or be making reasonable progress toward having, a coastal zone management program for the potentially affected area.

Construction of deepwater ports will add a new dimension to existing problems of land use control in localities of the Coastal Zone which will be principally affected. The Committees recognize that sound planning and management of land use in these impacted areas is a critical factor in assuring that the economic benefits of the deepwater ports will not be partially nullified by adverse sociological and environmental effects which could be avoided by proper planning.

The Coastal Zone Management Act of 1972 provides funds to assist coastal States and cooperating county and municipal governments in developing programs to assure wise use of the land and water resources in these areas where the competition between conflicting uses of land will be brought into sharp and immediate focus by construction and operation of a deepwater port.

The Committees expect the State to be making reasonable progress toward establishing programs pursuant to the Coastal Zone Management Act, which would control development in the area immediately adjacent to the deepwater port at the time of a deepwater port application. It is, however, in no way intended that the coastal State have its Coastal Zone Management Programs in place and functioning in order for a deepwater port to be approved, nor it is intended that this would be a continuing condition of the license. It will be deemed sufficient compliance with subsection (c) of section 9 of the bill, as reported, if at the time the application is submitted, the State has received a planning grant for its Coastal Zone which includes that area immediately adjacent to the deepwater port and affected by its commerce.

As of August 1, 1974, 28 States have had approved applications to receive planning grants under the Coastal Zone Management Act. The Committees note with satisfaction that all the coastal States, including Delaware, Maine, New Jersey, New Hampshire, Louisiana, Texas, Mississippi, Alabama, Washington and California, which may be affected by deepwater ports will, by the fall of 1974, be proceeding with the development of programs which would apply to their coastal zones so that all will meet the requirements of section 9(c) of the Deepwater Port Act.

The Committees recognize that environmental dangers inevitably trail after oil, wherever and however it is transported. A reduction in the number of tankers in the world fleet, through the use of supertankers, should lower the potential number of spills. And concentrating oil transfers to a few, well constructed and monitored superports should increase controls over the spills that occur.

Yet, the Committees recognize that tanker size creates dangers of its own. The break-up of a 500,000-ton tanker in heavy seas a few miles off Florida or Texas or Delaware would likely produce damages of catastrophic proportions. Thus, the nation, in moving toward superports, appears to be trading fewer spills for the increased danger of a catastrophic one.

This trade-off has significance, in part, when it comes to a determination by the National Oceanic and Atmospheric Administration that a State should be designated as an "adjacent coastal State" because it would face a "substantial risk" from a spill from a proposed offshore port. However, such an evaluation must not be made in a vacuum. Rather, the Committees believe that NOAA should compare the volume of spills now occurring from offshore lightering and other methods of oil transfer with the potential risk from a deepwater port before specifying what States qualify as "adjacent coastal States".

4. COMPETITIVE IMPACTS OF DEEPWATER PORT DEVELOPMENT

To date, major oil companies have joined in three separate consortia which propose to construct deepwater ports off Texas, off Louisiana, and in Delaware Bay. These deepwater port corporations are, respectively, Seadock, LOOP and Delaware Bay Transportation Company (DBTC). These consortia also list petrochemical and independent oil firms among their members.

The DBTC plans no longer appear to be active because of local opposition to their proposal, which has led some of the member companies to divert their planned investment to foreign sites. However, Seadock and LOOP continue to promote offshore deepwater ports and have each invested several million dollars in planning and promotional efforts.

Testimony received by the Special Joint Subcommittee suggested that there might be a potential for anti-competitive abuses by deepwater port licensees and that this possibility should be taken into account as deepwater port legislation was drafted.

For example, James T. Halverson, Director of the Bureau of Competition, Federal Trade Commission, in presenting testimony on the Administration's proposal, S. 1751, advised the Subcommittee on October 3, 1973, that:

> The significance of these superports to our expanding energy needs and to our growing imports of oil, the magnitude of their operations, and their attractiveness as a business investment, are all clear. These same factors magnify the risks to competition, and because of the tremendous amounts of money spent by consumers on petroleum, they highlight the potential losses which may flow from any exclusionary or discriminatory behavior.
>
> For these reasons, the bill must be examined carefully to determine whether it provides adequate safeguards to insure that the superports will function with a minimum of anticompetitive consequences. We think it does not.
>
> The market position which would be held by each of the deepwater ports will be an unusual one. Not only will each port be a Government-licensed, local monopoly over imported oil destined for refineries in certain sections of the country, but each port will also be a "bottleneck."
>
> All of the affected commerce—here imported oil—will flow, and must flow, through these deepwater ports since the transportation economies involved will render imported oil not carried in a supertanker noncompetitive. In situations such as these, when a monopoly extends not merely

to a small amount of commerce, but effectively controls all access to imported petroleum in an area, special care must be exercised to prevent competitive abuse.

The Subcommittee also received further testimony which suggested that, even though a facility would be regulated as a common carrier as described in the Interstate Commerce Act, as amended, the facility may still be constructed and operated in a manner which could preclude some potential shippers from using the facility. For example, Deputy Assistant Attorney General Keith Clearwaters of the Antitrust Division in the Department of Justice, testified before the Subcommittee that:

> . . . we have in the past observed situations in which, although a facility such as a pipeline may be operating as a common carrier under Government regulation, it may be so sized and routed that it is impractical and uneconomic for many nonowners who did not participate in the design and planning. In this way, nonmembers may be denied access as a practical matter.

To protect against potential abuses, the Committees provided in section 7 for antitrust review of any application for a deepwater port license. This section directs the Federal Trade Commission and the Attorney General to submit to the Secretary reports containing their opinions as to whether approval of an application might adversely affect competition or otherwise result in violation of the antitrust laws. Section (4)(c)(7) of the bill prevents the Secretary from issuing a license until he has received the views of the Federal Trade Commission and Attorney General.

In addition, section 8 stipulates that deepwater ports and their associated pipelines and storage facilities must be regulated as common carriers by the Interstate Commerce Commission for the transportation of oil and in accordance with the Natural Gas Act for the transportation of natural gas. Any licensee who violates his obligation to operate as a common carrier or who violates the Natural Gas Act is subject to an enforcement proceeding. The Secretary may in addition, act to suspend or terminate the license of any such person.

A proposal to bar oil companies from obtaining licenses to own, construct and operate deepwater ports was rejected by the Special Joint Subcommittee. It was believed that, in many cases, oil companies will be the only entities with the financial and technical capabilities necessary to undertake deepwater port development.

The Justice Department also indicated that such a ban was unnecessary, and testified that the financial requirements for building a deepwater port did not preclude smaller independent firms from undertaking deepwater port development.

Recognizing that both State governments and firms independent of the oil industry are actively planning to seek licenses for deepwater ports, the subcommittee felt that, in the interest of promoting competition, it would be desirable to give preference to such entities in granting licenses for deepwater port development. Thus section 5(h) of the bill establishes a double test based on both technical competence and the proposed ownership arrangement, to be made in weighing competitive applications.

Several criteria are listed to determine which application best meets the provisions and purposes of the Act. If all are judged equal, then preference in the issuance of a license is given to the application of a State or one of its political subdivisions. If no such application has been submitted, the application of a company or individual independent of the oil or natural gas industry is afforded preference over the application of any other person.

The Committees believe that the provisions of these sections will insure against the possibility that competition will be adversely affected by deepwater port development.

5. LIABILITY

The construction and operation of deepwater ports off the coast of the United States promises to reduce oil pollution damage to the marine environment. Tanker traffic in congested harbors and ports should be reduced and the need to lighter supertankers at offshore locations should be almost eliminated. As a result the risk of collision and the number of cargo transfer and other chronic spills should be minimized.

In spite of these environmental advantages the Committees recognize that increasing the number of supertankers operating off U.S. shores also increases the risk of a catastrophic super-spill.

Standards of liability for damages caused by the discharge of oil or other hazardous substances into the marine environment are addressed in several U.S. laws. However, these laws are limited in geographic and financial scope. They do not provide sufficient coverage to protect the public and the public resources from a major spill. Furthermore, the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage have not yet come into force.

While the Committees intend to address the need to establish a comprehensive system of liability for pollution from all ocean-related sources during the coming term, they believe that standards of liability applicable to the operation of deepwater ports should be developed to serve in the interim. Thus, liability established by the Deepwater Port Act covers only discharges of oil or natural gas from a deepwater port or from a vessel located in the safety zone around a deepwater port. It is hoped that some of the concepts and standards embodied in the liability provisions of the Deepwater Port Act of 1974 will be incorporated in any comprehensive liability system to compensate for damage to the marine environment.

The Committees addressed the question of liability for damages resulting from the operation of deepwater ports with three major objectives in mind—

(1) to provide the fullest and most expeditious compensation possible;

(2) to distribute the burden of risk equitably among deepwater port licensees, the owners and operators of vessels using deepwater ports, and the consuming public who will ultimately benefit from the use of supertankers and deepwater ports; and

(3) to impose standards of liability that will induce maximum effort to prevent the discharge of hazardous substances into the marine environment without imposing standards of financial responsibility that impair competition for deepwater port licenses.

Section 18 of the Deepwater Port Act of 1974 establishes procedures for reporting discharges of oil or natural gas into the marine environment and for removing such discharges. Reporting and clean-up provisions have been, to the greatest extent possible, patterned after those contained in the Federal Water Pollution Control Act. Limits of liability established for deepwater port licensees ($100,000,000) and the owners and operators of vessels using deepwater ports ($150/gross ton or $20,000,000, whichever is the lesser) are in line with what the Committee believes to be the levels of available insurance for vessels and deepwater ports.

At the same time, however, the Committees also recognized that damage from oil or natural gas discharges could exceed the limits of liability established for vessel owners and operators and deepwater port licensees. The Committees believe that such excess damage costs should be met by those who benefit from deepwater ports rather than those who suffer the damage. The Committees therefore, agreed to establish a Deepwater Port Liability Fund to be financed by a 2¢ per barrel fee on each barrel of oil (or in the case of natural gas its metric volume equivalent in a liquefied form) transported through a deepwater port. The Fund will be liable without limit for all damages suffered by any person not actually paid for by the owner or operator of the vessel or the licensee of the deepwater port.

The Deepwater Port Liability Fund is patterned after the Trans-Alaskan Pipeline Liability Fund established by the Trans-Alaska Pipeline Authorization Act (86 Stat. 862). However, unlike the Trans-Alaska Pipeline Liability Fund which may pay for damages up to a limit of $100,000,000 per incident, the Deepwater Port Liability Fund is available to compensate for damages without limit. The Committees believe that no person with a legitimate claim for damages as a result of a discharge of oil or natural gas associated with a deepwater port should be barred from full compensation for damages because of an arbitrary limit on the amount of compensation available per incident.

The Committees also believe that, because a discharge of oil or natural gas might damage valuable public resources, provision should be made to encourage and compensate for the cost of restoring such resources. The Deepwater Port Act, therefore, authorizes the Secretary to act on behalf of the public as trustee of natural resources, and sue to recover such sums as may be necessary for Federal and State governments to restore fisheries, the habitats of sedentary living species or to replace estuarine areas or other coastal resources damaged by deepwater port related discharges of oil or natural gas.

Because the Deepwater Port Act provides unlimited recovery for damages sustained as a result of deepwater port related oil or natural gas discharges, other Federal and State laws which might otherwise be applicable to such discharges are preempted. Thus, there would be no possibility for "double recovery" of damages, especially for those which may occur to public resources.

Several States are preparing to seek licenses to own, construct and operate deepwater ports. Yet many States are exempted from liability by their own Constitutions or other laws. The Committees believe that if a State is to hold a license for a deepwater port, there must be certainty surrounding the right of a citizen to sue the State for damages caused by the deepwater port.

The Committees also recognize that a great deal of research is needed on the technical aspects of oil pollution prevention and control. The Committees are encouraged by the promise of the C-SORB system now being researched by the Coast Guard and encourages continued work in that area.

In addition, the Committees urge that all other Federal agencies continue to work in cooperation with each other and with State government and independent research teams to develop and perfect systems of oil spill prevention, containment and control.

IV. Legislative History

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 auspices of the National Fuels and Energy Policy Study in April, 1972.

During the 92d and the 93d Congresses a number of bills pertaining to deepwater ports and other types of offshore development were introduced. The Senate Commerce Committee held 3 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 Act 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 (see Chapter V, "Committee Recommendations") 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. When the bill has been acted upon by the Senate, the Committees expect to request to be discharged from consideration of H.R. 10701. The Deepwater Port Act of 1974 will be then offered as an amendment in the nature of a substitute of H.R. 10701, which will be returned to the House for consideration.

It is the understanding of the three Committees that if a conference is requested, members of each of the three Senate full Committees sharing jurisdiction over this legislation will be appointed as Senate Conferees.

V. Committee Recommendations

As discussed under Chapter IV of this report which describes the Legislative History of the Deepwater Port Act, each of the three full Committees sharing jurisdiction over this issue agreed to consider the measure as reported by the Special Joint Subcommittee on Deepwater Ports and, rather than amending the bill in full committee, to carry recommended amendments to the floor.

Full Committee recommendations are described below.

1. COMMITTEE ON COMMERCE

The Committee on Commerce, in Executive Session on August 8, 1974, recommended by majority vote the enactment of the Deepwater Port Act of 1974. The following is an explanation of their recommended amendment.

INTRODUCTION

The Committee on Commerce recommends the enactment of S. 4076, the Deepwater Port Act of 1974. After consideration of this bill for over a year, it is clear that the economic and environmental interests of the Nation will be well served by the construction and operation of deepwater ports, providing they are licensed and regulated in accordance with the provisions of this bill.

At the same time, the Committee recommends the adoption of an amendment which would restrict eligibility for a deepwater port license to persons and entities that are free of involvement in any other phases of the oil industry. The amendment would limit the ownership of deepwater ports to public or private entities which do not engage in petroleum production, refining, or marketing, and would preclude major integrated oil companies, their subsidiaries and affiliates, as well as smaller companies engaged in other phases of the petroleum industry, from owning a deepwater port. Deepwater ports would be owned and operated by States, by independent pipeline or terminal companies, or by other non-petroleum organizations.

The amendment is as follows:

On page 12, line 11, amend subsection (g) to read as follows:

"(g) Eligibility for a License.—Any person who is engaged in, or directly or indirectly owned by, or an affiliate of any business entity which is engaged in, or which is an affiliate of any other business entity which is engaged in, the development, production, refining, or marketing of oil or natural gas, shall not be eligible for a license issued or transferred pursuant to this Act."

BACKGROUND AND NEED

A. Antitrust and deepwater ports

The oil industry, almost from its very inception, has controlled the layout and operation of its own transportation system. From the outset, frequent allegations have been voiced that such ownership and control by dominant units in the industry seriously restrains

competition by smaller companies and independents. Indeed, some argue that the original Standard Oil Trust obtained much of its market power by abuse of its control over oil transportation. (See *John D. Rockefeller's Secret Weapon* by Albert Z. Carr; McGraw-Hill; 1972.)

Oil company ownership of petroleum transportation facilities is conducive to anticompetitive behavior. The pattern that has emerged since World War II is for the largest petroleum companies to construct their own transportation networks on a joint venture basis to ship petroleum products through the various stages of processing and from refiners to markets. Such joint ownership of transportation facilities makes collusion easier and more likely and reduces competition among the participants because of the close cooperation needed to plan, construct, and operate such facilities. Each such company knows what all others are shipping, and in what quantities. The participating companies continually meet to discuss and supervise the transportation operation; each knows where the others' terminals and shipping points are located.

A transportation facility such as a pipeline or a deepwater port can potentially be operated in such a way so as to maximize the advantage to all owner-shippers, or it can be operated discriminatorily in ways that favor the investors. Non-owners can be denied the opportunity to ship through such a facility (even though it is illegal for a common carrier to exclude) and more subtly, the pipeline or deepwater ports could be sized, routed, and administered so as to make it impractical and uneconomical for many non-owners (who did not participate in the design, planning, and initial financing of the operation) to use the facility. In particular, owners can design the route to maximize benefit to themselves leaving other shippers to build possibly uneconomical feeder lines.

In addition, James T. Halverson, Director of the Bureau of Competition, Federal Trade Commission, testified before the Special Joint Subcommittee on Deepwater Port Legislation on October 3, 1973 that:

> "The significance of these super-ports to our expanding energy needs and to our growing imports of oil, the magnitude of their operations, and their attractiveness as a business investment, are all clear. These same factors multiply the risks to competition, and because of the tremendous amounts of money spent by consumers on petroleum, they highlight the potential losses which may flow from any exclusionary or discriminatory behavior.
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> * * * * * * *
>
> The market position which would be held by each of the deepwater ports will be an unusual one. Not only will each port be a government licensed, local monopoly over imported oil destined for refineries in certain sections of the country, but each port will also be a "bottle-neck."
>
> All of the affected commerce—here, imported oil—will flow, and must flow, through these deepwater ports since the transportation economies involved will render imported oil not carried in a supertanker non-competitive. In situations such as these, when a monopoly extends not merely to a small amount of commerce, but effectively controls all access to imported petroleum in an area, special care must be exercised to prevent competitive abuse.
>
> Aside from the apparent dangers of potential abuse of monopoly, we find a number of specific dangers that may be spawned by the deepwater port system. They are not inevitable, however, and could be controlled without damaging the concept of coastal deepwater ports.
>
> The local monopoly position of each port will afford any joint venturers participating in it a stranglehold position over port users. The joint venturers might set arbitrary quantities which would have to be met in order to receive the most advantageous price.
>
> Some joint venture owners might decide that a ship would have to unload a certain amount of oil before it would be granted any access to the facility. They might, in addition, require that ships using the facility meet certain design specifications which are unrelated to the operation of the port.
>
> Furthermore, the joint venturers' decisions as to the location of the ports will affect the location of future refining capacity, since new processing plants will be constructed near the ports in order to minimize the pipeline costs.
>
> Participating in a joint venture by many members of any industry, might, for example, facilitate collusion. Another problem might occur if a single set of joint venturers attempted to build all the deepwater ports and thereby string together a number of local monopolies into one larger and comprehensive monopoly over deepwater ports."

The questions raised by the Federal Trade Commission, concerning the anticompetitive potential of joint oil company ownership of deepwater ports, are not idle speculations. Similar anticompetitive difficulties have already been encountered in the operation of overland oil pipelines. These problems are so severe that the Department of Justice, in testimony before the Senate Commerce Committee on December 12, 1973 (Serial No. 93–63, Part 3 at p. 1023), has concluded:

> "We believe that there may be sound reasons for enacting legislation which would require that oil pipelines be independently owned, free from control by persons engaged in any other phase of the petroleum business."

The Department of Justice has recommended that oil pipelines be divested from ownership by oil companies which are engaged in production, refining or marketing because current regulatory activities by the Interstate Commerce Commission (ICC) and the Justice Department have been insufficient to prevent anticompetitive prac- which In a 1970 report (House Report No. 92–1617) on the "Anticompetitive Impact of Oil Company Ownership of Petroleum Products Pipelines," the House Select Committee on Small Business found the regulatory attitude of the ICC to be "complacent" and "disappointing," and that of the Justice Department to be "largely ineffective."

There is also substantial question as to whether existing law *per se*, let alone its enforcement, is adequate to alleviate the antitrust dangers

which would flow from a deepwater port owned by one or more oil companies. Under the Interstate Commerce Act, pipelines are declared to be common carriers, but this has been termed to be "one of the most illusory things in the world, because the Act imposes upon them none, or very few, of the real obligations of common carrier status". (Hearings on the Consumer Energy Act of 1974, Serial No. 93-63, Part 2 at 670.)

Additional questions have been raised as to whether dividends paid to pipeline (or deepwater port) owners constitute illegal rebates. This particular issue has not been definitively resolved. The Elkins Act (32 Stat. 847, as amended; 49 U.S.C. 41, 43) makes it illegal for a common carrier to directly or indirectly grant rebates to individual shippers. The reason a dividend may be considered an illegal rebate is that, although all shippers utilizing a transportation facility are charged the same rates, the owners of a common carrier receive dividend payments offsetting at least part of the rates paid. Thus, owner-shippers have a substantial competitive advantage over nonowner-shippers even though all shippers pay the same rate tariffs. As a clear example, railroads are barred from transporting cargo which they own or have an interest in by the so-called commodities clause of the Hepburn Act (49 U.S.C. 1 (8)). This clause does not, however, apply to pipelines.

The problem of settling this issue has continued because the Justice Department obtained what the House Small Business Committee describes as an "unfortunate" consent decree in connection with a 1941 Elkins Act lawsuit against oil companies owning pipelines. The consent decree did not declare dividends to be illegal rebates, but sought to limit dividends to a fair return on investment, based on a formula of not allowing dividends of more than 7 percent of each "shipper-owner's share" of the pipeline's "valuation." Increasingly, however, the 7 percent limitation has become almost completely ineffective because it is applied not to paid-in investment only, but to the entire valuation of the line, including debt capital. And since joint venture pipelines are quite often financed by a 90-10 debt-equity ratio with owners contributing only 10 percent of the capital costs, the effect of this "limitation" is staggering. Instead of limiting dividends to 7 percent of actual investment, the formula permits dividends of up to 70 percent of actual investment. This kind of return on investment gives the shipper-owner a definite competitive advantage over nonowners. [It should be noted that this decree was sought by the Justice Department after a major attempt to divest oil companies of pipeline (the so called "Mother Hubbard" case) failed because of the intervention of World War II and the unwieldy nature of the lawsuit.]

In spite of these difficulties, many non-owner shippers are unwilling to complain of mistreatment, because they fear reprisal from pipeline owners. However, in recent hearings before the Senate Antitrust and Monopoly Committee of the Judiciary Committee on August 8, 1974, independent shippers did come forward and testify concerning their difficulties in securing access to pipelines. There is no guarantee that this would happen in the case of a deepwater port where access may mean the difference between a shipper's success or bankruptcy. Under such circumstances, independent non-owner shippers are more likely to submit than complain since antitrust enforcement is minimal and ICC regulation is all but non-existent.

In sum, allowing oil companies to own and license deepwater ports will result in (1) elimination of competition between the joint venture owners; (2) an adverse impact on competing shippers who do not have an interest in the deepwater port; and (3) a definite overall competitive advantage to the port owners. The shippers who have an interest in a deepwater port will simply have far greater flexibility than their competitors. And deepwater ports will be *the* most economical method of importing large quantities of foreign oil into the United States over long ocean distances.

B. Traditional patterns of port development

For the most part, port development in the United States has been a public rather than a private undertaking. Privately owned and operated ports have served a limited use, usually taking the form of terminals handling relatively small volumes, owned and operated by a company for its own use. In contrast, a deepwater port would handle as much as 600,000 to perhaps 7 million barrels of oil per day, an amount which represents a very large portion of all oil imported into the United States.

Public port authorities primarily have been created to assist the port user and to act as a stimulant to the local economy, particularly where private industry would or could not make the investment but wished to have the facilities. In addition, some public port organizations have been created to serve a purely regulatory function to insure orderly port development.

There are essentially two types of structures used in creating port authorities. First, there is the public entity which operates as a direct branch of government. The Port of San Francisco, which was formerly administered by the State of California and has been a city port since 1969, is one example of this type of development. Under this approach, a State or local government port authority operates much as any other government agency. Budgets are submitted each year to State legislatures or city councils for approval. This does not necessarily mean, however, that the ports are not self-supporting. Usually State and local government port authorities finance expansion through the issuance of bonds to be repaid by the revenues of the port, rather than by the taxpayers. The difference between a State or a local government port authority and a "quasi-government" port authority is that, in the first case, bond issues must be approved by the State or local government body and probably also by the taxpayers in a general election.

The second form of public port authority is the quasi-government organization. This is perhaps the most prevalent type of public port administration in the United States. Quasi-government port authorities are public corporations established by State or local governments, but which operate independently from the government body within limitations set forth in enabling legislation.

One important difference between these two forms of port organizations that should be noted is that government port authorities usually have the full credit of the government body to fall back on if the port lacks adequate financial strength. While quasi-governmental port authorities do not have such explicit government support, there are a number of examples where a city or State has come to the assistance of a quasi-governmental port authority in need of financial assistance.

For instance, the City of Philadelphia issued bonds to finance new terminal construction in behalf of the Philadelphia port corporation. Philadelphia port corporation makes lease payments to the city in the amount equal to the debt service on the bond issue and in turn leases the facility to a terminal operator. This clearly strengthens the quasi-government port authority's financial position.

Already a number of Gulf States which are interested in deepwater port development have created State entities to examine the question and to prepare for development of these facilities. (See for example Louisiana Revised Statutes 34:3101–3114, creating the Louisiana Deep Draft Harbor and Terminal Authority). How each of these new State agencies will relate to deepwater port development is still under discussion in each State. In Texas, the argument over public versus private ownership has been most vigorous. According to the "Plan for Development of a Texas Deepwater Terminal" issued by the Texas Offshore Terminal Commission on January 24, 1974, the optimum first deepwater Texas port would be one financed by public revenue bonds and regulated by a public agency of the State of Texas. After an examination of the financing questions, the Texas Offshore Terminal Commission also made the following finding and recommendation:

> Public ownership provides the least costly financing alternative and thus provides the least cost to ultimate user—the consumer—of the products resulting from the crude petroleum transported through the facility. Development costs for the facility will approximate $400 million or less, which will be paid by the proceeds of revenue bonds issued by the State of Texas. Repayment of these bonds, plus operation and maintenance of the facility, will be from tariffs charged to those firms offloading crude oil petroleum to the facility.
>
> To achieve this optimum facility, location, and financing, the Commission recommends that the legislature establish an appropriate government entity capable of achieving these ends for the State of Texas and that enabling legislation contains sufficiently broad provisions permitting contracts to be made on lease purchase arrangement, lease/use contracts and user management contracts to enable the facility to function most efficiently.

Public ownership and operation of deepwater ports would then be continuing a long tradition of public ownership of major port facilities. The immensity of these oil-importing facilities, the wide extent of the nation to be served by even a single port, and the impact upon the States affected and the public, combine to strengthen the view that deepwater ports should not be controlled by oil companies. Furthermore, as the Texas Commission found, construction and operation of deepwater ports by a State or other public entity might result in a greater cost savings than if oil companies owned and licensed them.

C. Prohibiting oil company ownership of deepwater ports

The principal reason the Commerce Committee has recommended that deepwater ports be owned and licensed by States or by independent pipeline or terminal companies is to eliminate the anticompetitive

dangers inherent in oil company ownership of these major transportation facilities. Prohibition of oil company ownership of deepwater ports will help to improve competition, prevent further growth of monopolization of the nations energy supplies by major oil companies, and would serve the consumer.

In particular, independent ownership of deepwater ports would further reduce the opportunities for collusion among major petroleum companies. It would also eliminate the potential for allocating markets and managing distribution to the detriment of non-owners. In addition, it would reduce the major oil companies' ability to determine the precise points to be linked by the pipeline, the size and expandibility of the port related facilities in a way so as to insure special advantage for the major oil companies. Independent ownership would improve access by all shippers to the facilities on an equal footing. At the same time, independent deepwater ports would insure that extensive studies into the supply and demand balance required for the construction of these facilities are not carried out solely by a selected number of major oil companies in a fashion which would require joint planning and which would restrain individual marketing efforts by the companies.

It is particularly timely that the decision as to the ownership of deepwater ports be made at this time, prior to their construction, when transition can be made easier, rather than waiting until after such facilities are constructed. The possibly painful remedy of divestiture might have to be used in order to remedy these difficulties if the decision is not made now.

The Senate Commerce Committee has received persuasive testimony indicating that, from the standpoint of an integrated oil company, there do not appear to be any major efficiencies involved in owning a deepwater port, or in participating in joint venture ownership, rather than utilizing an independent common carrier port. It has sometimes been suggested that the capital requirements for deepwater ports are great and because there is a substantial element of risk, no independent private or public entity would be willing to undertake the construction and operation of such a port. It has also been suggested that financial institutions would not lend capital to non-oil company deepwater port proposal. The Committee is generally skeptical as to correctness of such suggestions. In fact, if a deepwater port delivery system brings about the transportation costs savings indicated by the oil companies, then it is economic good sense that it be utilized by oil companies, whether or not they own the system. Also, if they are as economical as claimed, then attracting investment capital and obtaining financing should not be difficult. Furthermore, if either independent companies or State governments are given the same kind of throughput guarantees by the major prospective users of the port as oil companies require themselves when they organize a joint venture activity, then risks would be reduced to acceptable limits and independent owners would be willing and able to finance even a large deepwater port.

Another argument against banning oil company ownership is that companies which own the oil would go elsewhere (the Virgin Islands, for example), rather than deal with an independent owner. Yet it is easy to see that if oil companies were prohibited from owning deepwater ports, they would generally find it in their own interest to

furnish such throughput guarantees since they stand to benefit greatly from the availability of an efficient transportation facility operated as a common carrier at reasonable rates. This conclusion is supported by the experience to date with independently owned and operated land-based pipelines. The Williams Brothers and Buckeye Pipelines, for example, have operated for many years entirely apart from any ownership ties with producers, refiners or marketers. By all accounts they have achieved a good record of operating their facilities and have added new facilities in response to the needs of existing and prospective shippers, large and small, integrated and unintegrated.

Others argue against banning oil company ownership from another point of view. They have stated that major oil company ownership can save the consumers money because Federal Energy Administration regulations presently prohibit oil companies from increasing their cost of product beyond base profit margin. Thus, it is argued, the unit cost of the product could not be raised by major oil companies, but the added cost of an independently owned deepwater port could influence the price upward. Besides being highly speculative, this argument ignores entirely the economic advantage of deepwater ports. The cost of oil will not rise because of the greater efficiency of deepwater ports. In other words, the real question is *not* whether the cost will go up, but how much the cost savings will be if a State entity or independent pipeline company owns and operates a deepwater port rather than the oil companies. No matter what entity builds a deepwater port, there will be no added costs to be carried through since a deepwater port will mean a reduction of transportation costs. In point of fact it has been shown by the studies done by the Texas Offshore Terminal Commission that, if a public entity owns and operates a deepwater port, its ability to obtain tax-exempt bond financing and its willingness to forego the 7 percent profit margin allowed common carrier pipelines will reduce the cost savings expected if oil companies controlled the port. Therefore, at least in the case of a publicly owned deepwater port, preventing oil company ownership may result in greater cost savings, and, if anything, the pressure on price should be downward.

D. Independent resources available for deepwater ports

In the main body of this Report (at page 14), it is stated that a similar amendment was rejected in Subcommittee because "(i)t was believed that, in many cases, oil company ownership companies will be the only entities with the financial and technical capabilities necessary to undertake deepwater port development". However, there was no evidence presented upon which this conclusion could have been based. Indeed, it appeared that the majority of the Subcommittee, while tacitly acknowledging the anticompetitive dangers of deepwater ports, nonetheless opted to place delivery of oil ahead of antitrust considerations fearing that both could not be accommodated simultaneously. However, it is the Commerce Committee's view that construction of deepwater ports can be accomplished and financed by either public ports authorities or independent companies without delay and that the nation does not have to rely on the resources of the oil industry for these facilities to be built. The very serious proposals of the Gulf States to build deepwater ports buttress this conclusion.

First of all, the technology of deepwater port systems can be described as "off-the-shelf" and can be purchased on the world market. With adequate financial support, public port authorities and independent terminal companies can have as much access to this market as any other entities. Because of the experience to date with single point mooring systems around the world, well-tested equipment should be well within the reach of either public port authorities or independent terminal companies. All that is contemplated for a deepwater port is one or a series of buoys connected to shore by a large diameter pipeline. This is neither novel nor exclusively in the technological domain of the oil companies.

Secondly, in contrast to the lack of evidence for the conclusion of the Subcommittee majority, there was direct testimony supporting the view that the financial requirements did not preclude independent interests from undertaking deepwater port development. Keith I. Clearwaters, Deputy Assistant Attorney General for Antitrust, stated in his testimony on October 3, 1973, that "(b)ank financing should be no problem, and indeed a deepwater port would seem such a good financial opportunity that one need not assume it would be attractive only to those already in the petroleum industry". Mr. Clearwaters indicated that the traditional method for financing large pipeline systems follows the so-called "90-10" practice: 10 percent of the capital requirements are met by direct investment and 90 percent by outside debt financing. The direct investment requirement (the entry cost) for a $390-$400 million deepwater port would then be around $39-$40 million, a sum which probably could be raised by either a public port authority or an independent terminal company.

Under this method the entry cost is not so high as to require only oil company ownership. Therefore the real question is one of debt financing which depends mainly on the security of the investment to be made. Those who argue against banning oil company ownership claim that the companies would simply refuse to use an independently-owned deepwater port and without "guaranteed throughput" contracts, debt financing would be extremely difficult if not impossible. Once again, this argument ignores the economics of deepwater ports. It is in the best interests of the oil companies to use a deepwater port whether or not they own the facility. To do otherwise would result in higher costs and inefficiency. If independently owned, a deepwater port would be available to all at reasonable rates. For the oil companies to refuse to use them would run counter to their own interests and could be interpreted as blackmailing their way to control over deepwater ports.

CONCLUSION

The Commerce Committee amendment would limit ownership of deepwater ports to organizations, public or private, which are totally unrelated to companies which engage in other phases of the petroleum and petroleum products industry including production, refining, and marketing of oil or natural gas. This would preclude the major integrated oil companies, their subsidiaries and affiliates, as well as smaller companies engaged in any phase of the petroleum industry from owning a deepwater port. The provision would permit ownership of deepwater ports by entities such as states, independent pipeline or terminal companies, or other qualified applicants who do not produce, refine or market oil or natural gas.

The amendment, however, would not preclude the owner of a deepwater port from subcontracting for various services with oil companies or their subsidiares and affiliates. In other words, petroleum companies could participate in the operation and maintenance of the facility as a subcontractor, but could not own or control it. The Committee has been informed by several States that they intend to farm out a number of services related to deepwater port operations should they be given a license. If a State has the license and is in effective control of the projects, then the Committee contemplates they should be freely able to subcontract for any of the necessary services which they themselves cannot provide.

This amendment will not prevent deepwater ports from being built, nor will it obviate the transportation cost savings likely to result from their operations. It will reduce the very real dangers of anticompetitive abuse of these facilities which, in theory, will serve the entire nation rather than just the owners of oil. Adoption of the amendment is strongly recommended.

2. COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

The Committee on Interior and Insular Affairs, in open markup on August 8, 1974, recommended the enactment of the Deepwater Port Act of 1974 with the following amendments.

1. By unanimous vote of 11 to 0, the Committee recommended the bill be amended to vest the authority to license and oversee the construction of deepwater ports in the Secretary of the Interior rather than the Secretary of the Department in which the Coast Guard is operating (currently the Department of Transportation). The Committee will introduce amendments to accomplish this purpose and request that they be considered by the Senate en bloc.

This amendment, which has also been recommended by the Administration, would result in establishing a deepwater port licensing and regulatory system similar to that contained in H.R. 10701, the House-passed deepwater port bill.

Since 1953, with the enactment of the Outer Continental Shelf Lands Act, the Department of the Interior has had jurisdiction over and responsibility for administering, the Outer Continental Shelf lands. This authority includes administering mineral leases, conducting geological and geophysical surveys, and approval of offshore construction beyond State territorial waters. The Department thus has had more than 20 years of experience managing and monitoring development on the Outer Continental Shelf.

It is, therefore, most logical to vest in the Interior Department the responsibility for overseeing the location and construction of deepwater ports, and evaluating their environmental impact. The Department's experience with the marine, geological and geophysical problems attendant on the location and construction of offshore drilling rigs and pipelines is virtually transferrable to the siting and construction of deepwater ports: this expertise should not be ignored.

The Committee, therefore, proposes to amend the present bill to authorize the Department of the Interior to issue licenses and oversee the construction of deepwater ports. Oversight of the *operation* of these ports would remain the jurisdiction of the Department in which the Coast Guard is operating as currently provided in the bill. This arrangement rightly reflects the expertise and experience of the Department of Transportation and the Coast Guard in this area. The Committee's amendment would thus conform the Deepwater Port Act of 1974 to the Outer Continental Shelf Lands Act, which vests the regulation of activities on the OCS in the Department of the Interior, except for specified duties reserved to the Coast Guard and the Department of the Army.

2. By unanimous vote of 11 to 0, the committee recommended that on page 47, lines 8 through 12, section 18(k) of the bill which preempts Federal and State liability laws be deleted and the following language substituted in lieu thereof:

"*(k) Choice of law.—Any person who receives compensation for damages pursuant to this section shall be precluded from recovering compensation for the same damages pursuant to any other State or Federal law. Any person who receives compensation for damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same damages as provided in this section.*"

Subsection 18(k) as reported from subcommittee expressly preempts Federal and State law insofar as it affects liability for damages suffered as a result of the discharge of oil or natural gas from a deepwater port or from a vessel in the safety zone around a deepwater port.

The Interior Committee understands the view of the Special Joint Subcommittee that there should be a uniform law governing liability for damages from oilspills from deepwater ports. However, the Interior Committee believes that there may be situations where the States would want to have different liability rules and that damaged parties might want to seek recovery under those rules. Thus, this amendment would eliminate the preemption provision. However, it would assure that damaged parties could not recover twice for the same damage.

3. By majority vote the Committee recommended that the bill be amended as follows:

(*a*) On page 46, lines 10 and 11, strike the words "The Secretary," and insert in lieu thereof the following: "*The Attorney General*".

(*b*) On page 46, line 14, after the word "group." insert the following: "*If, within 90 days after a discharge of oil or natural gas 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 a class action is maintained in accordance with paragraph (1) of this subsection, damages suffered by the individual members of the class may be aggregated in order to meet the minimum jurisdictional amount in controversy. In addition, in any case where the number of members in the class exceeds 1,000, publishing 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 23(c)(2) of the Federal Rules of Civil Procedure.*"

(*c*) On page 46, line 15, strike the number "(2)" and substitute in lieu thereof the number "(3)".

The Committee believes that, in light of two recent Supreme Court decisions (*Zahn* v. *International Paper Co.* 414 U.S. 291 (1973) and *Eisen* v. *Carlisle & Jacquelin et al.* No. 73-203 (1974)) concerning class action suits, these companion amendments are necessary to avoid redundant litigation of common issues and to assure that any person suffering damages from a discharge of oil or natural gas from a deepwater port or from a vessel in the safety zone around a deepwater port, will have adequate opportunity to recover for such damages under section 18 of the Deepwater Port Act of 1974.

In *Zahn* v. *International Paper Co.*, the Supreme Court held that in class actions founded on diversity jurisdiction every member of the plaintiff case must meet the jurisdictional amount requirement of $10,000 established by 28 U.S.C. 1332(a).

This decision prevents a class action if any member of the class has less than $10,000 damages, unless the action is based on a federal statute that waives the amount in controversy requirements.

Justice Brennan in dissenting from the Court's decision argued as follows:

> Class actions were born of necessity. The alternatives were joinder of the entire class, or redundant litigation of the common issues. The cost to the litigants and the drain on the resources of the judiciary resulting from either alternative would have been intolerable.

The Committee believes that potential litigants will be protected and afforded the most efficient adjudication of claims possible by eliminating the minimum amount in controversy.

In *Eisen* v. *Carlisle & Jacquelin et al.* the major obstacle to the action was the notice requirement specified in Rule 23(c)(2) of the Federal Rules of Civil Procedure. The class represented by Eisen numbered over 2,000,000 identifiable members. The cost of notifying each member individually as required by Rule 23(c)(2) was prohibitive to the listed plaintiff and the Court ruled that publication notice was not sufficient to meet the requirements of that Rule.

The Committee believes that in the case of damages caused by a discharge of oil or natural gas, notice by publication will be sufficient to meet the intent of Rule 23(c)(2) which is to protect the rights of each member of a class to be excluded from the class if he so desires or, if he does not wish to be excluded, to enter an appearance through his counsel.

3. COMMITTEE ON PUBLIC WORKS

The Committee on Public Works in executive session on August 14, 1974, ordered reported the Deepwater Port Act of 1974 by a unanimous roll call vote. The Committee also took action to recommend two amendments to the Deepwater Port Act of 1974 which will be offered on behalf of the Committee when the bill reaches the Senate floor. In addition, the Committee on Public Works considered each of the amendments recommended by the Committee on Commerce and the Committee on Interior and Insular Affairs.

PREEMPTION OF LIABILITY LAWS

The Committee on Public Works considered the amendment proposed by the Interior Committee to remove from the bill section 18(k) which preempts Federal and State laws providing for liability for clean-up costs or damage from oil spills, and substitute a provision precluding double recovery.

The Committee on Public Works agrees with the principle that State laws defining liability for oil spills or setting higher liability limits than those in this bill should not be preempted. This principle is contained in section 311 of the Federal Water Pollution Control Act, the basic law establishing liability for clean-up costs for oil spills in the navigable waters or the contiguous zone. The principle of allowing States to establish higher limits for the liability of certain parties has been accepted in recent litigation (*Askew* v. *American Waterways Operators, Inc., et al.*, 411 U.S. 325, April, 1973.)

In that case, in discussing the power of the State of Florida to impose liability for losses suffered by State or private interests, the Supreme Court notes that this is appropriate under State police power and is not a matter of exclusive Federal admiralty jurisdiction. The Court, speaking through Justice Douglas, states:

> It follows *a fortiori* that sea-to-shore pollution—historically within the reach of the police power of the States—is not silently taken away from the States by the Admiralty Extension Act, which does not purport to supply the exclusive remedy.

It is the belief of the Committee on Public Works, however, that such a principle should be clearly stated in the legislation, rather than simply deleting the preemption language. Therefore, the Committee recommends an amendment to section 18(k) of the bill based on the language dealing with this subject in section 211(h) of H.R. 10701, the House-passed bill.

This amendment specifies that State law with respect to imposing liability without regard to fault or establishing any additional requirements, including higher limits of liability, is not preempted. The Committee recognizes that the existence of the Deepwater Port Liability Fund established under this bill would guarantee each private claimant full payment of any damages and the full satisfaction of any clean-up costs, regardless of the limits of liability on vessel owners or operators or deepwater port licensees.

A State may legitimately choose, however, to protect its coastal environment or the economic life of its citizens by imposing a higher standard of liability on oil-handling operations within its waters. This should include vessel operations and pipeline segments associated with a deepwater port. In addition, any person who alleges damages as a result of a discharge of oil or natural gas from a deepwater port operation should have the option of seeking recovery for such damages either from the responsible party under State law, or from the vessel owner or operator or the licensee and the Fund in Federal courts.

The Committee on Public Works recommends that subsection (k) of section 18 of the Deepwater Port Act of 1974 be amended to read as follows:

> "(k) *Preemption.—This section shall not be interpreted to preempt the field of liability without regard to fault or to preclude any State from imposing additional requirements or liability for any discharge of oil or natural gas from a deepwater port or a vessel with any safety zone.*"

ANTITRUST REVIEW

The Committee on Public Works recommends adoption of an amendment that would provide more time for consideration of a license application by the Attorney General and the Federal Trade Commission, while preventing either agency from delaying or vetoing a license through inaction.

The bill, as developed by the Special Joint Subcommittee and reported by the three standing Committees, creates several different tests by which an application for a deepwater port license will be reviewed by the adjacent States and appropriate Federal agencies.

Section 4(c)(9) and section 9, for example, give the Governor of each adjacent coastal state until 45 days after the final hearing on the application to approve or disapprove an application. That may be up to 311 days after the filing of the application. But if a governor fails to respond, he is concluded to have approved the application. The Environmental Protection Agency, under section 4(c)(6), has a veto if the port would fail to comply with the Clean Air Act or the Federal Water Pollution Control Act. EPA is also given until 45 days following the last hearing. Failure to comment does not hold up the application.

Under section 4(c)(8), the Secretaries of the Army, State, and Defense are to be consulted for their views. Other agencies, with expertise in the field, will also be consulted. But in no case will these agencies have a right of veto.

Yet under section 4(c)(7) and section 7, either the Federal Trade Commission or the Attorney General can delay or prevent any licensing action by simply failing to provide its views on an application.

Specifically, the language of those sections prohibits the Secretary from issuing a license for a deepwater port unless he has received "views" from the Attorney General and the Federal Trade Commission on whether or not the construction and operation of the proposed port would affect competition and promote monopolization. Section 7(b) states that the agencies must prepare and submit those views within 90 days of the publication of notice of application.

But it imposes no penalties for failure to reply. Thus, the bill creates this anomaly: An opinion by the Attorney General or the FTC that a proposed port would damage competition does not prevent the Secretary of Transportation from going forward and issuing a license. Yet a failure by the Justice Department or the FTC simply to file an opinion would hold up the port's license indefinitely.

The Committee, therefore, by unanimous voice vote, recommends that the FTC and the Attorney General have the same comment period—up to 311 days following the application—granted other agencies, but that failure to provide any comment shall not restrain the Secretary in his further action on any application.

The Committee recommends the adoption of the following amendment:

Delete the second section of Section 7(b) and insert in lieu thereof the following:

> "*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.*"

OTHER AMENDMENTS

The Committee on Public Works recommends against the adoption of the amendment on oil company ownership of deepwater ports recommended by the Committee on Commerce. This position was agreed to by the Committee on a roll call vote of 9 to 3. The Committee believes that the priority the bill establishes among potential licensees of deepwater ports is sufficient protection of the public interest against unhealthy energy company domination of deepwater ports. The bill gives governmental bodies first opportunity at the ownership or control of deepwater ports and allows petroleum or natural gas company ownership of a port only where no other applicant has indicated an interest in developing a port in that area. An adjacent coastal State may still veto a port proposed by an oil or natural gas company, or file a superseding application. And the Secretary in deciding the merits of any application must consider whether the public interest is served by the construction or operation of that port by that particular applicant.

The Committee on Public Works also recommends against the adoption of the amendments to be offered on behalf of the Committee on Interior and Insular Affairs, which would vest deepwater port construction licensing authority in the Secretary of the Interior, rather than the Secretary of the department in which the Coast Guard is operating as provided in the reported bill. The Committee concurs in the sections of the Committee's joint report which illustrate the advantages of a single lead agency for licensing deepwater port construction and operation, and the fitness of the Coast Guard for that responsibility. The Committee agreed to oppose the Interior lead agency amendment by a rollcall vote of 11 to 1.

When the Committee on Public Works discussed the proposed Interior Committee amendment on class action suits, it understood the intention of the amendment to be two-fold: (1) to assure that private parties, as well as the Secretary, could institute class actions for damages under section 18 of the Deepwater Port Act of 1974; and (2) to modify the effect of *Eisen* v. *Carlisle & Jacquelin et al.* (—U.S.—, No. 73-203, May 28, 1974) which requires actual notice of all members of a proposed class under Rule 23(c)(2) of the Federal Rules of Civil Procedure.

The Committee is persuaded that under Rule 23, any private party could bring an action on behalf of a class for damages under the liability created by section 18 of this Act. The intention of sub-

section (i) is to authorize the Secretary to bring such actions, in addition to the possibility of private action, where he may be in a better position to establish liability or to identify the class of damaged parties.

In the judgment of the Committee on Public Works, the requirement of actual notice for all members of a class did not appear to be impossible or prohibitively expensive to perform for the potential damage claims under section 18, especially in the case of classes represented by the Secretary. Therefore, the Committee agreed to recommend against the adoption of the Interior Committee amendment on class action suits as originally proposed. The Committee, however, did not consider the amendment as it relates to the requirement that each member of the class must meet the jurisdictional amount, as determined in *Zahn* v. *International Paper Co.* (414 U.S. 291, 1973), and the Committee reserves its position on that portion of the amendment.

VI. Section-by-Section Analysis

[*Letters and numbers in parentheses herein refer to subsections and paragraphs, respectively, in the section being analyzed.*]

SECTION 1. SHORT TITLE

The short title of the bill is the "Deepwater Port Act of 1974".

SECTION 2. DECLARATION OF POLICY

This section sets forth the congressional policy in terms of which this Act is to be understood, applied, and construed.

(*a*): *Purposes*. The purposes of Congress in enacting this legislation are to (1) authorize and regulate the ownership, construction and operation of deepwater ports located beyond the territorial limits of the United States; (2) protect the marine environment by preventing or minimizing any adverse impacts of deepwater port development; (3) protect the interests of the United States and adjacent coastal States in such development; and (4) protect the rights and responsibilities of States and communities to regulate growth, determine land use, and protect the environment.

(*b*): *Disclaimer*. The Act is in no way intended to affect the legal status of the high seas, the superjacent airspace, of the seabed and subsoil (including the Continental Shelf).

While no existing international law, treaty, or agreement specifically recognizes the construction and operation of deepwater ports as a permissible use of international waters witnesses appearing before the subcommittee testified that exercising Federal jurisdiction on the high seas for the purpose of authorizing and regulating deepwater ports is consistent with the principles of international law. Therefore, this subsection affirms that the Act in no way alters the existing international legal regime.

SECTION 3. DEFINITIONS

This section defines terms used in the Act.

(1) "Adjacent coastal State" means a State that exists in any one of three relationships with a deepwater port as described below.

(A) A coastal State which would be or is directly connected by pipeline to a deepwater port is an adjacent coastal State for that deepwater port. The words "directly connected" are intended to indicate that the adjacent coastal State is the State where the pipeline connection from the deepwater port buoy or platform *first comes ashore*. Thus, a State which hosts a pipeline segment that is connected with or serves a deepwater port would not be considered an adjacent coastal State under this criteria if the pipeline first comes ashore in another State.

(B) A coastal State, which has lands (including islands or submerged lands) or waters lying within 15 miles of a deepwater port or any of its components as described in the definition of deepwater port (paragraph 8 of secion 3) would qualify as an adjacent coastal State. Thus, a coastal State whose lands or waters are within 15 miles of any pipeline segment that connects a deepwater port to shore would qualify as an adjacent coastal State.

(C) Any coastal State which, in the opinion of the Administrator of the National Oceanic and Atmospheric Administration would bear substantial risk of serious damage to its coastal environment from an oil spill from a deepwater port or from a vessel operating in the safety zone around a deepwater port as established pursuant to Section 10(d) of the Act, would be considered an adjacent coastal State.

By incorporating this third category in the Act, the Committee intends to protect the interest of a State whose coastal environment bears a risk of damage from deepwater port associated discharges comparable to that of a State directly connected by pipeline to the deepwater port or within 15 miles of the facility. The Committees believe that this situation might, in particular, arise on the east coast where a number of States border the coastline in close proximity to one another and each of them would be equally or close to equally vulnerable to serious damage as a result of oil spills incidents originating from the proposed deepwater port.

A more complete discussion of adjacent coastal State's role in deepwater port development may be found in part 4 of chapter III of this report.

(2) "Affiliate" is defined as any entity owned or controlled by another person or any entity under common ownership or control with an applicant licensee or any person required to be disclosed under sec. 5(c)(2) (A) and (B).

(3) "Antitrust laws" is defined to include 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 73 and 74 of the Act of August 27, 1894, as amended. These are respectively, the Sherman Anti Trust Act (26 Stat. 209), as amended (15 U.S.C. § 1), the Clayton Act (38 Stat. 730) as amended (15 U.S.C. § 12 et seq.) the Federal Trade Commission Act and Sections 8 and 9 of the Restraint of Import Trade Act (15 U.S.C. 570).

(4) "Application" means an application for a license to own, construct and operate a deepwater port, for the transfer of a license or for a substantial change in any conditions or provisions of such a license.

(5) "Citizen of the United States" means any person who by law, birth or naturalization is a United States citizen. The term also in-

cludes any State, agency of a State or group of States, or any corporation, partnership or association organized under the laws of any State.

(6) "Coastal environment" means the navigable waters and the lands and waters lying beneath such waters, and the adjacent shorelines and their underlying waters. The term includes transitional and intertidal areas between waters of the territorial seas and the adjacent shoreline such as bays, lagoons, salt marshes, estuaries and beaches. The term also includes fish, wildlife, and other living resources and the recreational and scenic values of such lands, waters and resources. When applied to the United States or to a State of the United States, the term encompasses the waters of the territorial sea and the resources lying within those waters.

(7) "Coastal State" means any State of the United States in or bordering the Atlantic, Pacific or Arctic Oceans or the Gulf of Mexico.

(8) "Construction" means activities incidental to the building, repairing or expanding of a deepwater port or any of its components. The term includes pile driving, bulkheading and alterations, modifications or additions to the deepwater port. This definition is intended to exclude those activities relating to site evaluation which a person might undertake before submitting an application. Provision for the regulation of pre-application activities is made in section 5(b).

(9) "Control" is defined as the power to directly or indirectly determine the policy, business practices, or decisionmaking process of another person. Such power may be derived from 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 by any other means.

(10) "Deepwater port" is defined as any structure or group of structures located beyond the territorial waters of the United States used or intended for use as a port or terminal for the loading or unloading and further handling of oil or natural gas for transportation to or from any State. The term excludes vessels but includes all components and equipment associated with the deepwater port such as pipelines, pumping stations, service platforms, and mooring buoys to the extent they are located seaward of the high water mark.

Because it is conceivable that a deepwater port could be constructed beyond the United States territorial limits by some other nation for its own use, the definition is designed to clarify that a deepwater port subject to licensing and regulation by the United States is one used for the transportation of oil or natural gas to or from the United States.

The Deepwater Port Act establishes a comprehensive Federal licensing system for deepwater port development; therefore, components of a deepwater port, such as a pipeline segment, or pumping station, which may lie within the territorial seas, are included in the licensing process. Thus Federal agencies, such as the Coast Guard or Corps of Engineers, which have authority under other Federal laws to grant permits for structures erected within territorial limits would carry out their administrative responsibilities with respect to such a port component through the Deepwater Port Act. No separate permit or license would be required. However, the responsibilities and authorities of the State with respect to activities in waters or on lands within its jurisdiction would not be altered. The deepwater port

licensee would still be required to obtain authorizations from State or local government that are needed to carry out construction or operation of the deepwater port within territorial seas.

A deepwater port is defined as a "new source" for purposes of the Clean Air Act and Federal Water Pollution Control Acts. As such, a deepwater port would be subject to any standard of performance established by the Administrator of the Environmental Protection Agency pursuant to Sec. 306(a) of the Federal Water Pollution Control Act (P.L. 92-500, 86 Stat. 816-904),

> "for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants."

and pursuant to Sec. 111 of the Clean Air Act (P.L. 91-604, 84 Stat. 1681),

> "for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction) the Administrator determines has been adequately demonstrated."

(11) "Governor" is defined to include the Governor of a State or any person designated by State law to exercise the powers granted to the Governor by the Deepwater Port Act.

(12) "Licensee" is defined as any citizen of the United States holding a valid license to own, construct or operate a deepwater port under the Act.

(13) "Marine environment" is defined to include the coastal environment, the waters of the high seas and the contiguous zone, the living and non-living resources of those waters and the recreational and scenic values of such waters and resources.

(14) "Natural gas" means natural gas, liquefied natural gas, artificial or synthetic gas, or any mixture or derivative of such gas.

(15) "Oil" is defined as petroleum, crude oil or any substance refined from petroleum or crude oil.

(16) "Person" is defined to include an individual, public or private corporation, a partnership or other association, or a government entity.

(17) "Safety zone" is defined as an area established around a deepwater port in accordance with section 10(d) of the Act.

Section 10 provides for the designation of two types of safety zones around a deepwater port, one to serve temporarily during the construction phase and a second to serve permanently during operation of a deepwater port. Unless it is stated otherwise, the term "safety zone" as used throughout the bill means the permanent safety zone for operation as established in accordance with section 10(d).

(18) "Secretary" is defined to mean the Secretary of the Department in which the Coast Guard is operating unless specified otherwise.

As discussed under Chapter III of this report, entitled "Major Issues", the committees addressed the question of which Federal

administrative organization was most appropriate to carry out the purposes of the Deepwater Port Act. Several alternatives were considered including the establishment of an interagency licensing commission. The Committees decided, however, in favor of a single lead agency licensing procedure and a majority of the subcommittee favored placing the responsibility for licensing deepwater port development in the Department in which the U.S. Coast Guard was operating (at the present time, this is the Department of Transportation).

(19) "State" is defined to include any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

(20) "Vessel" is defined to mean every description of watercraft or other artificial contrivance used as a means of transportation on or through the water. It does not include any pipeline.

SECTION 4. LICENSE FOR THE OWNERSHIP, CONSTRUCTION AND OPERATION OF A DEEPWATER PORT

This section sets forth the authority and prerequisites for the issuance, transfer or renewal of a license to own, construct and operate a deepwater port; eligibility for and the conditions and term of such a license.

(a): *General.* This subsection states that no person subject to the laws of the United States may own, construct or operate a deepwater port except in accordance with a license issued pursuant to the Deepwater Port Act. It also states that no person may transport oil or natural gas between a deepwater port and the United States unless that deepwater port is licensed under the Act.

(b): *Authority.* This subsection authorizes the Secretary of the Department in which the Coast Guard is operating to issue, transfer, amend or renew a license for the ownership, construction and operation of a deepwater port.

(c): *Prerequisites to Issuance of Licenses.* This subsection establishes the prerequisites which must be met before the Secretary may issue a license under the Act.

(1) The Secretary must determine that the applicant is financially responsible. This includes the applicant's financial capability to undertake and complete the construction and commence and continue operation of a deepwater port for the license term in accordance with the provisions of the Act. It also includes the capability of the applicant to demonstrate financial responsibility or obtain insurance as required by Section 18 pertaining to liability of the licensee.

(2) The Secretary must find that the applicant can and will comply with applicable law, regulations, and license conditions. This includes not only the law and regulations as established under the Deepwater Port Act but also the Constitution of the United States, and all Federal and (wherever applicable) State law. Further assurance in this regard is provided in section 5(e) which requires the Secretary to receive written agreement from the licensee that he will comply with the terms of this Act and all other applicable laws.

(3) The Secretary must find that the construction and operation of the deepwater port would be in the national interest and consistent

with national security and other national policy goals including energy needs and environmental quality. Thus, the Secretary must consider deepwater port development in the overall context of this Nation's policy goals and objectives and the primary and secondary effects which deepwater port development may have on the achievement of such goals and objectives.

(4) The Secretary must also determine that a deepwater port will not unreasonably interfere with navigation or other reasonable uses of the high seas as defined by treaty, convention, or customary international law.

Constructing and operating federally regulated deepwater ports beyond U.S. territorial limits is considered to be a reasonable use of the high seas as permitted under the Convention on the High Seas. Thus, in authorizing deepwater port development, the Secretary must assure that such development will not interfere with the rights of other nations to make reasonable use of the high seas or with their right to engage in such activities as may be permitted under other international treaties, conventions or laws. Such activities include navigation, fishing and scientific research.

(5) The Secretary must determine that the applicant will construct and operate the proposed deepwater port using best available technology to prevent or minimize adverse impact on the marine environment. The Secretary must make his determination in accordance with environmental review criteria established pursuant to section 6 of the Act. These criteria are intended to serve as basic guidelines for determining what environmental impacts could result from deepwater port development and the procedures and technology which can be used to prevent or minimize such impacts.

(6) The Secretary may issue a license only if he has *not* been informed by the Administrator of the Environmental Protection Agency within 45 days after the last public hearing on a proposed license, that the deepwater port in question will not conform with the provisions of the Clean Air Act (42 U.S.C. 1857 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) or the Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1401–1421). If the Administrator fails to comment, the Secretary may assume that the deepwater port will comply with the laws cited above, and issue a license (all other requirements of this Act having been met).

(7) The Secretary must receive the opinions of the Federal Trade Commission and the Attorney General as to whether issuance of a license pursuant to the Act would adversely affect competition, promote monopolization, or otherwise create a situation in contravention to the antitrust laws. The opinions of the Federal Trade Commission and the Attorney General are to be transmitted to the Secretary in accordance with section 7 of the Act. The Federal Trade Commission's and Attorney General's opinions are intended to be advisory only, so that an adverse opinion would not statutorily prevent the Secretary from issuing a license under the Act.

It is intended, however, that the Secretary will be guided by the Federal Trade Commission's and the Attorney General's views in making a determination that the issuance of a license is in the national interest and consistent with national policy goals and objectives as required under paragraph (3) of this subsection.

(8) The Secretary must consult with the Secretary of the Army, the Secretary of State and the Secretary of Defense concerning the adequacy of the proposed deepwater port development and its effect on programs within their respective jurisdictions.

Although the Secretary, in carrying out his responsibilities under this Act, is required to consult with *all* interested Federal agencies, the Act specifies those agencies that will be particularly affected by the Secretary's actions. The views of these heads of Federal agencies will be particularly relevant to the Secretary's determinations under paragraphs (3), (4) and (5) of this subsection concerning national security, international law, navigation, and technological matters.

(9) The Secretary may not issue a license unless the Governor of any adjacent coastal State or States has approved or is presumed to approve the deepwater port proposal under consideration. Approval must be transmitted to the Secretary or presumption of approval made, in accordance with Section 9 which establishes procedures for designation of and coordination with adjacent coastal States.

(10) The Secretary may not issue a license unless at the time an application is submitted, the adjacent coastal State in which the pipeline from a proposed deepwater port would first come ashore, has developed or is making reasonable progress towards developing an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451–1464), which applies to the area to be directly and primarily affected by land and water development related to the deepwater port. "Reasonable progress" as used in this paragraph is described in Section 9(c) of the bill.

(*d*): *Port Evaluation*. This subsection requires the Secretary, upon request by a public port, to review that port's existing plans for constructing a deep-draft channel in comparison with the proposed deepwater port. In order to request such a review, the public port must have either an active Army Corps of Engineers study under way on such a deep-draft channel or a pending application for a permit to dredge such a channel and harbor. Such a request must be made no later than 30 days after the Secretary receives an application for a deepwater port license.

The Committees believe such a review may be useful in some cases because an application for a deepwater port license would alter the feasibility of plans for dredging a channel and harbor capable of handling vessels of supertanker size. The diversion of oil traffic to the deepwater port might depress a positive benefit-cost ratio, which is necessary for approval of any deep-draft proposal for the near shore port.

Section 4(d) will assure that such a balancing evaluation is made prior to a decision on a deepwater port license, if the public port requests it. The balancing study will determine whether the deepwater port or the expanded near shore deep-draft port, or both, best serve the national interest. In this study, the Secretary's decision is discretionary and non-reviewable.

This subsection is not intended to encourage protracted study which would have the effect of delaying by months or years a final decision on a deepwater port application. The comparative evaluation is to be completed within the time table established for the Secretary to reach a decision granting or denying a license for the ownership, construction and operation of a deepwater port.

(*e*): *Conditions of Licenses*. (1) Basic authority is provided for the Secretary to include in a license, any reasonable conditions he deems necessary to carry out the provisions of the Act, or which are otherwise required by any Federal department or agency pursuant to the terms of the Act.

(2) The Secretary is prevented from issuing a license until he has a written agreement with the licensee (or in the case of a transfer, the transferee) that there will be no substantial change from plans, methods, procedures and safeguards as originally approved by the Secretary, without prior approval in writing from the Secretary. The licensee or transferee must also agree in writing that he will comply with any reasonable conditions prescribed by the Secretary in accordance with the Act.

(3) The Secretary is authorized to establish bonding requirements or such other assurances as he may deem necessary to assure that the licensee will remove all components of the deepwater port upon revocation or termination of the license. However, this paragraph also authorizes the Secretary to waive the removal requirement for any component of a deepwater port that he finds would not constitute a threat to navigation or to the environment. This could be the case with a pipeline connecting a deepwater port to shore. Since prospective plans for deepwater port development call for buried pipeline connections to shore a requirement to remove the pipeline once operations at a deepwater port were permanently discontinued might in fact pose a greater threat to the environment than if the pipeline were capped and left in place.

(*f*): *Transfer of Licenses*. This subsection authorizes the Secretary to transfer a license for a deepwater port if he determines that the transfer is in the national interest and if the transferee meets the requirements of the Act.

A prospective transferee would make application to the Secretary in order to receive a license under the Act. Issuance of the license to a transferee would be governed by the same prerequisites to issuance of a license as contained in section 4(c).

(*g*): *Eligibility of the Licensee*. This subsection states that any citizen of the United States who otherwise qualifies under the terms of the Act, is eligible to receive a license to own, construct and operate a deepwater port.

The Committees considered the question of whether legislation authorizing deepwater port development should seek to prohibit foreign ownership of deepwater port facilities through a narrow and restrictive definition of the term "citizen of the United States." It was decided, however, that such a policy would operate against this Nation's best interests and relationships with the international community. A proposal to prohibit companies involved in the production, processing or marketing of petroleum, petroleum products or natural gas from holding a license under the Deepwater Port Act was also rejected. In a related action, however, the Committees agreed that the application of a State entity or an applicant independent of those aspects of the petroleum or natural gas industry described above should be given preference.

(*h*): *Term and Renewal of Licenses*. This subsection sets the term of a license for a period not to exceed 20 years. The licensee is given

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a preferential right to renew his license if he continues to meet the prerequisites, as contained in subsection (c), under which the license was originally issued.

In renewing a license, the Secretary may impose any new conditions as he determines are reasonable and appropriate. The term of renewal is not to exceed 10 years. In setting the term of renewal at half the original term of the license, the Committee intends to provide a more frequent review of the operating condition of the deepwater port.

The Secretary will undoubtedly impose license conditions concerning operating procedures, maintenance, and equipment to assure that a deepwater port is constructed and operated with maximum protection of health, life and the environment. He may also choose to specify the maximum throughput of a deepwater port.

In general, the greater the volume throughput of a deepwater port facility, the greater the potential for adverse secondary environmental impacts to result from its development. It may be argued that if oil import levels are high, operating a number of deepwater ports of limited throughput, and dispersing them at various locations along the coast is preferable to operating a limited number of facilities with high throughput capacities.

The Committees expect the Secretary to consider the merits of a policy of dispersing deepwater port development rather than allowing throughput to concentrate through one facility. If it is determined that such a policy will best serve the national interest and the purposes and provisions of this Act, the Secretary may condition the license to limit the throughput volume of a deepwater port.

SECTION 5. PROCEDURE

(a): Regulations. This subsection authorizes the Secretary to issue regulations to carry out the purposes of the Act as soon as practicable after the date of enactment. In so doing the Secretary must consult with other Federal agencies of relevant jurisdiction and expertise and comply with the provisions of the Administrative Procedure Act (15 U.S.C. § 553).

The Secretary's regulations must include application, issuance, transfer, renewal, suspension, and termination of licenses. They must also provide for full consultation and cooperation with all interested Federal agencies and departments, any potentially affected coastal state, and for consideration of the views of any interested members of the public. The Secretary is also authorized to amend or rescind any regulation promulgated pursuant to this subsection.

(b): Site Evaluation. This subsection directs the Secretary to designate those activities involved in the evaluation of potential deepwater port sites or preconstruction testing which, unless they are properly regulated, may adversely affect the environment, interfere with authorized uses of the Outer Continental Shelf or otherwise pose a threat to human health and welfare. This subsection prohibits such activities from being undertaken without prior approval from the Secretary. The Secretary is authorized to promulgate regulations consistent with the provisions of this Act, to carry out the purposes of this subsection.

The purpose of this subsection is to define what exploratory activities can be safely undertaken by a potential applicant without specific approval and which activities should be controlled under some form of pre-license permit.

(c): Submission of Plans. This subsection specifies the procedure to be followed in submitting an application. It provides that detailed plans, including the information specified in paragraph (2) of the subsection, must be submitted to the Secretary. The Secretary has 21 days after receipt of the application to make a preliminary review of the materials submitted and to determine whether all the required information appears to be contained in the application. The purpose of such preliminary consideration by the Secretary is not to make an extensive review of the application but to determine whether, in fact, the application contains all the information the Secretary must ultimately have to process the application.

When the Secretary determines that an application appears to contain the information required by paragraph (2), he is required, within 5 days of making such determination, to publish notice of the application and a summary of the plans in the Federal Register. The date on which such publication occurs triggers the various time periods under the Act: for the submission of competing applications, the holding of public hearings, the designation of adjacent coastal States. The notice provisions of this subsection apply to all applications for a deepwater port in any application area.

Paragraph (2) authorizes the Secretary to specify the information that must be contained in each application. At a minimum such information must include:

(A) information on any person having an ownership interest in the applicant of greater than 3 per centum;

(B) to the extent feasible, information on 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) information on affiliates of the applicant and of persons required to be disclosed pursuant to subparagraphs (A) or (B), together with a description of the relationship between the applicant, each affiliate and persons required to be disclosed under subparagraphs (A) or (B);

(D) the proposed location and capacity of the deepwater port;

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

(F) information on the phasing of construction;

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

(H) to the extent known by the applicant or any person required to be disclosed under subparagraphs (A), (B), or (C), the location and capacity of, and the anticipated

volume of oil to be refined by, each existing and proposed refinery that will receive oil that has been transported through the proposed deepwater port;

(I) the financial and technical capabilities of the applicant to construct and operate the deepwater port;

(J) other qualifications of the applicant to hold a license, including information to assist the Secretary in determining the "best" application and any application with priority standing.

(K) a description of procedures to be used in constructing, operating, and maintaining the deepwater port, including systems of oil spill prevention, containment, and cleanup; such procedures would also include the applicant's plans for navigational aids and procedures, plans for manning the deepwater port, and such other information as the Secretary deems relevant; and

(L) other information required by the Secretary to determine the environmental impact of the proposed deepwater port.

(*d*): *Application Area.* (1). In order to avoid piecemeal consideration of various proposed deepwater ports for particular limited areas, this paragraph requires the Secretary to consider simultaneously all applications for proposed deepwater ports in any particular application area. The Secretary is required to publish in the Federal Register a description of the relevant application area when notice of the initial application for that area is published.

Paragraph (2). An application area is any reasonable geographical area within which a deepwater port is proposed to be constructed and operated. It may not exceed a circular zone the center of which is the proposed port and the radius of which is the distance from such proposed port to the high water mark of the nearest adjacent coastal State.

Paragraph (3). Any other person wishing to submit an application for a deepwater port in that area has 60 days to give notice to the Secretary of his intent to file an application and an additional 30 days to file a competing application. Failure to submit the notice and application within the specified time periods bars consideration by the Secretary of that application until the other pending applications have been acted upon.

(*e*): *Agency Coordination.* (1). This paragraph directs the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Chief of the Corps of Engineers, the Administrator of the National Oceanic and Atmospheric Administration and the head of any other Federal agency having juisdiction, interest, or technical expertise relating to deepwater ports to comment in writing to the Secretary describing such jurisdiction or expertise. Agencies have within 30 days after the enactment of the Act to file this information.

The deepwater port development process falls within a broad range of Federal agencies' jurisdictions and areas of expertise. Maximum coordination among these agencies will be required to achieve effective regulation of deepwater ports.

This paragraph is intended to assure expeditious and effective involvement by Federal agencies with appropriate jurisdiction and expertise in the administration of the Deepwater Port Act. These Federal agencies are expected to assist the Secretary in formulating rules and regulations and reviewing applications and, finally, to exercise their full authority to regulate the construction and operation of deepwater ports.

(2). In accordance with this paragraph, an application filed pursuant to the Act constitutes an application for all Federal authorizations which may be required to construct and operate a deepwater port. This includes any authorization required to construct and operate any component of a deepwater port within the territorial limits of the United States.

This paragraph establishes a "one-window" application review process for deepwater port development. By eliminating the need to file several applications for Federal authorization to lay pipelines or erect structures in navigable waters or on the Outer Continental Shelf the Deepwater Port Act creates an expeditious and comprehensive application review process. Federal permit authorities which are consolidated with the deepwater port application review process include those of the Coast Guard, the Department of the Interior, and the Corps of Engineers.

The "one-window" review process should lead to effective communication and coordination among Federal agencies and provide integrated administration of the licensing and regulation process. To facilitate this the Secretary must forward a copy of the application to all Federal agencies having jurisdiction over or other interest in deepwater ports. Each agency must recommend approval or disapproval of the application based on their legal interest no later than 45 days after the last public hearing on the proposed deepwater port.

If any agency recommends against approval of an application, it shall specify the manner in which the application might be amended to comply with the law or applicable regulations.

(*f*): *Environmental Impact Statement.* A single detailed environmental impact statement in accordance with the National Environmental Policy Act must be prepared for any license issued pursuant to this Act. The Secretary shall direct the preparation of the statement with the participation of all other Federal agencies involved in the application review process.

As previously discussed, the deepwater port application review process incorporates the authorities of several Federal agencies to license and regulate structures in navigable waters or on the Outer Continental Shelf. Since these authorities are consolidated in the deepwater port application review process, the requirements of the National Environmental Policy Act applicable to these authorities should also be consolidated.

(*g*): *Hearing Requirement.* Before a license is issued, at least one public hearing concerning a deepwater port must be held in each adjacent coastal State. Hearings must be conducted with due public notice and opportunity for public participation. Following the conclusion of these hearings at least one formal public hearing must be held in the District of Columbia in accordance with the Administrative Procedures Act. This subsection calls for the consolidation of public hearings held by various Federal agencies insofar as it is practicable. All public hearings concerning applications within the same designated application area must be consolidated and concluded within 240 days after notice of the initial application for that application area has been published.

(*h*): *Reimbursement of Costs*. (1). This paragraph requires each applicant to pay a non-refundable fee to the Secretary upon submission of his application. In addition the applicant is required to reimburse the United States and the appropriate adjacent coastal States for any additional costs, including the cost of evironmental evaluations, incurred in processing the application.

(2). This paragraph requires a licensee to annually reimburse the United States and the appropriate adjacent coastal State for any costs in excess of the application fee incurred in monitoring construction or operation of the facility.

(3). This paragraph requires the licensee to pay annually in advance, the fair market rental value of the subsoil and seabed of the Outer Continental Shelf utilized by the deepwater port. This payment shall include the fair market rental value for the right-of-way utilized by the pipeline segment of the deepwater port lying on lands within Federal jurisdiction. The pipeline right of way fee, which the Secretary may prescribe, is limited to that part of the pipeline lying outside the territorial limits of any State, leaving to the involved State the question of assessing right-of-way fees for the pipeline component within that State's jurisdiction.

(*i*): *Secretary's Decision*. (1). This paragraph specifies that the Secretary shall approve or deny any application for a designated application area within 90 days after the last public hearing on a proposed license for that area.

(2). This paragraph requires that if more than one application has been submitted for a particular application area, and no one application clearly best serves the national interest, the Secretary must give first preference in issuing a license to the application of an adjacent coastal State (or combination of such States), or of any political subdivision, agency or instrumentality thereof. If there is no such applicant, then the Secretary must grant the license to a person who is not engaged in, or an affiliate of, any person who is engaged in producing, refining, or marketing oil or natural gas, and who is not an affiliate of any such affiliate, if there is such an applicant. If there are no such applicants, the Secretary may issue the license to any other person who otherwise qualifies under the Act.

(3). This paragraph establishes criteria for determining which deepwater port proposed for a particular application area, clearly best serves the national interest. In making this determination the Secretary must consider:

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

(B) the reliability of the proposed deepwater ports as a source of oil or natural gas;

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

(D) differences in costs of construction and operation of the deepwater ports, to the extent that such differential may significantly affect the ultimate cost of oil or natural gas to the consumer.

SECTION 9. ENVIRONMENTAL REVIEW CRITERIA

(*a*): *General*. This section directs the Secretary, in accordance with the recommendation of the Administrators of the Environmental Protection Agency and the National Oceanic and Atmospheric Administration to develop environmental review criteria for evaluating applications for a deepwater port license. In formulating such criteria, the Secretary must consult with the heads of other Federal agencies with relevant jurisdiction and expertise.

Criteria established pursuant to this section must be consistent with the National Environmental Policy Act and must include evaluations of the effect of deepwater port development on the marine environment, oceanographic currents and wave patterns and alternate uses of the oceans and navigable waters such as scientific study, fishing, and exploitation of other living and nonliving resources. Environmental review criteria must also address the potential dangers to a deepwater port from waves, winds, weather, and geologic conditions and the steps which can be taken to protect against or minimize such dangers.

In addition, the criteria must pertain to the effect of deepwater port development on land based developments, human health and welfare and to any other considerations that the Secretary finds necessary or appropriate.

(*b*): *Review*. This subsection directs the Secretary to review and, whenever necessary, revise these criteria. In so doing he must follow the same procedure under which the criteria were originally developed.

(*c*): *Procedure*. This subsection specifies that environmental review criteria will be established in the same manner and at the same time as regulations promulgated under Section 5(a) of the Act to carry out the purposes and provisions of the Act.

SECTION 7. ANTI-TRUST REVIEW

(*a*): *General*. This subsection prohibits the Secretary from issuing, transferring or renewing a license pursuant to the Act unless he has received the opinions of the Federal Trade Commission and the Attorney General as to whether the issuance of a license would adversely affect competition, restrain trade, promote monopolization or otherwise create or maintain a situation in contravention of the anti-trust laws. This subsection also states that the issuance of a license under the Act may not be admitted as a defense to any action for violation of the anti-trust laws or be interpreted to modify or abridge any private right of action under the anti-trust laws.

(*b*): *Procedure*. This subsection sets forth the procedure for obtaining the opinions of the Federal Trade Commission and Attorney General as required by this section. Within 90 days after receiving their copies of an application filed pursuant to this Act, the Federal Trade Commission and Attorney General must each prepare a report assessing the competitive effects which may result from the issuance of a license.

Nothing in this section prevents the Attorney General or the Federal Trade Commission from challenging any anticompetitive situation which may result from the ownership, construction or operation of a deepwater port. Nor is the section intended to modify in any way the anti-trust laws.

SECTION 8. COMMON CARRIER STATUS

(*a*): *General.* This subsection requires that, with respect to the transportation of oil, a deepwater port and any storage facilities directly served by a deepwater port must be regulated as common carriers by the Interstate Commerce Commission.

The subsection also requires the 'the transportation of natural gas through a deepwater port and storage facilities directly served by a deepwater port will be regulated in accordance with the Natural Gas Act.

To assure that this common carrier provision works effectively, it is essential that licensees maintain separate bookkeeping and records on all costs associated with the construction and operation of the port, and report these figures publicly. The port's charges, of course, must be uniform, whether on its own tankers or those of a competitor.

(*b*): *Discrimination Barred.* This subsection requires a licensee to accept, transport, or convey without discrimination all oil or natural gas delivered to the deepwater port for which he holds a license. The subsection further authorizes the Secretary to take action against a licensee who violates his obligation to operate as a common carrier. In so doing the Secretary may commence an appropriate proceeding before the Interstate Commerce Commission or the Federal Power Commission, or request the Attorney General to take appropriate action. The Secretary is also authorized to suspend or terminate a license in accordance with Section 12 of the Act.

SECTION 9. ADJACENT COASTAL STATES

(*a*): *Designation.* Pursuant to this subsection, the Secretary is required to designate as an adjacent coastal State any coastal State directly connected by pipeline to, or within 15 miles of a proposed deepwater port. The Secretary's designation is published together with public notice of the application.

No later than 60 days after receiving his copy of an application the Administrator of the National Oceanic and Atmospheric Administration must designate as an adjacent coastal State, any other coastal State which would, because of prevailing winds or currents, experience substantial risk to its coastal environment from a deepwater port.

(*b*): *Coordination.* This subsection requires the Secretary to forward a complete copy of an application to the Governor of any State designated as an adjacent coastal State with respect to the deepwater port with respect to which that application was filed. Copies must be forwarded to the Governor no later than 10 days after a State is designated either by the Secretary or the Administrator of NOAA. The Governor has until 45 days after the last public hearing (see Sec. 9(c)) to approve or disapprove the proposed deepwater port. The Secretary cannot issue a license without the approval of the adjacent coastal State or States involved. However, if the Governor fails to respond within time limit prescribed his approval of the proposal is conclusively presumed.

(*c*): *Coastal Zone Management.* As described in this subsection, an adjacent coastal State connected directly by pipeline to a deepwater port must have, or be making reasonable progress toward having, a coastal zone management program for that area of its coast which

would be directly affected by the deepwater port. A state is considered to be making reasonable progress if it is receiving a planning grant pursuant to Sec. 305 of the Coastal Zone Management Act of 1972.

(*d*): *Interstate Compacts.* This subsection provides automatic Congressional ratification of interstate compacts which are formed for the purpose of seeking a license for deepwater ports.

The lengthy interstate compact ratification process may delay the effective action of States wishing to combine forces in order to seek a license for a deepwater port. The Committee feels that State ownership of deepwater ports is a desirable policy objective and that the combination of State government resources is in some cases, the most effective means of achieving this objective.

The Committee intends, however, that this abbreviation of the interstate compact ratification process will in no way relieve a State from any of its obligations as an interstate compact participant.

SECTION 10. MARINE ENVIRONMENTAL SAFETY AND NAVIGATIONAL SAFETY

(*a*): *General.* (1). This paragraph authorizes the Secretary to prescribe by regulation procedures and rules governing a deepwater port. Such regulations will cover such areas as the designation and marking of anchorage areas, the maintenance of facilities, law enforcement, and the equipment and training of personnel which is necessary to clean up polluting discharges or otherwise prevent or minimize any adverse impacts resulting from a deepwater port.

(2). This paragraph requires any oil carrying vessel using a deepwater port to comply with regulations established under section 4417a of the Revised Statutes and the Ports and Waterways Safety Act of 1972. This provision means that a vessel using a deepwater port must comply with regulations established by the Secretary of the Department in which the Coast Guard is operating—

> ". . . to prevent damage to, or the destruction or loss of any vessel, bridge, or other structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to those waters; and to protect the navigable waters and the resources therein from environmental harm resulting from vessel or structure damages, destruction, or loss . . ."

(*b*): *Lights and Other Warning Devices and Safety Equipment.* This subsection directs the Secretary to issue rules and enforce regulations concerning lights and other warning devices and equipment in order to promote safety of life and property at and around a deepwater port.

(*c*): *Protection of Navigation.* In order to insure the protection of navigation, this subsection requires the Secretary to mark any component of a deepwater port if the licensee has failed to do so in accordance with applicable regulation. The licensee involved must reimburse the Secretary for the cost of such marking.

(*d*): *Safety Zones.* (1). This paragraph authorizes the Secretary to establish a safety zone around a deepwater port of appropriate size to insure navigational safety. Activities or structures incompatible with the operation of a deepwater port are prohibited within the safety zone. The Secretary must describe by regulations those activities

permitted within such a zone. In establishing a safety zone, the Secretary is to consult with the Secretary of the Interior, the Secretary of Defense, the Secretary of Commerce and the Secretary of State. The Secretary's action under this subsection is subject to recognized principles of international law. This paragraph directs the Secretary to establish the safety zone around a deepwater port as proposed in an application no later than 30 days after he has published notice of receiving that application.

(2). This paragraph authorizes the Secretary to describe by regulation activities which may be permitted within a safety zone during construction of a deepwater port.

Designation of the safety zone around a deepwater port as proposed in an application is necessary to enable the Administrator of the National Oceanic and Atmospheric Administration to make a determination as to which States are adjacent coastal States (in accordance with section 9(a) of the Act). However, changes in construction or operating plans as originally submitted may be required under the conditions of a license. It may, therefore, be necessary for the Secretary to make some revisions concerning the safety zone around a deepwater port for which a license is granted.

SECTION 11. INTERNATIONAL AGREEMENTS

This section authorizes the Secretary of State to seek effective international action and cooperation in support of the policy established by the bill. In carrying out his responsibilities under this provision, the Secretary of State must consult with the Secretary.

The section further authorizes the Secretary of State to formulate, present, or support specific proposals in the United Nations or any other competent international organizations concerning rules and regulations relative to the ownership, construction, and operation of deepwater ports, especially with respect to navigational safety.

During the deliberations of the Committees, the Law of the Sea Conference opened in Caracas, Venezuela. The existence of that important conference underlines the need for international agreements to assure the safety of any deepwater port licensed and constructed off the coast of the United States.

Negotiations for such agreements should center on the need to protect deepwater ports in international waters, and on regulations governing construction, ownership, operation, and navigational safety of deepwater ports.

SECTION 12. SUSPENSION OR TERMINATION OF LICENSES

(*a*): *General.* This subsection directs the Secretary, under specified circumstances, to suspend or terminate any license for the construction or operation of a deepwater port, or to require operational changes to protect the public health or welfare, pending a final ruling.

Violation of any rule, regulation, or condition may be grounds for the Secretary to suspend or terminate a licensee. But prior to the actual suspension or termination, the Secretary must provide due notice, followed by a reasonable period of time to allow the licensee to correct the violation, and a subsequent administrative hearing, unless automatic suspension or termination upon a fixed condition is provided in the license.

The Committees recognize that great investments will be necessary to construct and operate a deepwater port. It is not expected that authority granted in this section will be used capriciously. This section directs the Secretary to spell out in detail the basis of any suspension or termination of a license and to afford the licensee an appropriate period of time to comply with any amendment of license conditions.

(*b*): *Immediate Suspension.* If the Secretary finds that immediate suspension of any aspect of deepwater port construction or operation is essential to protect public health or safety, or to eliminate an imminent danger, the Secretary shall order the licensee to immediately halt such dangerous operations, or to alter them in a specified manner.

(*c*): *Abandonment.* This subsection specifies that a license issued under this bill will be forfeited if it is not used for any continuous 2-year period.

(*d*): *Procedure.* To enable him to enforce these authorities, the Secretary may, in accordance with this subsection, issue subpoenas, administer oaths, compel testimony, produce evidence, take depositions, and examine witnesses.

SECTION 13. RECORD KEEPING AND INSPECTION

(*a*): *Records.* This subsection requires a licensee to maintain records, make reports, and provide information in accordance with regulations prescribed by the Secretary. It is not intended that regulations prescribed by the Secretary will duplicate those promulgated under the authority of any other law. However, the licensee must make *all* records and information available to the Secretary upon request regardless of the legal authority under which they are maintained unless specifically provided otherwise by law.

(*b*): *Inspection.* This subsection insures that duly authorized public officials will have access to deepwater ports for inspection purposes. The subsection also requires that inspections be conducted with reasonable promptness and that the licensee be notified of inspection results.

SECTION 14. PUBLIC ACCESS TO INFORMATION

(*a*): *General.* Communications, documents, reports, or any other information transmitted between a Federal government official and any other person concerning a deepwater port must be made available to the public in accordance with this subsection. The public must have access to inspect such material and to reproduce it at reasonable cost. This subsection does not apply to information which is protected from disclosure by any other law.

(*b*): *Exception.* This subsection bars disclosure of information that relates to a trade secret as described by the laws governing the conduct of public officials and employees (18 U.S.C. 1905) except under procedures designed to maintain confidentiality when requested for official use by,

(1) Federal or adjacent coastal State government entities, or

(2) Committees of Congress having jurisdictional interests in the information requested.

In addition, material referred to in this subsection may be disclosed to any person in any judicial proceeding under a court order formulated to preserve confidentiality, or to the public in order to protect health and safety. In this latter case, the party to which the information pertains must be given an opportunity to comment in writing or to discuss the proposed disclosure in closed session within 15 days of the request for information unless the resulting delay would be detrimental to public health and safety.

SECTION 15. REMEDIES

(*a*): *Criminal Violations.* This subsection imposes a fine or imprisonment, or both, upon any person convicted of willfully violating any provision of the Act or any rule, regulation or order issued under authority of the Act.

The penalty imposed under this subsection may not be more than $25,000 for each day of the violation, or imprisonment of not to exceed 1 year, or both.

(*b*): *Civil Penalties.* (1). This paragraph establishes a civil penalty not to exceed $25,000 for each day of violation of any provision of the Act. Persons liable to pay such a penalty to the United States must be found in violation of a provision rule, regulation, order or license condition established by or in accordance with the Act. The Secretary's finding must be made in accordance with 5 U.S.C. 554.

Procedures which the Secretary must follow in assessing a civil penalty in accordance with this subsection include consideration of the gravity of the violation, the degree of culpability and the history of any previous offenses of the person found in violation of the Act.

(2). This paragraph establishes procedures for obtaining judicial review in the appropriate court of appeals of any civil penalty imposed by the Secretary under paragraph (1). Procedures established by this paragraph must be carried out in accordance with 28 U.S.C. 2112 and 5 U.S.C 706(2)(c).

(3). This paragraph authorizes the Attorney General to recover any penalty assessed and unpaid after it has become a final and unappealable order, or after final judgment has been entered in favor of the Secretary.

(*c*): *Specific Relief.* This subsection authorizes the Secretary or the Attorney General to bring action for equitable relief to redress a violation of the Act. Such action must be brought in an appropriate district court of the United States. Under this subsection jurisdiction of the district courts of the United States is described to include grant of appropriate or necessary relief, including mandatory or prohibitive injunctive relief, interim equitable relief, compensatory damages and punitive damages.

SECTION 16. CITIZEN CIVIL ACTION

(*a*): *Action Authorized.* Except as provided in subsection (b), a person may obtain injunctive relief on his own behalf against any person including the United States or other government instrumentality (to the extent permitted by the 11th amendment of the Constitution) alleged to be in violation of the Act. A person may also bring an action against the Secretary for failure to perform any non-discretionary action or duty required under the Act. Action

against the Secretary may be brought either in the district court for the District of Columbia or the district of the appropriate adjacent coastal state. Grant of jurisdiction to the district courts over suits brought under this section is made without regard to the amount in controversy or the citizenship of the parties involved.

(*b*): *Action Barred.* This subsection prevents a person from bringing an action under subsection (a) of this section until 60 days after he has notified the Secretary or the potential defendant of the alleged violation. A person is also barred from bringing an action under this section if the Secretary or the Attorney General is actively and diligently prosecuting a civil action relating to the alleged violation. A person may, however, intervene in such an action as a matter of right.

With respect to potential civil actions against the Secretary a potential plaintiff must first notify the Secretary of his intent and wait 60 days before commencing a civil action as authorized under subsection (a)(2) of this section.

(*c*): *Government Intervention.* This subsection enables the Secretary or the Attorney General, if not a party, to intervene as a matter of right in any civil action brought in accordance with subsection (a).

(*d*): *Costs.* Under this subsection, the court, in issuing a final order in any action brought under subsection (a), is authorized to award costs of litigation (including reasonable attorneys' fees) to any party as the court deems appropriate.

(*e*): *Other Actions.* This subsection states that nothing in this section may be interpreted to restrict the right of a person or class of persons to seek enforcement or relief under any statute or common law.

SECTION 17. JUDICIAL REVIEW

This section affords any person who suffers a legal wrong or who is adversely affected or aggrieved by the Secretary's decision to issue, transfer, modify, renew, suspend or revoke a license to seek judicial review of the decision involved. Judicial review sought under this section must be brought in the United States Court of Appeals for the circuit within which the adjacent coastal State nearest to the deepwater port involved is located, and such review must be requested within 60 days of the Secretary's decision.

SECTION 18. LIABILITY

The provisions of this section pertain to discharges of oil or natural gas from deepwater ports or from vessels located in the safety zone around a deepwater port. It establishes procedures for clean-up and the principles and extent of the liability of licensees and of owners and operators of vessels utilizing deepwater ports. A Deepwater Port Liability Fund is created to compensate for damages in excess of those compensated by a licensee or vessel owner and operator. The provision is patterned in many respects after Sec. 311 of the Federal Water Pollution Control Act which establishes reporting and clean-up procedures for discharges into, and standards of liability for vessels operating in navigable waters, and Sec. 204(c)(4) of the Trans-Alaskan Pipeline Authorization Act which created a Liability Fund to cover damages caused during marine transportation of oil from the Trans-Alaskan Pipeline.

(*a*): *Prohibition*. (1). This paragraph prohibits the discharge of oil or natural gas into the marine environment from a deepwater port or from a vessel located within the safety zone around a deepwater port.

(2). This paragraph establishes a civil penalty of not greater than $10,000 for each violation of paragraph (1). Each violation is a separate offense and a penalty may not be assessed without proper notification of the alleged offender, who must also be given opportunity of a hearing.

The owner or operator of a vessel found in violation of paragraph (1) may, at the request of the Secretary, be denied clearance under Sec. 4197 Rev'd Stat. 46 U.S.C. 91 by the Secretary of the Treasury. Or, he may obtain clearance by filing a bond or some other surety satisfactory to the Secretary.

(*b*): *Reporting*. This subsection requires a person in charge of a vessel or a deepwater port to immediately notify the Secretary of a discharge of oil or natural gas. Any person who fails to comply with this subsection is subject to a fine of not more than $10,000, imprisonment for not more than 1 year, or both.

Notification or information obtained through notification pursuant to this subsection is admissible to a court only in the case of prosecution for perjury or for giving false statements.

(*c*): *Clean-Up*. (1). This paragraph establishes the procedures for removing oil or natural gas discharged from a deepwater port or from a vessel in the safety zone around a deepwater port. The Secretary is directed to clean up, or to arrange for cleanup, discharges of oil or natural gas covered by this section, unless he determines that it will be properly done by a licensee, or by the owner or operator of a vessel involved.

(2). This paragraph requires the Secretary to coordinate the removal of oil and natural gas discharges with the National Contingency Plan for removing oil and hazardous substances.

Creation of the National Contingency Plan was mandated by Section 311(c)(2) of the Federal Water Pollution Control Act as amended. As provided by that Act, the National Contingency Plan enables the mobilization of Federal, State and local personnel to accomplish "efficient, coordinated, and effective action to minimize damage from oil discharges, including containment, dispersal, and removal of oil." The plan details procedures, techniques, and equipment for oil pollution control and establishes emergency task forces of trained personnel at every major port. The Committees anticipate that plans to deal with discharges of oil or natural gas from each deepwater port licensed under this Act will be incorporated, wherever possible, in the National Contingency Plan.

(3). This paragraph enables the Secretary to use the Deepwater Port Liability Fund established by section 18(f) of the bill, to cover the costs of removing oil or gas discharges. The Secretary may borrow from the U.S. Treasury for this purpose if the Fund is unable to satisfy the outstanding claims. The Secretary is expected to reimburse State and local government entities for clean-up costs they may incur in accordance with this section. Clean-up costs are the most easily identified damages which result from discharges of polluting substances, while damages to resource values are less easily quantified and may go unperceived for some time following a polluting event.

The Committees, therefore, believe that clean-up costs should be reimbursed as quickly as possible rather than be delayed pending the adjudication of other damage claims.

(*d*): *Vessel Owner or Operator*. This subsection makes the owner and operator of a vessel (located in the safety zone around a deepwater port) which discharges oil or natural gas into the marine environment jointly and severally liable for damages caused by such discharge. Liability under this subsection is imposed without regard to fault for up to $20,000,000 or $150/gross ton of the vessel, whichever is lesser, for each discharge.

The vessel owner and operator are exempted from liability under this subsection if (as provided in subsection (g)) it can be shown that the discharge in question was caused solely by an act of war or by negligence on the part of the United States in establishing and maintaining aids to navigation. This subsection also makes the owner and operator of a vessel liable for the full amount of all cleanup costs and damages if it can be shown that the discharge was a result of gross negligence or willful misconduct within the privity and knowledge of such owner or operator.

(*e*): *Licensee*. This subsection makes the licensee of a deepwater port liable without regard to fault for clean-up and any other damages incurred as the result of a discharge of oil or natural gas from a deepwater port or from a vessel moored at a deepwater port. Liability of the licensee under this subsection is limited to $100,000,000 per incident. The licensee is not liable if the discharge was caused solely by an act of war or by the negligence of the United States in maintaining and establishing aids to navigation. The licensee is liable without limit for the full amount of clean-up costs and damages if the discharge was the result of willful misconduct or gross negligence within his privity and knowledge.

(*f*): *Deepwater Port Liability Fund*. (1). This paragraph establishes a Deepwater Port Liability Fund to be administered by the Secretary. The Fund will be a nonprofit corporate entity which may sue or be sued in its own name.

(2). The Fund is liable, without regard to fault, for all clean-up costs and damages in excess of those compensated for either by the vessel owner and operator or the licensee in accordance with their responsibilities as provided in subsections (d) and (e).

(3). Two cents is to be collected for each barrel of oil and for each metric volume equivalent thereof of liquefied natural gas, which flows through a deepwater port. These collections are to be made by the licensee in accordance with regulations prescribed by the Secretary. Moneys collected in accordance with this paragraph are to be deposited in the Fund until $100,000,000 has been accumulated. Collections then cease as long as the Fund remains at $100,000,000 and there are no adjudicated claims against it which remain to be satisfied.

Bunker or fuel oil for use of the tankers utilizing the port and oil which was transported through the Trans-Alaskan Pipeline are exempted from the throughput charge collected under this subsection. When oil begins to flow through the Trans-Alaskan pipeline it will be subject to a 5¢ per barrel fee at the point where it is loaded on a vessel for transport to the West Coast. This fee is paid to a liability fund which will cover damages resulting from any discharge of Trans-

Alaskan pipeline oil during the marine transportation leg. For this reason, the Committees felt that Trans-Alaskan oil should be exempted from the 2¢ per barrel charge levied against oil flowing through a deepwater port in order to avoid any disincentive to use deepwater ports which might result from the additional charge. However, damages which may occur as a result of a discharge of Trans-Alaskan pipeline oil or natural gas from a deepwater port or from a vessel in a safety zone are to be compensated in accordance with this Act rather than any other law.

(*g*): *Defenses.* Under this subsection, a licensee or the owner and operator of a vessel is not liable for damage if it can be shown that the discharge in question was caused solely by an act of war or by negligence on the part of the Federal Government in establishing and maintaining aids to navigation. However, the Fund would be liable for damages resulting from such discharge. The licensee, owner/operator of a vessel, and the Fund are exempted from liability for damages claimed by any party if such damages were caused *solely* by the negligence of such party.

(*h*): *Subrogation and Other Rights.* (1). This paragraph provides that in any case where liability is imposed pursuant to subsection (d), and the discharge was caused by the negligence of the licensee, the vessel owner and operator held liable acquires by subrogation the rights of any person entitled to recovery against that licensee.

(2). This paragraph provides that in any case where liability is imposed pursuant to subsection (e), and the discharge was caused by the vessel owner and operator, the licensee acquires by subrogation the rights of any person entitled to recovery against such owner and operator.

(3). This paragraph provides that in paying compensation pursuant to subsection (f)(2), the Fund acquires by subrogation all rights of the claimant to recover for damages from any other person.

(4). This paragraph guarantees the rights of recovery which the licensee, the owner or operator of a vessel, and the Fund have against any third party whose act may in any way have caused or contributed to a discharge of oil or natural gas.

(5). This paragraph enables a licensee or an owner or operator of a vessel to recover from the Fund for clean-up costs reasonably incurred in accordance with subsection (c)(1), if he can show that the discharge was caused solely by an act of war, or by negligence on the part of the Federal Government in establishing and maintaining aids to navigation.

(*i*): *Class and Trustee Actions.* (1). The Secretary is authorized to act on behalf of any group of damaged citizens that he determines would be better represented as a class in suing for compensation under this section, and to distribute funds recovered to members of the group.

(2). The Secretary is authorized to recover for damages to public resources and to utilize sums recovered in the restoration of such resources through either Federal or State government efforts.

(*j*): *Award Process.* (1). The Secretary may establish by regulation procedures for filing and paying clean-up costs and damages in accordance with this section.

(2). The time limit for filing for damages resulting from a discharge is set at 3 years after such discharge.

(3). Appeals from any final determination made by the Secretary in accordance with this section must be filed within 30 days thereafter. Such appeals must be filed in the United States Court of Appeals of the circuit within which the nearest adjacent coastal State is located.

(*k*): *Preemption.* As provided in this subsection, all Federal and State laws which might otherwise be applicable to liability for damages resulting from a discharge of oil or natural gas from a deepwater port or from a vessel in a safety zone are preempted.

(*l*): *Financial Responsibility.* This subsection directs the Secretary to require any licensee, or any owner or operator of a vessel using any deepwater port to carry insurance or give evidence of other financial responsibility in an amount sufficient to provide for liabilities imposed by this section.

(*m*): *Definitions.* Terms used in this section are defined as follows:

(1) "clean-up costs" means all actual costs incurred in removing or attempting to remove oil or natural gas discharged into the marine environment in violation of this section. It includes the costs of any other means or measures utilized to reduce or mitigate damages from such discharges. It refers to costs incurred by the Federal, State or local government, foreign nations, or the contractors or subcontractors of such governments or nations.

(2) "damages" are defined as excluding "clean-up costs" but including damage to any person, real or personal property, the natural resources of the marine environment or the coastal environment of any nation. It includes damages claimed without regard to ownership of any affected lands, structures, fish, wildlife, biotic or natural resources.

(3) "discharge" is defined to include any spilling, leaking, pumping, pouring, emitting, emptying or dumping into the marine environment of such quantities of oil or natural gas determined to be harmful by the Administrator of the Environmental Protection Agency. The Committees expect the Administrator to define harmful quantities of oil as defined in regulations issued under section 311 of the Federal Water Pollution Control Act.

(4) "owner or operator" means any person owning, operating or chartering by demise, a vessel.

(*n*): *Oil Spill Liability Study.* Paragraph (1) of this subsection directs the Attorney General to conduct a study of methods and procedures for implementing a uniform liability law concerning ocean-related sources of oil pollution. The study is to be carried out in cooperation with the Secretary, the Secretary of State, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, and the Council on Environmental Quality. In addition, participation by the Administrative Conference of the United States, a Federal Government coordinating body established by the Administrative Procedures Act (80 Stat. 573) will assure maximum coordination with those agencies that administer laws pertaining to liability for vessels, Outer Continental Shelf resource exploitation, and deepwater

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ports, during the study effort. As provided in the Administrative Procedures Act, the Administrative Conference of the United States was established in 1966 to:

> . . . provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

The Attorney General must report the results of the study together with alternative proposals for a uniform liability system to the Congress within 6 months after the date of enactment of the Act.

The Committees expect the Attorney General's report to consist of a comprehensive evaluation of the existing domestic laws and international laws, agreements or treaties pertaining to liability. In addition, the Committees expect the Attorney General to report on independent funds or other means of self-insurance established by industry to compensate for damages caused by ocean-related sources of oil pollution. The Attorney General should evaluate the effectiveness of such laws, treaties, agreements, and independent means of compensating for damages. He should also incorporate in his report alternative recommendations for legislation to provide a comprehensive system of liability which will assure the most expeditious and complete compensation for damages together with a comparative evaluation of the cost of implementing such a system. The Attorney General should also address the means of providing maximum incentive to protect against discharges of oil or natural gas into the marine environment without imposing unreasonable financial burdens on persons involved in the activities associated with such discharges.

It is expected that during the next session of Congress, those Committees with appropriate jurisdiction will, through the hearing and investigation process, also examine existing systems of liability in order to determine the best means of providing comprehensive and equitable liability laws.

SECTION 19. RELATIONSHIP TO OTHER LAWS

(*a*): *General*. (1). The Constitution, laws, and treaties of the United States are applicable to a deepwater port licensed under this Act. The Constitution, laws, and treaties of the United States are also made applicable to activities connected, associated or potentially interfering with the use or operation of a deepwater port in the same manner as if the deepwater port were located in the navigable waters of the United States. Nothing in the Act may be construed to relieve, exempt or immunize any person from any requirements imposed by Federal law, regulation or treaty.

(2). This paragraph declares that the Act does not alter the responsibilities and authorities of any State or the United States within the territorial waters of the United States except as otherwise provided.

By establishing a single Federal licensing process for deepwater ports which applies also to the pipeline segment lying within U.S. territorial waters, the bill preempts some of the Federal licensing

authorities which are normally exercised with respect to structures and installations in the territorial seas. Furthermore, section 18 of the bill which pertains to liability, preempts other Federal or State law concerning liability which might otherwise apply to discharges from deepwater ports or from vessels in the safety zone of such facilities. However, the rights of the State and the Federal Government with respect to the territorial seas as established by the Submerged Lands Act are in no way affected by the provisions of the bill.

(*b*): *State Laws*. This subsection extends the laws of the nearest adjacent coastal State to the deepwater port, to the extent they are applicable and not inconsistent with the provisions of this legislation or any other Federal law.

For purposes of this subsection, the nearest adjacent coastal State is described as the State whose seaward boundaries would encompass the deepwater port if they were extended beyond the territorial sea.

The laws of the nearest adjacent coastal State, in effect on the date of enactment, or as adopted, amended or repealed after that date, are to be administered and enforced by appropriate Federal officers and courts. This provision is not intended to preempt enforcement of State laws by appropriate State officers and courts, but is merely intended to grant authority to Federal officers and courts to administer and enforce applicable law.

This subsection also prevents the Deepwater Port Act from relieving, exempting or immunizing any person from requirements imposed by State or local law or regulation. In addition, States are not precluded from imposing more stringent environmental or safety regulations.

The effect of this subsection is to establish a system of deepwater port regulation similar to that governing the operation of structures erected on the Outer Continental Shelf in accordance with the Outer Continental Shelf Lands Act.

(*c*): *Foreign Citizens and Vessels*. This subsection prevents a licensee from permitting a vessel registered in or flying the flag of a foreign nation, to call at or otherwise utilize a deepwater port except under specified conditions. This prohibition does not apply in a situation involving a force majeure or if the foreign state involved has specifically agreed to recognize the jurisdiction of the United States over the vessel and its personnel while the vessel is in the safety zone around a deepwater port. Such agreement must be in accordance with the provisions of this bill and the vessel owner or operator must have a designated agent in the United States for the service of process regarding a claim or legal proceeding against the vessel.

(*d*): *Customs Laws*. This subsection exempts deepwater ports licensed under the Act from the customs laws of the United States. However, any foreign materials to be used in the construction of a deepwater port are to be treated as though they were imported for consumption in the United States. Such materials are therefore subject to taxes and duties which are applicable by law in the customs territory of the United States.

(*e*): *Court Jurisdiction*. This subsection places original jurisdiction over cases and controversies arising out of or in connection with the construction or operation of a deepwater port in the United States district courts. Proceedings concerning any such case or controversy may be instituted in the judicial district in which any defendant

resides or may be found. Alternatively such proceedings may be brought in a judicial district in the adjacent coastal State nearest to the place where the cause of action arose.

(*f*): *Conforming Amendment.* This subsection amends section 4(a)(2) of the Outer Continental Shelf Lands Act to make State law in effect, or as adopted, amended or repealed, applicable to structures on the Outer Continental Shelf as authorized under the Outer Continental Shelf Lands Act.

The Outer Continental Shelf Lands Act, as passed in 1953, called for extending the laws of nearest coastal states in force at that time, over structures on the Outer Continental Shelf, to the extent that such laws were applicable and not inconsistent with Federal law. However, no provision was made in the Outer Continental Shelf Lands Act to apply State laws as adopted, amended or repealed, *after* the date of enactment of that Act. Thus it is State law as of 1953 which applies to activities on the Outer Continental Shelf.

The language in section 19(f) was recommended by the Justice Department to alleviate the situation where State laws which are no longer in force, are applied to activities conducted under the Outer Continental Shelf Lands Act. This subsection assures that only State law which is current and in force will be applied to deepwater ports.

SECTION 20. ANNUAL REPORT BY SECRETARY TO CONGRESS

This section requires the Secretary to report annually to the Congress concerning the administration of the Deepwater Port Act.

These reports must include a detailed description of the following: all revenues and expenditures; all completed, ongoing and contemplated deepwater port development activities; a summary of management, supervision and enforcement activities including any environmental damage, navigational or other accidents which have occurred, together with an estimate of the resultant damage and the corrective measures taken; a list of the infractions of this Act or other applicable laws which have occurred at deepwater ports and the disciplinary action taken in each instance; and any recommendations for legislation as may be deemed necessary to improve the management and safety of deepwater ports or further the purpose of this Act.

SECTION 21. PIPELINE SAFETY AND OPERATIONS

(*a*): This section requires the Secretary of Transportation and the Secretary of the Interior to 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.

The need for this provision was expressed in an interagency report on the legal issues relating to deepwater ports which was prepared for the use of the White House. According to that report the Department of Transportation has clear authority to regulate the safety of natural gas pipelines located on the Outer Continental Shelf pursuant to 49 U.S.C. Chapter 24. However, the Department of Transportation's authority to regulate pipelines carrying petroleum or other hazardous substances in interstate commerce (18 U.S.C. 831–835) applies neither to pipelines located on the United States Outer Continental Shelf or to storage facilities located on land.

The OCS Lands Act (43 U.S.C. 1334(c)), authorizes the Secretary of the Interior to license pipeline construction on the Outer Continental Shelf and, in consultation with the Interstate Commerce Commission and the Federal Power Commission, to assure that they are operated without discrimination against any potential shipper of oil, gas, or other mineral products gathered from the shelf. The OCS Act does not, however, provide the enforcement of safety requirements. According to the White House Legal Study Group it is, therefore, uncertain whether the Department of the Interior or the Department of Transportation is responsible for regulating the safety of pipelines on the Outer Continental Shelf. The Study Group recommended that deepwater port legislation clarify authority to regulate the safety of pipelines and storage facilities associated with deepwater ports both to assure that no regulatory vacuum exists and to avoid overlapping jurisdiction among Federal agencies.

(*b*): This subsection directs the Secretary of Transportation in cooperation with the Secretary of the Interior to examine the laws, regulations and methods of resolving jurisdictional conflicts as they relate to the safety of pipelines on the Outer Continental Shelf, and to report to Congress on the actions, including the amendment of existing or enactment of new laws, needed to improve the regulation of pipeline safety on the Outer Continental Shelf.

SECTION 22. NEGOTIATIONS WITH CANADA AND MEXICO

This section authorizes the President to enter into negotiations with Canada and Mexico concerning agreements or the conduct of investigations relating to deepwater port development.

SECTION 23. SEVERABILITY

This section makes the remainder of the Act unaffected by the invalidation of any of its provisions.

SECTION 24. AUTHORIZATION FOR APPROPRIATIONS

This section authorizes the appropriation of not to exceed $1,000,000 for each of three fiscal years following the date of enactment of the Act to be used for administration of its provisions.

VII. Cost

In accordance with subsection (a) of section 252 of the Legislative Reorganization Act of 1970, the Committees estimate that the cost of administering the Deepwater Port Act of 1974 will not exceed $1,000,000 for each of the three fiscal years following the date of enactment of the Act.

It should be noted that section 5(h) of the bill directs the Secretary to establish by regulation and collect from any applicant for a license, a nonrefundable application fee. In addition, this subsection requires a licensee to annually reimburse the United States and the appropriate adjacent coastal States for all reasonable administrative and other costs in excess of the application fee. This includes costs incurred in processing the application, and in monitoring the construction, operation, maintenance and termination of a deepwater or any of its components.

This subsection also enables the Secretary to determine and collect annually from the licensee fair market rental value for the area of the subsoil and seabed of the Outer Continental Shelf utilized by the deepwater port, including the pipeline right-of-way. An adjacent coastal State may in accordance with its laws and rights under the Submerged Lands Act, also charge a fee for lands within its jurisdiction which are utilized by the deepwater port.

Furthermore, section 19 of the bill which establishes a Deepwater Port Liability Fund provides for moneys in the fund to be accumulated by collection of a 2¢ per barrel fee on oil (or in the case of natural gas its metric volume equivalent in a liquefied state) flowing through a deepwater port.

Costs of administering the fund are paid from moneys in the fund. Thus, as a consequence of these provisions, administering the Deepwater Port Liability Fund should result in no additional cost to the U.S. Government.

VIII. Tabulation of Votes Cast in Committee

Pursuant to Section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following is a tabulation of votes of the Committee during consideration of the Deepwater Port Act of 1974.

The Committee on Commerce voted unaminously to report favorably the Deepwater Port Act of 1974 and by voice vote adopted the amendment described earlier in the report.

The Committee on Interior and Insular Affairs ordered the Deepwater Port Act of 1974 favorably reported to the Senate with three amendments by unanimous voice vote taken in open public session.

During the consideration of this bill by the Committee on Public Works three rollcall votes were taken. Pursuant to Section 133 of the Legislative Reorganization Act of 1970 and the Rules of the Committee on Public Works, these votes are announced here.

Senator Bentsen moved that the Committee on Public Works recommend against the adoption of the amendment proposed by the Committee on Commerce relative to ownership of deepwater ports by oil or natural gas companies. The motion carried, 9-3 with Senators Baker, Bentsen, Burdick, Domenici, Gravel, McClure, Montoya, Randolph, and Stafford voting in the affirmative and Senators Biden, Clark, and Muskie voting in the negative.

Senator Bentsen also moved that the Committee on Public Works recommend against the adoption of the amendments proposed by the Committee on Interior and Insular Affairs, which would vest deepwater port construction licensing authority in the Secretary of the Interior. The motion carried, 11-1, with Senators Baker, Bentsen, Biden, Burdick, Clark, Domenici, Gravel, Montoya, Muskie, Randolph, and Stafford voting in the affirmative and Senator McClure voting in the negative.

The bill was ordered reported by the Committee on Public Works on the motion of Senator Bentsen, 12–0, with Senators Baker, Bentsen, Biden, Burdick, Clark, Domenici, Gravel, McClure, Montoya, Muskie, Randolph, and Stafford voting in the affirmative.

IX. Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, S. 3717, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Outer Continental Shelf Lands Act (67 Stat. 462)

Sec. 4. Laws Applicable to Outer Continental Shelf

(a)(1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the Outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the Outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however*, That mineral leases on the Outer Continental Shelf shall be maintained or issued only under the provisions of this Act.

(2) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State **[**as of the effective date of this Act**]**, *now in effect or hereafter adopted, amended, or repealed,* are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the Outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the Outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the Outer Continental Shelf.

X. Executive Communications

The reports of and communications from Federal agencies relevant to the Deepwater Port Act of 1974, are set forth below in reverse chronological order:

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., September 17, 1974.

Hon. Henry M. Jackson,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: With respect to deepwater ports legislation pending before the Senate, it is our position that Federal responsibilities relating to the construction of such ports should be carried out by the Department of the Interior and that the operating aspects of such ports should be the responsibility of the Department of Transportation.

This allocation of responsibility is appropriate for several reasons. Under existing law, the Department of the Interior has extensive responsibilities relating to offshore energy resources and structures as well as other resources related to the advisability of constructing deepwater ports. Interior's administration of the Outer Continental Shelf Lands Act and other programs has resulted in development within Interior of the requisite marine geology, biology and land management expertise to carrying out the primary role for decisions concerning construction of deepwater ports. This expertise will be a critical part of the preparation of the environmental impact analysis which is a major part of Federal approval or disapproval of deepwater ports applications. On the other hand, the Department of Transportation's current responsibilities equip it to deal with operational aspects of such ports, including safety, navigational and environmental regulations. Under arrangements making Interior responsible for construction matters and Transportation responsible for operating matters, the agency having primary responsibility would nevertheless coordinate its actions fully with other agencies. Thus, for example, in reviewing deepwater port construction applications, Interior would consult the Department of Transportation, particularly the Coast Guard and Office of Pipeline Safety, as well as other agencies.

When the House was working on its deepwater ports bill, the allocation of Federal agency responsibility was a major issue. It was resolved only with great difficulty in accordance with the views we have outlined above. Concurrence of the Senate in this resolution would greatly facilitate passage of deepwater ports legislation. For this reason and because we believe it is appropriate on the merits, we urge your strongest efforts to see that when the Senate passes the bill, it allocates Federal agency responsibility in accordance with the Administration position as we have outlined it.

Sincerely yours,

CLAUDE S. BRINEGAR,
Secretary of Transportation.
ROGERS C. B. MORTON,
Secretary of the Interior.

This letter was sent to Senator Magnuson and Senator Randolph also.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., August 22, 1974.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Since the Senate is expected to vote very soon on a bill authorizing the construction of deepwater ports, I want to emphasize again the importance of enacting deepwater ports legislation in the 93d Congress. With the experiences of serious fuel shortages still very fresh in our memories, I need not dwell on the necessity of continuing to focus on solutions to our energy problems. Deepwater ports will provide a vital link in our energy transportation system. The trans-Alaska pipeline will be on stream by 1977, and at least for the next few years the country's dependence on imported oil will increase. Deepwater ports will provide the safest, most efficient and most economical method for transporting oil from these sources to the lower 48. In early June the House passed a deepwater ports bill, H.R. 10701. I urge the Senate to continue to treat this legislation as one of its high priority responsibilities and to enact a bill similar to H.R. 10701 so that a final bill can be enacted by both Houses and signed into law this session.

On June 24 we sent the Special Subcommittee on Deepwater Ports a letter expressing our views on a draft of the bill (copy enclosed). We reaffirm our position, and we continue to support the amendments we recommended in that letter. The following is an explanation of three amendments in particular that we consider crucial to a satisfactory deepwater ports bill.

FEDERAL AGENCY COORDINATION

The bill would authorize the Secretary of Transportation to issue licenses for the construction and operation of deepwater ports. However, the Department of the Interior, as well as the Department of Transportation, will be deeply involved with deepwater port projects; and the two agencies' involvement can be separated into two distinct stages of each project, construction and operation. Accordingly, we recommend that the authorization of deepwater ports be divided into two parts so that the Secretary of the Interior would issue construction licenses and the Secretary of Transportation would issue operation licenses.

The Department of the Interior will be chiefly responsible for the siting and construction of deepwater ports. It has over 20 years of experience managing development on the Outer Continental Shelf under the Outer Continental Shelf Lands Act. Its experience in studying marine, geological and geophysical problems related to the location and placement of drilling platforms and pipelines and in studying the secondary growth impacts on adjacent coastal areas qualifies the Department as the most appropriate agency to evaluate the environmental effects of a proposed deepwater port. Moreover, the Department of the Interior is deeply involved in planning for the production, distribution and transportation of fuels. In helping to develop the nation's energy policies, the Department studies and provides information on the nation's mineral reserves, its production and refinery capacities, its regional fuel demands and prospects for new discoveries both domestic and foreign. Planning the location of deepwater ports is an integral part of this Department's energy responsibilities. For these reasons we urge that the Department of the Interior be authorized to issue licenses to construct deepwater ports.

We urge that the Department of Transportation be directed to coordinate the overseeing of deepwater ports once operations have begun since the Coast Guard will have most of the Federal responsibilities during that stage of the projects. It will be responsible for regulating navigation, enforcing safety requirements and detecting and preventing pollution. More specifically, we recommend that the Secretary of Transportation be given the responsibility for issuing operation licenses after completion of construction and for controlling all activities conducted under the licenses.

H.R. 10701, as passed by the House of Representatives, would divide the licensing responsibilities between the Department of the

Interior and the Department of Transportation and would direct them to coordinate the involvement of all other Federal agencies. We fully endorse the delegation of responsibilities in that bill. Naturally, if the Senate passes a bill with a similar delegation of authority, the demands on a conference committee would be significantly reduced and the likelihood of enacting a bill this year would be increased.

STATE APPROVAL OF LICENSES TO CONSTRUCT DEEPWATER PORTS

Section 3(1) of the bill would give a State the opportunity to prevent the construction of a deepwater port if any one of the following conditions applied: first, if the facilities would be connected to the State, second, if the State is located within 15 miles of the proposed deepwater port, or third, if there is a

> "substantial risk of serious damage, because of such factors as prevailing winds and currents as determined, in his discretion, by the Administrator of the National Oceanic and Atmospheric Administration pursuant to section 9(a)(2) of this Act, to its coastal environment as a result of oil spill incidents that originate from a proposed deepwater port or from a vessel located within a safety zone around such proposed deepwater port".

We recommend that the third condition, quoted above, be deleted along with subsection 9(a)(2), an accompanying provision.

The requirement that the Administrator of NOAA make a determination of the risk of serious damage from an oil spill due to winds or currents does not take into consideration the most important factor, the probability of an oil spill. It is the intent of the Administration that the construction or operation of any deepwater port authorized by this legislation would be subject to strict regulations that would reduce the probability of accidents to a minimum. Even if the legislation directed the Administrator of NOAA to consider "probability" in making determinations of risk, it would not serve a worthwhile purpose. The Administrator would not be in a position to evaluate "probability" since he would not participate significantly in approving the plans and designs or overseeing the operating procedures of a deepwater port. Assigning him this review and oversight responsibility would involve the agency in an area where its expertise is limited and would result in a costly and time-consuming duplication of work. During the normal review of any application, we would seek the views of NOAA and other Federal and State agencies as required by the National Environmental Policy Act of 1969. If the probability of a spill and the risks of damage were too great and if they could not be avoided by stipulations or regulations, the application would be denied.

The first two conditions in section 3(1) are intended to allow States an opportunity to prevent construction of a proposed deepwater port if they are apt to experience significant shoreside impact from a deepwater port operating off their coasts. The third condition, however, would extend this opportunity to States that are some distance from the proposed facility and that may be affected by a possible oil spill. The provision is so broad that if it is not deleted, it is questionable whether any deepwater port will be constructed.

DREDGING OF HARBORS INSTEAD OF CONSTRUCTING DEEPWATER PORTS

Subsection 4(d) would direct the Secretary, after an application for a deepwater port is filed, to compare the economic, social and environmental effects of the construction, expansion, deepening and operation of a harbor if a State has existing plans for a deep draft channel and harbor or meets other requirements.

We strongly recommend that this subsection be deleted. All available information supports the conclusion that the construction of deepwater ports is environmentally and economically more satisfactory than the construction and maintenance of a deep draft channel and harbor. Deepwater ports avoid the risks of oil spills due to heavy tanker traffic within conventional ports, they avoid the environmental problems associated with dredging and the disposal of sludge, and they are less expensive to construct and maintain.

The National Environmental Policy Act of 1969 will require that alternatives to a deepwater port be evaluated before a license is issued, in any event. Subsection 4(d) of the bill, on the other hand, would require that special consideration be given to developing deep draft channels and harbors, a less preferable alternative, and it would encourage port authorities and dredging companies to prepare plans and exert pressure for constructing them. Moreover, the mandatory review of these plans would add delays and expenses to the review of applications to construct and operate deepwater ports.

Again, I emphasize the importance of deepwater port legislation for improving the distribution of energy resources and minimizing the impacts of any fuel shortages.

The Office of Management and Budget has advised that there is no objection to the presentation of this letter from the standpoint of the Administration's program.

Sincerely yours,

(Signed) ROG. MORTON,
Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 24, 1974.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your letter of June 7, 1974 requesting the views of this Department on a draft bill, the "Deepwater Port Act of 1974." We will direct our comments to the most recent draft of the bill dated June 20, 1974.

We recommend enactment of the draft bill if it is amended as suggested below and in the attachment.

The bill would authorize the Secretary of Transportation to issue licenses for the construction and operation of deepwater ports. It requires each applicant for a license to submit a plan showing his financial and technical ability to construct and operate a deepwater port as well as his ability to meet environmental and safety requirements. Licenses would be issued only after preparation of environ-

mental impact statements, holding of public hearings, consultation with other Federal agencies, and approval of adjacent coastal States.

Last year the Administration proposed a bill to authorize the construction of deepwater ports and we continue to support enactment of legislation that would accomplish this purpose. As you know, deepwater ports would improve our ability to meet the growing demand for petroleum, they would minimize the risk of oil spills and they would provide a method for transfering oil from tankers to onshore facilities at the most economic rate possible. The following are explanations of the most serious problems we have with the draft bill.

FEDERAL AGENCY COORDINATION

The bill would direct the Secretary of Transportation to issue all licenses for the construction and operation of deepwater ports. We recommend that the Department of the Interior be responsible for the issuance of licenses and the overseeing of activities prior to operation of a deepwater port and that the Department of Transportation be responsible for the overseeing of activities once operation has begun. H.R. 10701 as it was passed by the House of Representatives on June 6, 1974 would coordinate Federal agency responsibilities as we recommend.

The evaluation of land and marine impacts of deepwater ports is similar to the evaluation the Department of the Interior conducts under the Outer Continental Shelf Lands Act. The Department has over 20 years of experience studying marine, geological and geophysical problems related to the location and placement of drilling platforms and pipelines on the Outer Continental Shelf. In addition, the Department is experienced in studying the impacts of Outer Continental Shelf development on adjacent lands within the territorial United States. The Department of Transportation, on the other hand, is best suited to oversee activities related to the operation of deepwater ports because of its administrative jurisdiction over the Coast Guard and Office of Pipeline Safety.

Since Federal agency coordination is a fundamental part of the bill, this amendment would simplify the task of a conference committee should the designation of a conference committee be necessary. We emphasize that the amendment would not pre-empt the responsibilities or authorities of any Federal agency. Rather, it would insure that the administration of the Act is as efficient as possible. Other Federal agencies would still review applications and oversee activities of licensees as they are authorized or directed by law.

ELIGIBILITY FOR A LICENSE

The second sentence in section 4(f) provides that any business entity which is engaged in the development, production, refining or marketing of oil or natural gas shall not be eligible for a license.

The sentence would prohibit all oil and gas producers, their affiliates and apparently all independent oil and pipeline companies from applying for a license. It would therefore exclude as licensees the segment

of the business community that is most qualified to construct and operate deepwater ports. As a result, the provision would probably restrict the issuance of licenses to State agencies. However, because the State agencies would have to rely on contracts with those qualified to construct and operate deepwater ports, it is doubtful that the provision would accomplish its apparent purpose.

Finally, the provision would address the issue of competition in the petroleum industry only as it might apply to deepwater ports. We urge that the provision be deleted and that oil and pipeline companies be eligible for a license subject, of course, to the antitrust laws and the common carrier provisions in the bill.

STATE APPROVAL OF LICENSES

Section 9(a) would give adjacent coastal States 30 days after the last public hearing on a proposed license to approve or disapprove of the application. Failure to notify the Secretary within 30 days would be conclusively presumed to be approval. The section would also require that if an "adjacent coastal State" notifies the Secretary within 190 days after receiving an application that the application is inconsistent with a State environmental program, the Secretary shall impose conditions in the license so that it is consistent with the State program. An "adjacent coastal State" is defined in three parts as a State that is directly connected to a deepwater port, a State that would be located within 15 miles of a deepwater port, or a State that would be subjected to a substantial risk of serious damage from an oil spill in the opinion of the National Oceanic and Atmospheric Administration.

We agree that an "adjacent coastal State", which we understand to be a directly affected State, should be given an opportunity to prevent construction of a deepwater port. We urge, however, that the bill more clearly define "adjacent coastal States". For this reason, we recommend deletion of the third part of the definition, subsection 3(1)(C). Delegation by Congress of any Federal agency to designate "adjacent coastal States" would almost assure a veto of each proposed deepwater port. The responsible Federal agency would be pressured to designate all States which may be remotely affected by an oil spill as "adjacent coastal States" in order to avoid criticism in the event of a spill. To avoid the same criticism, officials from States which would not directly benefit from a deepwater port and which were designated as "adjacent coastal States" would be pressured into disapproving the license application.

We also recommend that the bill specify a deadline before which an "adjacent coastal State" must express disapproval and that any disapproval be based on a conflict with a State environmental program. Accordingly, we recommend that subsection 9(a)(1) and (2) be revised as set forth in the attachment. Persons would then have greater assurance that their applications would be reviewed promptly and that any disapproval would be based on sound reasons.

LIABILITY OF LICENSEE

Section 17 provides that licensees would be liable without fault for all damages up to $100 million for any one incident. Liability would not extend to damages caused by vessels. Apparently, the $100 million liability would be in addition to liability for cleanup costs.

We do not oppose legislation defining the liability of licensees of deepwater ports. However, we question whether liability for operation of deepwater ports, for operation of oil tankers and for development of oil on the Outer Continental Shelf should be addressed on an *ad hoc* basis. There is already special liability for oil shipped by tanker from the Port of Valdez in Alaska, as required by the trans-Alaska pipeline legislation, the Act of November 16, 1973, P.L. 93-153, 87 Stat. 576. In addition, Congress is considering special liability provisions in amendments to the Outer Continental Shelf Lands Act. Without uniform liability for oil development and transportation facilities on the ocean, damaged parties may incur an unreasonable burden in attempting to identify the source of oil spills so that they may determine whether they have been provided for under special liability laws.

We therefore recommend that section 17 be deleted. The Administration has a study well underway to review the need for comprehensive liability legislation related to oil spills.

We urge the Subcommittee to report promptly a bill with clear and efficient procedures for reviewing applications and with provisions that will encourage qualified applicants and insure effective environmental safeguards.

The Office of Management and Budget has advised that there is no objection to the presentation of this letter from the standpoint of the Administration's program.

Sincerely yours,

JOHN C. WHITAKER,
Acting Secretary of the Interior.

ATTACHMENT

REVISION OF SUBSECTION 9(A)(1) AND (2)

An application for a license shall include a certification that in the applicant's best judgment the issuance of the license would be consistent with existing environmental programs or legislative requirements of any adjacent coastal State. The adjacent coastal State shall notify the Secretary whether the applicant's certification complies with its environmental programs or legislative requirements. In case of noncompliance, the adjacent coastal State shall specify why the certification does not comply and how it may be amended so that it does comply, if compliance is possible. Failure to notify the Secretary within 90 days after receipt of the certification from the applicant shall be conclusively presumed to be compliance. The Secretary may not issue a license until the adjacent coastal State has notified him of compliance or until the State has failed to notify him within 90 days after receipt of the certification.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., August 2, 1974.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Transportation concerning Special Subcommittee Working Paper No. 2 on deepwater ports.

The Department of Transportation supports the efforts of the Special Subcommittee to draft a deepwater ports bill that will be acceptable to the Administration. We recognize the urgent need for deepwater ports legislation to meet the growing demands for petroleum and natural gas in this country; while also recognizing the need for adequate safeguards to protect the environment from the risks involved in the construction and operation of deepwater ports.

At your request, we have studied the Special Subcommittee's latest working paper and have enclosed herewith the Department of Transportation's technical comments on that draft.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

RODNEY E. EYSTER,
General Counsel.

Enclosure
Technical comments on:

SPECIAL SUBCOMMITTEE WORKING PAPER NO. 2 ON DEEPWATER PORTS DATED JULY 10, 1974

1. Sec. 3, page 4, item 2—Recommend retention of safety zone concept for proposed deepwater port as presently drafted. This type of concept is quite valuable for navigational safety purposes. Also "located within a safety zone" is an easier concept to regulate than the phrase "in the process of being moored at, moored at, or disembarking from the proposed deepwater port," the phrase used in item 2, which is subject to various interpretations.

2. Sec. 3, page 6, lines 1–7—Support concept of removing from the definition of "construction" those activities involved in site evaluation and drafting permit procedures for these activities.

3. Sec. 3, page 7, item 6—Recommend approval of staff recommendation for the reasons stated therein.

4. Sec. 3, page 8, line 2—Strike "or any State or group of States". Since "citizen of the United States" is defined in Section 3(4) to include "any State" and "any agent of a State or group of States" the present language is redundant and could be the subject of confusion if left standing.

5. Sec. 3, page 9, line 3—Strike "includes" and substitute the words "means an individual,". Makes it clear that an individual is a "person" under the Act and also conforms the language of this definition to that used in other definitions.

6. Sec. 3, page 9, line 12—Add a new subsection (18) defining vessel:

> (18) "vessel means every description of watercraft or other artificial contrivance used as a means of transportation on or through the water other than a public vessel.

7. Sec. 4, page 11, item 8—Support increased time limit as more consistent with the need for careful review and decisionmaking in this important area. For similar reasons we also support item 15 on page 21 and item 28 on page 31.

8. Sec. 4, page 11, line 14—Add, "Research," after the word "Protection" and strike the word "Marine" before "Sanctuaries" and add the words "of 1972" after the word "Act". This wording would correctly identify the Marine Protection, Research, and Sanctuaries Act of 1972.

9. Sec. 4, page 12, lines 16–18—Recommend striking entire subsection (8) and substituting the following language:

> (8) he has not been informed, within 45 days of the last public hearing on a proposed license for a designated application area, by the Federal Trade Commission or the Attorney General that issuance would adversely affect competition, restrain trade, further monopolization, or otherwise maintain a situation in contravention of the antitrust laws; and

This change would give the Secretary the benefit of the expertise of the Federal Trade Commission and the Attorney General in the antitrust area.

10. Sec. 4, page 12, line 20—Change "Section 9" to "Section 8" to conform to the numbering in the latest working paper.

11. Sec. 5, page 17, item 10—We support this amendment offered by Senators Johnston, Jackson, and Metcalf. The suggested language would avoid timing problems arising from the submission of incomplete applications. For the same reason, we also support items 11, 14, 18, and 26. However, for the reasons mentioned in our comment 7, we recommend increasing the time frame for the Secretary's action from 10 days to 21 days.

12. Sec. 5, page 20, lines 2–4—Recommend that an additional provision be drafted requiring that, once public notice of the application area has been published, any other person must file with the Secretary a notice of intent to file an application within 30 days of such public notice and then file the application within 60 days thereafter. This still allows additional applicants a full 90 days, but gives the Secretary advance notification of additional applications so that work on the environmental impact statements and notice of hearings required by the Act can proceed expeditiously.

13. Sec. 5, page 20, lines 1–10—Recommend redrafting to make it clear that additional applicants must have a completed application submitted to the Secretary within 90 days. As written, an applicant who submitted an incomplete application near the end of the time period could argue that the Secretary must await his completed application before continuing the hearing procedure. This would build additional delay into the process and shorten the already brief period for completing hearings.

14. Sec. 5, page 22, item 18—As mentioned in comment 15 we support this amendment to the extent it ties any time limits to the publication of the notice of application rather than the filing of the application. However, we strongly recommend redrafting this amendment as follows:

> Provided, however, that all public hearings shall be concluded within 120 days after the time for receipt of applications within an application area has expired pursuant to subsection 5(c) of this Act.

As presently drafted subsection 5(c) requires the Secretary to wait 90 days before closing an application area to further applications. Until the expiration of 90 days it would not be known whether or not more than one application would be under consideration. Item 18, as it is now drafted, would then require all hearings to be completed within a thirty day period. We feel that it would be virtually impossible to complete all the required hearing in all adjacent coastal States as well as the full adjudicatory hearing in the District of Columbia within this short time frame.

15. Sec. 5, page 23, lines 1–4—Strike the phrase beginning with the word "reimburse" in line 1 and ending with the word "application" in line 4 and substitute the following; "remit to the Secretary at the time the application is filed a nonrefundable application fee of $100,000. In addition, an applicant shall reimburse the Secretary for all administrative and other costs, including environmental evaluations, in excess of the application fee incurred in processing his application." Providing for an initial application fee would avoid possible time consuming and costly litigation over reimbursement of administrative and "other" costs that could be expected, especially from rejected applicants. Another, but less favorable, method of reducing possible litigation in this area would be to authorize the Secretary to set by regulation a standard application fee to cover the administrative costs of processing the application.

16. Sec. 5, page 23, line 4—Add the word "annual" between the words "by" and "payment". This would provide a time frame for the payment of these damages.

17. Sec. 5, page 23, item 21—We strongly support this amendment. It is felt that 30 days would not provide sufficient time after the conclusion of hearings to adequately prepare the record, forward recommendations to the Secretary, and make a meaningful review of what we anticipate to be a voluminous amount of important and technical material.

18. Sec. 6, page 26, line 18—Strike the words "and weather" and substitute "weather, and geological conditions". This would provide coverage for an additional potential danger to a deepwater port.

19. Sec. 7, page 29, item 24—We strongly support this amendment recommended by the Justice Department for the reasons contained therein.

20. Sec. 8, page 30, line 7—Before the word "Upon" place a "(1)" to conform to the number of this Section.

21. Sec. 10, page 32, line 5—Change "SEC. 10" to read "SEC. 9" to conform to present numbering in the proposed bill.

22. Sec. 9, page 32, item 31—We support this amendment recommended by the Justice Department for the reasons contained therein.

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23. Sec. 9, page 33, lines 7–15—Recommend specific language be included as part of this subsection to insure that a safety zone can be established during the construction of a deepwater port. In this respect, we refer you to Sec. 203(e) of H.R. 10701 as passed by the House.

24. Sec. 10, page 34, line 18—Add the phrase "construction and" before the word "operation" to ensure that the Secretary is authorized to immediately suspend construction in order to protect public health, safety, or the environment.

25. Sec. 10, page 35, line 7—Recommend adding a new subsection granting the Secretary, or his designee, the power to preserve and enforce orders during proceedings brought under this Section; to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths, and to examine witnesses. Without these powers, hearings held under this section would not comply with due process and a *de novo* hearing could be obtained in the District Courts. It is also recommended that the District Courts be given jurisdiction to enforce, through their contempt power, failures to comply with lawful orders or process of the Secretary. Similar provisions will be required for the hearings conducted pursuant to Section 5(f) and it might be best to draft an entirely new section that would be applicable in both hearings.

26. Sec. 11, page 35, line 18—Strike the phrase "and a written notice of inspection authority". As written this subsection would limit the existing authority granted to Coast Guard personnel by 14 USC 89: The recommended deletion would insure that upon presentation of identification Coast Guard personnel would be authorized to perform their duties in accordance with 14 USC 89.

27. Sec. 13, page 37, line 20—After the word "rule" add ", order," to provide remedies for violations of orders issued pursuant to Section 10(b) of this Act.

28. Sec. 13, subsection (b), pages 38–39—Recommend that strong consideration be given to utilizing civil penalty assessment procedures similar to those found in section 311(b)(6) of the Federal Water Pollution Control Act, allowing a trial *de novo* at the initial collection stage in the District Courts. However, if the present draft is retained, authority must be granted to the Secretary to issue lawful orders and process to carry out the provisions of subsection (b), as set forth in comment 25.

29. Sec. 13, page 38, line 5—After the word "regulation" add "or order issued" for the reason stated in recommendation 27.

30. Sec. 13, page 39, line 11—Before the word "found" add the phrase ", and only if," to clarify that the findings of the Secretary are to be reviewed for substantial evidence only.

31. Sec. 14, page 40, lines 14–17—Strike everything within the parenthesis as being redundant since it is included in the definition of "person". Retention of this parenthetical phrase could be the subject of confusion.

32. Sec. 14, page 41, line 13—Add "or" after the word "violator". This would clarify the relationship between subparagraphs (A) and (B).

33. Sec. 14, page 42, line 9—Add the phrase "including the United States" between "party" and "whenever" to make it clear, since "party" is not defined elsewhere in the act, that the United States could recover its litigation costs.

34. Sec. 16, page 43—We are concerned over the growing number of liability and special fund provisions in recent environmental legislation. The proliferation of these provisions leads to confusion within the administering agencies as well as by persons who sustain damages as a result of an oil spill. We, therefore, support present efforts to develop comprehensive oil spill liability legislation.

35. Sec. 17, page 47, item 45—We support this item for the reasons contained in the Justice Department's comment.

36. Sec. 17, page 48, line 3—We recommend that the method of extending the boundary be specified to avoid litigation on this point. Extension could be accomplished either by drawing a line perpendicular to the coast or by extending the existing boundary in the same direction. We have no preference for either method.

37. Sec. 17, page 48, line 8—Strongly recommend adding a new subsection (c) after line 8 to list specific maritime statutes that would apply to a deepwater port and its safety zone. This would insure that those statutes particularly relating to the regulation of port activities apply to the deepwater port. We suggest that language similar to that contained in Subsection 204(c) and 204(d) of H.R. 10701, as passed by the House, be used for this purpose.

38. Sec. 17, page 49, item 49—We support this amendment proposed by the Justice Department but note that the jurisdiction granted in the proposed subsection would have to be modified to exclude that jurisdiction granted elsewhere in the Act to the various Courts of Appeal.

39. Sec. 17, page 49, item 50—We also support this amendment proposed by the Justice Department for the reasons stated therein.

40. Sec.—Page 50, item 52—We do not support adoption of this proposed amendment since the Secretary currently has statutory authority to perform all the functions delineated for both oil and gas pipelines.

UNITED STATES DEPARTMENT OF JUSTICE,
Washington, D.C., June 26, 1974.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for comments on the proposed bill [Special Subcommittee Working Paper No. 3, June 18, 1974], "To regulate commerce, promote efficiency in transportation, and protect the environment, by establishing procedures for the location, construction, and operation of deepwater port facilities off the coast of the United States, and for other purposes."

This bill would establish for deepwater ports constructed in the adjacent seas a comprehensive legal system for activities on those structures. The bill authorizes the Department in which the Coast Guard is operating to license the construction and operation of deepwater ports

beyond our territorial sea on the continental shelf of the United States and generally extends the laws of the United States to those ports.

Section 19 of the bill also extends to the deepwater ports, as federal law, the civil and criminal laws of the adjacent state, where such laws are applicable and not inconsistent with the Act or with other existing or future federal laws and regulations. However, section 19 fails to provide a specific grant of jurisdiction to the federal courts to entertain actions based upon such laws, whether federal or assimilated state laws. The only specific grant of jurisdiction to the federal courts found in the bill relates to citizen actions under section 15. Although the bill provides for resort to the federal courts for "Judicial Review" under section 16 and "Remedies" under section 14, even those sections do not specifically grant the courts jurisdiction over those matters. Notably, a general grant of jurisdiction was specifically provided in similar legislation involving activities on structures erected on the seabed under the Outer Continental Shelf Lands Act, 43 U.S.C. 1333. We believe that such a grant of jurisdiction is necessary and desirable.

In extending under section 19(b), the civil and criminal law, as federal law, of the nearest adjacent state to activities on deepwater ports in the adjacent seas, the bill creates a regime for these structures similar to the regime created for structures employed in the exploration and exploitation of the natural resources of the outer continental shelf. (Outer Continental Shelf Lands Act, 43 U.S.C. 1332.) However, the formulation adopted in the bill does not entirely eliminate the possibility that a different system of law will apply to structures under the Act and the bill located in the same general area. Thus, while the bill makes present state law applicable as federal law, the Outer Continental Shelf Lands Act makes state law as of 1953 applicable. Notably, Congress extended state law as of 1953, rather than "present" state law, in the Outer Continental Shelf Lands Act only because it was uncertain whether an extension of "present" state law was constitutional. However, that uncertainty has been resolved by the Supreme Court when it upheld the Assimilative Crimes Act of 1948 (18 U.S.C. 13). *United States* v. *Sharpnack*, 355 U.S. 286. It would be desirable from an enforcement point of view that the same law apply to activities to structures located in the same general area whether erected pursuant to the Outer Continental Shelf Lands Act or the proposed deepwater port bill.

Section 17 establishes liability on the part of the licensee and its affiliates for damages in connection with or resulting from the discharge of oil or natural gas from a deepwater port licensed under the Act, specifically preserving the rights of the states to impose additional more stringent liability standards. As previously noted, section 19 extends state law, as federal law, to activities on the deepwater port. Thus, licensees of a deepwater port may be sued for a variety of causes under the bill arising from the construction and operation of the deepwater port. However, under the bill, states may be licensees. Unless a state waives its immunity under the 11th Amendment to the Constitution, it may not be sued in the federal courts for causes of action by citizens of another state or by citizens or subjects of any foreign state either under section 17 or pursuant to the general extension of state and federal law under section 19. Moreover, the state may not be sued on these causes of action even by its own citizens unless the state has

been deemed to waive its sovereign immunity. If this result is not intended, the bill should be amended to provide that a state, as a condition to receiving a license, waives immunity as to causes arising out of construction and operation of the deepwater port.

We have the following additional comments.

Section 4 prohibits any person from constructing or operating a deepwater port except in accordance with a license issued under the bill. A "deepwater port" is earlier defined to include either a fixed or floating structure which is affixed to the continental shelf. Assuming a structure must be affixed to the continental shelf to come within the purview of the bill, we note that although the jurisdiction proposed would be justified under articles proposed by the United States for consideration at the United Nations Law of the Sea Conference now under way, such jurisdiction is inconsistent with present rules of international law as understood and practiced by the United States.

As presently written, subsection 8(a) suggests that the licensee of a deepwater port shall be deemed a common carrier only for purposes of regulation by the Interstate Commerce Commission. Unless it is the intention of Congress to limit the responsibilities of the licensee as a common carrier only to that Act, we suggest that the words "as defined in the Interstate Commerce Act, as amended" be substituted for the words "for the purposes of regulation by the Interstate Commerce Commission" in lines 1 and 2, page 21.

Under section 9, the Governor or appropriate state official may, in effect, veto a deepwater port project for any reason. Thus, although subsection 9(a)(2) provides that no license shall be issued unless it is consistent with state land and water use programs, subsection 9(a)(1) apparently permits the Governor to disapprove without regard to consistency with state land and water use programs. If it is intended to limit the power of the adjacent coastal states, of which there may be more than one, to veto a proposed license on the ground of inconsistency with state land and water use programs, subsection 9(a)(1) should be amended to reflect that intention. This problem would be corrected by the amendment proposed by the Department of the Interior in its report.

Subsection 10(a) provides authority for the Secretary to prescribe rules and regulations with respect to the operation of any deepwater port while subsection 10(d) provides the Secretary with authority to establish a zone around a deepwater port to prevent anything from occurring within that zone which threatens the safe operation of the port. We note that the Secretary's authority in neither instance extends to the construction of a deepwater port. Unless Congress intends to limit the Secretary's authority in this respect, we suggest that subsections 10 (a) and (d) be amended to cover the construction of such a port.

Section 17 establishes a system of strict liability for pollution damage resulting from the operation of a deepwater port, except where the damage has resulted from a discharge of oil or gas from a vessel. Although compensation for such damage is limited to $100,000,000, the liability of the licensee is limited to $14,000,000 with a Deepwater Port Oil Spill Liability Fund to be liable for the remainder. The section provides that all damaged parties may recover "without regard to ownership" for damage to lands, structures, fish, wildlife or biotic or other natural resources "relied on by any damaged party for subsistence or economic purposes."

The question of what constitutes an injury is distinct from the question of whether or under what circumstances a person may recover for such an injury. Although it is clear from section 17 that it is the intention of Congress to redefine the circumstances under which a person may recover for any injury, i.e., eliminating the necessity of establishing negligence, it is not clear whether Congress is also attempting to redefine what is an injury for which a person may recover. In this respect, we find the language "without regard to ownership" and "relied by any damaged party for subsistence or economic purposes," confusing and possibly opening the door to claims not viewed as justified under existing law or intended by the Congress. If it is the intention of Congress to leave the law regarding what constitutes an injury—rather than liability for such injury—where it is today, we suggest that the last two words in line 18 and all of lines 19 through 21 on page 30 be deleted.

Section 17 excludes damages resulting from a discharge of oil or gas by vessels. Damages occurring beyond the territorial sea, except for costs relating to preventative action, are not now recoverable under any federal system of strict liability. Thus, the Federal Water Pollution Control Act establishes liability only to the Federal Government for cleanup costs in the territorial sea and the contiguous zone. Senate bill 841, a bill to implement the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Oil Pollution Damage, establishes liability to individuals, private and public, only for pollution damage, including cleanup costs in the territorial sea, and for costs of preventing such pollution to the territory, which threatens from the seas beyond.

Thus, under the terms of this bill, individuals, including the Government, could not recover for pollution damages to property outside of the territorial sea resulting from discharges from vessels using the proposed facilities, except under existing law. Moreover, it is questionable whether the protection of the Conventions and the implementing legislation will extend to damage caused even within the deepwater port facility itself by discharge of oil or gas from vessels, since the United States apparently does not claim that area is territory.

Section 19 suggests that general international law, rather than international law as understood and practiced by the United States, supersedes the Constitution and laws of the United States. In our view, this is not correct. The Federal Government may choose to construe international law differently than international tribunals or other nations. However, as presently worded, section 19(a) could be construed to permit a defendant in our courts to contest federal regulations, lawful under our Constitution and laws, on the ground that the regulations are not consistent with general international law. If Congress seeks to avoid such a situation, the phrase "to the extent consistent with international law", in subsection 19(a), should be deleted.

Finally, section 19(b) provides that a deepwater port licensed under this Act shall be deemed to be within the territorial jurisdiction of the nearest adjacent coastal state. Since the rights and jurisdiction of the nearest adjacent coastal state with regard to such ports are specifically defined elsewhere in the bill, language providing that the port shall be deemed to be within the territorial jurisdiction of the nearest coastal state raises a serious question as to the relationship of state-federal

rights in and jurisdiction over deepwater ports. If Congress by this provision intends to create rights and jurisdiction for the nearest adjacent coastal state greater than those specifically defined elsewhere in the bill, we suggest that such rights and jurisdiction also be specifically defined to avoid extended litigation.

Finally, we have a number of difficulties with the definitions found in section 3. The definition of "control" in subsection (6) is, in our opinion, too vague a definition upon which to base the grant or denial of rights under the Act.

The definition of "construction" in subsection (8) is circular in that it defines construction, in part, as "all other activities incidental to the construction or reconstruction" of a deepwater port. We would suggest substituting the words "building, repairing or expanding" for "construction or reconstruction" in line 5, page 5.

The definition of "marine environment" in subsection (11) may be construed to exclude the territorial sea. Marine environment includes the coastal waters of a state, the contiguous zone and the high seas. In our view, coastal waters of a state do not, strictly speaking, include the waters of the territorial sea. Those waters technically belong to the United States. The states have been granted the use and management of the submerged lands and natural resources of the territorial sea under the Submerged Lands Act, 43 U.S.C. 1301, but not the territorial sea itself.

Moreover, in the event the United States extends its territorial sea beyond the present 3-mile limit, the territorial waters between 3 miles and the new limit will not automatically be subject to any right or jurisdiction of the coastal states. For these reasons, we suggest that the words "territorial sea of the United States," be inserted after "shorelines;" in line 7 of page 6.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. VINCENT RAKESTRAW,
Assistant Attorney General.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., June 25, 1974.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR CHAIRMAN MAGNUSON: This replies to your request for our comments on the proposed Deepwater Port Act of 1974.

The new legislation represents a redraft of S. 1751. Last October, Chairman Stafford testified on S. 1751 before the Special Joint Subcommittee. A copy of that testimony is enclosed. At that time, he stated that there was a strong inference that the Interstate Commerce Commission would have jurisdiction over pipelines connecting with the deepwater port facilities. The suggestion was made that if the inference was correct, then Congress should amend the bill so as to

eliminate any doubt on that point. Section 8(a) of the draft bill does precisely that by subjecting the transportation of oil through a pipeline and storage facilities of a deepwater port to the provisions of the Interstate Commerce Act. Thus, our principal objection to S. 1751 has been eliminated.

At this juncture, I would like to call attention to the fact that the draft bill contains more than one section 8. The one I refer to is on page 18 of the draft bill and is entitled "COMMON CARRIER STATUS".

As pointed out in the Chairman's testimony of last October, there are no licensing requirements for pipelines now subject to our jurisdiction. Licensing requirements are imposed upon deepwater ports which include pipeline and storage facilities. This causes a disparity in regulatory treatment. I indicate this not as an objection but only for informational purposes.

Section 8(b) bans discrimination by a licensee (pipeline) in accepting, conveying, transporting or purchasing oil and natural gas delivered to a deepwater port. Again, as indicated in Chairman Stafford's previous statement, we have jurisdiction to remedy discriminatory practices pursuant to section 5(c) of the Submerged Lands Act. Under section 8(b) of the draft bill, it is incumbent upon the Secretary to institute proceedings before us where appropriate, to remedy discriminatory practices. We have no objection to this; however, it should be made clear in the legislative history that this section does not limit the filing of a complaint to the Secretary, that the remedies available under existing statutes are not abridged, that any interested party may file a similar complaint and that the agencies may institute investigations on their own motion.

There is a technical error in section 8(b) which should be corrected. This can be done by inserting the number "11" immediately after the word "section" in line 17.

Another deviation from the present regulations involves abandonments. Our statement of last October pointed out that presently the Commission has no jurisdiction over pipeline abandonments. Section 11(c) of the draft bill, however, raises a presumption of abandonment, which could result in forfeiture of a license, for deliberate nonuse of the deepwater port facility for a two-year period. Thus, a pipeline otherwise subject to our jurisdiction could be abandoned. The net result would be no change in our authority and we have no objection to its enactment.

With respect to the maintenance of records, section 12(a) should be amended to provide that the Secretary's regulations cannot contradict or amend those now required by us pursuant to part I of the Interstate Commerce Act. The information required by us for regulatory purposes could differ from that required by the Secretary; therefore, in order to provide the type of regulation envisioned by section 8(a), the section should not require the duplication of recordkeeping, but merely authorize the Secretary to require such additional records as he finds to be necessary to carry out the purposes of this Act.

In conclusion, I would like to reiterate the support of the Commission for the Deepwater Port Act of 1974. Deepwater ports in light of energy needs and the balance of trade considerations are clearly in the national interest, and indeed, their construction looms inevitable. This legislation will insure that their development will proceed in an orderly fashion with due regard for the economic use of our resources and the minimization of environmental dangers and safety hazards.

Sincerely yours,

KENNETH H. TUGGLE, *Acting Chairman.*

UNITED STATES DEPARTMENT OF STATE,
Washington, D.C.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your June 7 letter requesting State Department comments on the "Deepwater Port Act of 1974". This bill authorizes and regulates the location, construction and operation of deepwater ports both within and beyond the territorial limits of the United States. Our comments and suggestions are based on the June 18 draft of the bill.

Sections 4(a) and (f) of this draft bill, read together, would prohibit the construction and operation by foreign nationals of deepwater ports affixed to our continental shelf in high seas areas. We are concerned that to the extent the prohibition appears to apply to ports not actually used to transport commodities to the United States, it would be inconsistent with current international law, specifically the Convention on the Continental Shelf and the Convention on the High Seas. Moreover, we believe this broad prohibition is unnecessary to accomplish the objectives of the legislation. Because the major economic incentive to construct and operate a deepwater port off the United States coast would be the transport of oil or other materials to the United States, the same result can be accomplished in an equally effective manner on a different jurisdictional base by prohibiting the transport of any materials between the United States and an unlicensed deepwater port. The second part of Section 4(a) provides for this result. Therefore, we recommend that the first part of Section 4(a) be narrowed to apply to "citizens of the United States" instead of to "persons" in general.

With respect to Section 10 the Department believes it is necessary to insure that regulations are undertaken in a manner consistent with international law. This is especially important in terms of navigation in the vicinity of the deepwater port. For example, the United States is a member of the Inter-Governmental Maritime Consultative Organization which may establish internationally agreed traffic separation schemes and similar navigation regulations. For this reason we recommend addition of the following phrase at the beginning of Section 10(a): "Subject to applicable rules of international law, . . .". Moreover, we also recommend that Section 10(d) of the bill be redrafted as follows:

> (d) SAFETY ZONES—Subject to applicable rules of international law, the Secretary, after consultation with the Secretary of the Interior, the Secretary of Commerce, the

Secretary of State, and the Secretary of Defense, shall: (a) designate a zone of appropriate size around any deepwater port for the purpose of navigational safety. In such zone, no installations, structures, or uses will be permitted which are incompatible with the operation of the deepwater port; (b) by regulation define permitted activities within such zone.

The Department also wishes to comment on certain parts of Section (3) of the bill which affect foreign investment. The Administration is opposed to any provision that would have the effect of restricting foreign investment. Therefore, we recommend that Section 3(7) and part (A) of Section 3(4) of the draft Senate bill be deleted.

The U.S. Government has traditionally maintained a policy of encouraging the free flow of capital and technology throughout the free world. Our policy is to admit foreign capital freely and accord it equality with domestic capital. This policy was reaffirmed at a Cabinet-level meeting in December 1973. The Federal Government has imposed restrictions on foreign investments in the United States in only a very few areas—notably domestic transportation, communications, and nuclear energy—when closely related to national defense.

We believe that restrictions on foreign investment as provided in the above-mentioned sections would be contrary to the basic economic interests of the United States and are not necessary in order to accomplish the purposes of this bill. We must, of course, assure that the operation of these facilities is consistent with the national interest of the United States. This purpose can be served effectively by careful scrutiny by the Federal Departments and regulatory agencies prior to the issuance or transfer of a license. In this regard, the Administration would not be opposed to inclusion of a provision dealing with national security, such as that in Section 103(h) of the original administration bill, S. 1751. The ongoing monitoring of these facilities would assure that their operation is in conformity with antitrust statutes and the national security of the United States. Contractual provisions could specifically recognize the right and authority of the United States Government to enter upon and take temporary possession of any of the facilities, if, in the opinion of the President of the United States, such action is necessary to protect the safety of the United States. Such provisions are included in permits granted by the Federal Power Commission pursuant to Executive Order No. 10485 concerning electric power and natural gas facilities located on United States borders, and by the Department of State in accordance with Executive Order No. 11423 regarding certain facilities, including oil pipelines, constructed and maintained on our international borders.

Restrictions on foreign investment might well raise questions under our bilateral treaties of Friendship, Commerce and Navigation and would appear to violate our obligations under the OECD Capital Movements Code. Such restrictions could invite retaliation by other countries against our own, economically much more significant, investment abroad, both present and future.

Although dramatic changes have occurred over the last year in the international payments position of particular countries, we do not foresee foreign investment posing a threat to the economy or the

security of the United States. On the contrary, by enacting restrictive legislation we might discourage an influx of funds which could serve as a valuable stimulus for economic expansion and employment in this country.

We are continuing to keep foreign investment under review to assess its future impact on individual industrial sectors and geographic regions.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

We appreciate the opportunity to comment on this draft bill, and I hope you will call on me if you believe we can be of further assistance.

Cordially,

LINWOOD HOLTON,
Assistant Secretary for Congressional Relations

FEDERAL POWER COMMISSION

REPORT ON THE DEEPWATER PORT ACT OF 1974

The Deepwater Port Act of 1974 (designated as S. ——, Special Subcommittee Working Paper No. 2) requires a license for the construction or operation of a deepwater port. The license is to be on the basis of written plans approved by the Coast Guard and the Secretary of the Department in which the Coast Guard is operating. A deepwater port is defined under the bill to be a fixed or floating manmade structure located off the U.S. coast and affixed to the U.S. Continental Shelf and intended for use as a port for the transportation of oil or natural gas between vessels and any State. The definition includes all associated components and equipment including pipelines.

A 20-year, renewable license would be available to U.S. citizens subject to conditions deemed necessary by the Secretary or otherwise required by Federal agencies under the Act. Before the license is issued the Secretary must determine that the applicant is financially responsible; that he will comply with applicable laws, regulations and license conditions; that the deepwater port will not unreasonably interfere with international navigation; that the port will be constructed and operated using best available technology to minimize adverse impact on the marine environment; that the competitive effects of the license have been assessed by the FTC and Justice Department and their recommendations embodied in the license; and that the Governor of the adjacent coastal State approves of the deepwater port.

The bill provides in section 8(a)(2) that for purpose of the Natural Gas Act:

> transportation of natural gas through a pipeline and storage facilities as part of a deepwater port shall be deemed to be transportation or commerce from one State to another State, and shall be subject to regulation by the Federal Power Commission pursuant to such Act.

The definition of natural gas proposed in the Deepwater Port Act is "natural gas, liquefied natural gas, artificial or synthetic gas, or any mixture thereof or derivative therefrom" (section 3(11)). This definition would be much broader than the definition in section 2(5) of the Natural Gas Act which provides that " 'Natural Gas' means either natural gas unmixed, or any mixture of natural or artificial gas." The Commission has held that synthetic gas processed from naphtha feedstocks is not natural gas within the Natural Gas Act (Opinion No. 637, *Algonquin SNG, Inc., et al.*, Docket No. CP72-35, *et al.*, 48 FPC 1216, December 7, 1972). The Commission has also held that coal gasification plants produce artificial gas within the section 2(5) definition which consequently is not subject to FPC jurisdiction when unmixed with natural gas. (Opinion No. 663, *El Paso Natural Gas Co. et al.*, Docket No. CP73-131 *et al.*, 49 FPC ——, September 4, 1973). If the proposed bill's definition were adopted, the Commission would be forced to regulate SNG as it moved through the deepwater port storage facility and associated pipelines to the shore but a regulatory gap would exist from the time gas arrived onshore until it was mixed with natural gas moving in interstate commerce. To prevent such complications, we suggest the substitution of the Natural Gas Act definition for section 3(11) of the proposed bill.

Section 8(b) of the bill provides that a license shall accept, convey, transport, or purchase without discrimination all oil and natural gas delivered to the deepwater port. If the Secretary believes the licensee is not in compliance with the common carrier provision he shall commence an appropriate proceeding before the ICC or FPC or request the Attorney General to take appropriate steps to enforce the requirement.

The application for license filed with the Secretary shall constitute an application for all Federal authorizations required for construction and operation of the port. The Secretary shall forward the application to all Federal agencies having or sharing jurisdiction over the project, for comment, review or other action required by law. Hearings held on a license are to be consolidated wherever practicable with hearings held by other agencies. Public hearings are to be concluded within 180 days after the filing of an application for license and the Secretary's final decision is due within 90 days of the last public hearing. Within 30 days of the end of hearings, the affected agencies' comments, reviews, recommendations or other action required by law must be transmitted to the Secretary.

The bill requires the preparation of a single detailed environmental impact statement evaluating all activities associated with each deepwater port license application. The Commission believes that there would be even more value in requiring the preparation of a single, categorical type of environmental evaluation dealing with a reasonable projection of all deepwater ports needed. A single program statement may be more appropriate here by providing for a "more exhaustive consideration of the effects and alternatives than would be practicable in a statement on an individual action." *Scientists' Institute for Public Information, Inc.* v. *A.E.C.*, 481 F. 2d 1079, 1087 (D.C. Cir. 1973). Since more than one deepwater port will probably be constructed, the better locations will be more clearly shown by a categorical approach. Such a statement would not preclude subsequent initiatives in selecting sites other than those initially studied, but would provide a better

framework for individual site decisions. This approach has the advantages of focusing attention on the broader national energy environment system and putting individual site specific decisions into proper national perspective—assuring both better energy system development and better national environmental management.

A major advantage of deepwater ports would result from the use of supertankers for the transportation of oil and LNG. The United States is unable to provide port facilities for ships of supertanker size and deepwater ports would provide such facilities. Without constraint on the size of LNG ships serving the United States, ultimate gas consumers will have the opportunity to benefit fully from whatever economies of scale there may be in the design of new LNG ships of supertanker size. In the case of supertankers for oil, figures of the Interior Department show that transportation economics clearly favor larger ships. Crew costs remain virtually unchanged between a 100,000 and 400,000 ton tanker, and other operating expenses do not increase in proportion to the increased capacity.

The Commission would favor the enactment of the Deepwater Port Act with our suggested amendments.

The Office of Management and Budget advises that the Administration continues to favor the enactment of the House-passed Deepwater Port legislation and, to the extent that the present bill departs significantly from that legislation, the Administration is unable to support it.

FEDERAL POWER COMMISSION,
JOHN N. NASSIKAS, *Chairman*.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., Oct. 29, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department with respect to S. 1751, a bill—

> To amend the Outer Continental Shelf Lands Act and to authorize the Secretary of the Interior to regulate the construction and operation of deepwater port facilities.

S. 1751 would establish authority in the Department of the Interior for licensing the construction and operation of deepwater port facilities. Under the provisions of S. 1751, licenses would be issued to any U.S. citizen, domestic corporation or State or local government after the Secretary of the Interior determines that the applicant is financially responsible and has demonstrated an ability and willingness to comply with all applicable laws, regulations and conditions; the construction and operation of proposed deepwater port facilities will not unreasonably interfere with international navigation or other reasonable uses of the high seas; and the facility will minimize or prevent any adverse significant environmental effects. Prior to issuing any license, the Secretary is required to consult with the governors of adjacent coastal States to ensure that the facility and its directly related land based activities would be consistent with the States' land use planning programs.

The license required by S. 1751 would be in addition to permits or licenses which may be required under existing legislation from other Federal agencies. However, the proposed bill provides a mechanism whereby all Federal permits or licenses necessary for the construction and operation of the deepwater port facility will be handled through a single application filed with the Interior Department. That Department will ascertain the other Federal agencies which have the responsibility and jurisdiction under existing law for aspects of the construction and operation of such terminals. Interior will not issue a license under the Act until it has been notified by such agencies that the application meets the requirements of the laws which they administer.

The Department of Commerce supports the enactment of S. 1751. Our support stems not only from the long-standing interest of the Maritime Administration in the promotion and development of our ports, but also from the interest of the National Oceanic and Atmospheric Administration in the promotion of a safe marine environment. We believe that the bill would encourage the construction of greatly needed-deepwater port facilities in a manner that would ensure adequate regard for and balancing of both onshore and offshore environmental effects.

Under section 8 of the Merchant Marine Act, 1920, the Maritime Administration is responsible for the promotion of efficiency and lower costs in the transportation of commodities in U.S. foreign commerce, including the importation of petroleum. The issue of deepwater port facilities has therefore received serious examination in the agency, and it continues to be a subject of primary concern. We have determined that significant economies may be derived from the utilization of Very Large Crude Carriers (VLCC's) that would require deepwater port facilities. For example, at world scale rates prevailing in mid-June of this year, it would have cost approximately $22.53 per ton to bring crude oil from the Persian Gulf to the United States east coast in a 54,000 DWT tanker, while the transportation cost per ton for carrying crude oil in a 241,000 DWT tanker would have been only $14.11. Based upon the current price of Persian Gulf crude of $15.90 at the source, the $8.42 transportation cost reduction for VLCC's represents a 21.9 percent savings in the landed cost of Persian Gulf crude. Because of these and similar transportation economies, the Maritime Administration has been interested in encouraging the construction of VLCC's since the beginning of this decade.

In December 1969, the Maritime Administration granted Title XI mortgage insurance for the first VLCC to be built in the United States and destined to fly the American flag, a 225,000 DWT tanker under construction at the Seatrain yard in Brooklyn, which was launched on June 30 of this year. On June 30, 1972, construction-differential subsidy was awarded for six VLCC's, including three tankers of 265,000 DWT, the largest ships ever to be built in this country. In June 1973, the Maritime Administration awarded construction-differential subsidy for three additional VLCC's, including two 265,000 DWT vessels which will be owned by Gulf Oil Corporation, the first American-built VLCC's to be purchased by a major United States oil company. The nine VLCC's will cost a total of more than $615 million and the Government's share of their cost paid as construction-differential subsidy is

more than $260 million. These VLCC's cannot enter any of the Gulf Coast or East Coast harbors. If the United States is to be served by these vessels, deepwater port facilities must be developed.

Levels of domestic energy production and usage fix the measure of required imports. To the extent that substantial imports will be required, given the transportation economies which exist, the issue is simply whether large tankers will unload their oil in the Caribbean or Canada for transshipment of petroleum or refined products to the United States in smaller vessels, or whether they will bring their cargoes directly to this country using deepwater port facilities.

If transshipment of petroleum or refined products from deepwater ports in the Caribbean is elected, then many more visits by smaller tankers to United States ports will be required in order to transport our petroleum imports. This transshipment will result in higher costs for imports of crude oil and refined products. It will also result in a substantial increase in the risk of environmental damage to our ports and waterways from oil spills due to the increase in the number of visits by small vessels to our ports and the increase in port congestion which may result in collisions.

The location of deepwater port facilities in the Caribbean and Canada may also result in the establishment of new refineries and petro-chemical complexes in those countries rather than in the United States. Such a development would result in the export of jobs from the United States and have an adverse effect on our balance-of-payments.

The National Oceanic and Atmospheric Administration of the Department of Commerce would assist the Department of Interior in performing its duties to minimize the environmental hazards that could result from the construction of deepwater port facilities. NOAAM can provide scientific information on the ocean environment, fisheries and marine biology. In addition, NOAA components such as the National Ocean Survey and the Environmental Research Laboratories have extensive programs dealing with tides, current, and atmospheric effects on the ocean. Thus, NOAA is able to determine if a site being considered for a deepwater port facility is one where discharge would be carried shoreward. Similarly, the expertise of NOAA in ocean dynamics could aid in siting artificial structures so as to minimize interference with bottom sediment transport, nutrient flow, and the ability of a body or area of water to assimilate pollutants.

Another important role for NOAA in relation to the deepwater port legislation stems from its responsibilities for administering the Coastal Zone Management Act. The goal of this Act is to promote effective coastal zone planning and management at the state level. Clearly the accomplishment of this goal will be important to the rational development of deepwater port facilities.

Industry has recognized the need for deepwater ports for several years and a number of projects have been initiated by the major oil companies to develop superports at specific sites. The reaction of the coastal states has been mixed, with, for example, Delaware banning an oil transfer facility under its Coastal Zone Act, while the Louisiana Governor appointed a "superport task force" to facilitate efforts to establish a deepwater port facility off the Louisiana coast. While we recognize that responses may vary from state to state, we are hopeful

that all citizens will recognize the need for deepwater port facilities and the fact that the import of petroleum through such facilities is preferable, both economically and environmentally, to the import of petroleum in smaller ships using existing conventional port facilities. Without regard to the nature of the state responses to proposed projects, however, industry has been unwilling to act until issues concerning Federal jurisdiction beyond the three-mile limit have been resolved. And, Federal jurisdiction is accordingly a necessity.

S. 1751 makes clear the Government's basic position in that the proposed legislation would establish a uniform, coordinated procedure for licensing and regulating deepwater ports. The Secretary of the Interior would have prime responsibility, and applicants will have only one place in the Federal Government to go for a decision.

Over the past 2 years, the Department of Commerce has participated in and contributed to interagency economic and environmental studies of deepwater ports. These studies concluded that U.S. deepwater port facilities were environmentally and economically desirable. We have also considered the environmental aspects of deepwater terminals independently and in the recently completed Environmental Impact Statement on the Maritime Administration's tanker program. Our analyses reinforce the basic interagency findings that deepwater ports are economically and environmentally desirable.

The Department of Commerce will continue to work closely with the Department of the Interior and industry to implement S. 1751 after it is enacted.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

KARL E. BAKKE,
General Counsel.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., Oct. 19, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 1751, "To amend the Outer Continental Shelf Lands Act and to authorize the Secretary of the Interior to regulate the construction and operation of deepwater port facilities."

The bill would authorize the Secretary of the Interior to issue to citizens of the United States licenses to construct or operate deepwater port facilities if he determines that an applicant is financially responsible, the proposed facility will not unreasonably interfere with international navigation and is consistent with the international obligations of the United States, and that adverse environmental effects will be prevented or minimized. He would be authorized to issue regulations prescribing procedures for issuing licenses. Customs and navigation laws administered by the Bureau of Customs, with certain exceptions, would not apply to facilities; however, customs officials would be granted reasonable access to deepwater port facilities to enforce laws under their jurisdiction.

The bill was included in President Nixon's April 18, 1973, Message to the Congress on Energy Policy and the Department strongly recommends its enactment as a necessary step in meeting the nation's energy challenge.

The Department would recommend minor technical changes to clarify section 113 of the bill with regard to the customs and navigation laws. A Comparative Print showing the suggested changes is enclosed for your convenient reference.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee and that enactment of S. 1751 would be in accord with the program of the President.

Sincerely yours,

EDWARD C. SCHMULTS,
General Counsel.

Enclosure.

COMPARATIVE PRINT

Changes in section 113 are shown as follows (language proposed to be omitted is enclosed in brackets; new matter is in italics):

> SEC. 113. The customs and navigation laws administered by the [Bureau of Customs] *Secretary of the Treasury*, except those *navigation laws* specified in section 111(b)(7) [herein] *of this Act*, shall not apply to any deepwater port facility licensed under this Act; but all [materials] *foreign articles to be* used in the construction of any such deepwater port facility and connected facilities such as pipelines and cables shall first be made subject to a consumption entry in the United States and [duties deposited thereon] *all applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States shall be paid thereon in accordance with the laws applicable to merchandise imported into the customs territory of the United States*. [However, a] All United States officials, including [customs officials] *officers of the customs as defined in section 401(i), Tariff Act of 1930, as amended, 19 U.S.C. 1401 (i)*, shall at all times be accorded reasonable access to deepwater facilities licensed under this Act for the purpose of enforcing laws under their jurisdiction or carrying out their responsibilities.

DEPARTMENT OF STATE,
Washington, D.C., Oct. 17, 1973.

Hon. WARREN G. MAGNUSON
Chairman, Committee on Commerce,
U.S. Senate

DEAR MR. CHAIRMAN: The Secretary has asked me to respond to your June 5, 1973 letter requesting comments on S. 1751, the "Deepwater Port Facilities Act of 1973". This bill provides authority to issue licenses and prescribe rules and regulations for the construction and operation of deepwater port facilities. The process established by the bill would provide for strict environmental controls as well as appropriate navigation and safety requirements.

The Department of State supports the enactment of this bill. The licensing and regulatory scheme provided by the bill will ensure that the proper elements of international law and policy are considered in the decisionmaking process. Construction and operation of deepwater port facilities by licensed U.S. citizens undertaken in accordance with the bill would be a reasonable use of the high seas as recognized in the 1958 Convention on the High Seas. Furthermore, the bill is drafted to ensure that activities under it will not be deemed to affect the legal status of the high seas, the superjacent airspace or the seabed and subsoil, including the continental shelf. In general, we feel the approach taken in this bill recognizes the vitality of international law and is designed to ensure that the development and operation of offshore facilities is undertaken in a manner consistent with accepted maritime practices and general principles of international law. In addition, we feel the bill establishes a rational, effective system for the licensing and regulation of deepwater ports.

The Department has been informed by the Office of Management and Budget that there is no objection to the submission of this report.

Sincerely,

MARSHALL WRIGHT,
Assistant Secretary for Congressional Relations.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., Sept. 21, 1973.

Hon. WARREN MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your request for comment on S. 1751, a bill "To amend the Outer Continental Shelf Lands Act and to authorize the Secretary of the Interior to regulate the construction and operation of deepwater port facilities," has been assigned to this Department by the Secretary of Defense for the preparation of a report expressing the views of the Department of Defense.

This bill would authorize the Secretary of the Interior to license and regulate the construction and operation of deepwater port facilities beyond the 3 mile territorial sea.

In his energy message to the Congress in April of this year, the President proposed the development of deepwater ports in answer to the problem of importing, cheaply and with minimum damage to the environment, the large quantities of oil we will be needing in the foreseeable future. In implementation of this portion of his message, there has been transmitted to the Congress by executive communication from the Secretary of the Interior the proposed Deepwater Port Facilities Act of 1973 which has now been introduced as S. 1751. This is a proposal to meet the many problems associated with the regulation and construction of such facilities.

The Department of the Navy, on behalf of the Department of Defense, supports enactment of S. 1751.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee and that enactment of S. 1751 would be in accord with the program of the President.

For the Secretary of the Navy.

Sincerely yours,

E. H. WILLETT,
Captain, U.S. Navy, Deputy Chief.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., July 27, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the comments of the Department of Transportation concerning S. 1751, a bill

> To amend the Outer Continental Shelf Lands Act and to authorize the Secretary of the Interior to regulate the construction and operation of deepwater port facilities.

The bill is the Administration's proposal to provide for the licensing of deepwater port facilities on the high seas off the coast of the United States.

Section 2 of the bill would amend the Outer Continental Shelf Lands Act to authorize the Secretary of Interior to prescribe such rules and regulations as may be necessary to accommodate the exploration and exploitation of the oil and gas and other mineral resources of the Outer Continental Shelf with the construction and operation of deepwater port facilities licensed by him. It should be noted here that the amendment in section 2 would not apply to the areas off the Gulf coasts of Texas and Florida between 3 and approximately 9 miles offshore. This result occurs because of the reference in the Outer Continental Shelf Lands Act (67 Stat. 462, 43 U.S.C. 1331) back to the definition of "lands beneath navigable waters" in the Submerged Lands Act (67 Stat. 29, 43 U.S.C. 1301). Accordingly, it would appear that necessary accommodation between mineral exploration and exploitation activities and the construction and operation of deepwater port facilities in those areas must be achieved through some process other than that established by this section. The aforementioned "hiatus zone," however, would not affect the Secretary's authority under title I of S. 1751 to regulate deepwater port facilities beyond the 3-mile limit.

This Department realizes that the application of the laws of the United States to activities connected with the operation and use of deepwater port facilities as stated in section 111(a) of the bill represents a delicate balance between two competing interests. First, there is a need for positive control over activities connected with the use and operation of such a facility, particularly for the purpose of assuring safety and environmental protection. Second, there is a strong law of the sea concern that the establishment of the necessary juris-

dictional base for such control not consist of a unilateral assertion of jurisdiction by the United States over areas of the high seas. No assertion of jurisdiction is made over the water areas immediately adjacent to a deepwater port facility. However, the term "activities connected with the operation and use of such deepwater port facilities", as found in section 111(a) of the bill, is sufficiently broad to apply the laws of the United States not only to any foreign or domestic activity using the facility but also to any foreign or domestic activity in the vicinity of a deepwater port facility which by its nature has a capacity to interfere with or pose a threat to the use and operation of such a facility, provided such an application is consistent with international law. In this regard, the implied consent to United States jurisdiction by foreign vessels or persons who use such facilities, found in the second sentence of section 111(a) of the bill, should not be considered to be a limitation on this application.

Finally, the regulatory authorities conferred by the laws of the United States are made applicable to the deepwater port facilities and activities by section 111(a) of the bill. It is presumed that the Secretary's authority to condition the grant of a license under the bill (sec. 107) and to promulgate regulations governing the health and welfare of persons using deepwater port facilities (sec. 111(c)) will be exercised consistently with the regulatory authorities of other agencies.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

J. THOMAS TIDD,
Acting General Counsel.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 18, 1973.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: In accordance with today's Presidential Message on Energy, I am enclosing our proposed bill "To amend the Outer Continental Shelf Lands Act and to authorize the Secretary of the Interior to regulate the construction and operation of deepwater port facilities."

We recommend that it be referred to the appropriate committee and that it be enacted.

Regardless of the policies adopted to increase domestic supplies, imports of crude oil and products into the United States are projected to probably double by 1980 and could continue to increase dramatically in succeeding years.

Most United States ports, already heavily congested, are not equipped to handle this increased trade. With few exceptions the largest ship which can enter United States ports fully loaded is 65,000 deadweight tons (DWT). (Compared to the new deep draft tankers which are now being built in excess of 200,000 DWT.) The use of small vessels is the least desirable method of importing large quantities of crude oil and products into the United States, both because of environmental and economic considerations. As imports of crude oil and products increase, our conventional ports will become more congested and the risks of collision and groundings will increase.

An alternative to this prospect which promises significant benefits both environmentally and economically is the construction of deepwater port facilities. Deep draft tankers could use these facilities, generally connected to shore by a pipeline. These tankers make possible substantial cost savings and can be designed to reduce the risks of pollution through use of multiple tanks, double bottoms, segregated ballast and other design improvements.

If we do not act, it is highly possible that transshipment terminals to the United States will be built in the Caribbean or in Canada. This not only deprives this Nation of an essential transportation asset, but we also lose associated employment and incur balance of payments deficits. More importantly, these foreign terminals service the United States through increasing numbers of small and medium sized tankers, many of them old.

The bill we are proposing would remove any legal impediments to the development of such deepwater terminals off the United States coast by establishing authority in the Department of the Interior for licensing the construction and operation of ports beyond the 3-mile limit. This process would include strict environmental controls and specific provision for navigation and safety. Licenses would be issued to any United States citizen, domestic corporation, State or local government when the Secretary finds that the applicant is financially responsible and has demonstrated an ability and willingness to comply with all applicable laws and conditions. Prior to issuing any license, the Secretary is required to consult with the governors of adjacent coastal States to ensure that the facility and its directly related land based activities would be consistent with the States' land use planning programs.

The construction and operation of proposed deepwater port facilities will not unreasonably interfere with international navigation or other reasonable uses of the high seas. Such construction and operation and the regulation of related activities will constitute a reasonable exercise, fully consonant with the principle of freedom of the high seas and will be consistent with international obligations of the United States.

The license required by this Act would be additional to permits or licenses which may be required under existing legislation from other Federal agencies. However, the proposed bill provides a mechanism whereby all Federal permits necessary for the construction of the deepwater port facility will be handled through a single application filed with the Interior Department. This Department will be responsible for ascertaining that the other Federal agencies with jurisdiction over the construction of the facility have given necessary approvals.

It should be emphasized that the basic planning and design of these deepwater port facilities will be left to non-Federal initiatives—as will the financing thereof. The Federal Government's role will be largely confined to reviewing the plans to assure that the facility will meet the requirements of the Act and comply with other applicable laws.

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This legislation is an essential step towards significantly reducing the environmental risks associated with increased marine traffic carrying oil imports. In addition, this legislation will result in substantial cost savings to the American consumer. We therefore urge its speedy enactment.

The Office of Management and Budget advises that enactment of this bill would be in accord with the President's program.

Sincerely yours,

JOHN C. WHITAKER,
Acting Secretary of the Interior.

XI. ADDITIONAL VIEWS

ADDITIONAL VIEWS OF MR. BUCKLEY

I support the general thrust of this legislation and most of the concepts incorporated within it. It should prove an effective tool in protecting the environment, while fostering lower costs in petroleum transportation. But as with any complicated bill, a number of provisions were included with less than unanimous agreement. I should like to discuss some of these provisions and express my views where disagreements exist.

As reported, the bill would license ports off the coast of the United States, but outside the territorial limits of the United States. The bill thus creates two distinct licensing procedures for deepwater ports: one when the port is to be located inside the 3-mile limit, another when it is to be outside. I believe this artificial division will prove to be administratively cumbersome. In Subcommittee, I urged adoption of a single Federal licensing procedure for all superports off our coast. I regret that the majority of the Subcommittee did not agree.

Further, I believe that the legislation would have been more effective had it authorized ports handling all types of commodities, not just oil and natural gas. Although it appears that oil is likely to be the only commodity able to attract the substantial investment required at this time, I believe the bill should have authorized licensing for any type of offshore port. This would insure consistency in the regulatory requirements among various types of ports. I see no reason to discriminate between the types of commodities which could be accommodated by a deepwater port. The function of the legislation we are enacting should be to set up general rules (e.g., environmental protections, common carrier status). Any applicant which can meet these requirements ought to be permitted to construct such a port.

Another provision with which I disagree is Section 4(d), the so-called "dredging language." This provision requires the Secretary, when requested, to make a study of the economic, social, and environmental comparisons between a new superport and dredging an existing inshore port to supertanker depths.

Economic balancing should not be the concern of the Secretary. The purpose of this bill is to establish a procedure for the consideration of deepwater port licenses. If a state or private group decides that it is economically advantageous to finance and construct a deepwater port, and is able to comply with the requirements of the statute in all other respects, the Secretary should not have the authority to withhold approval because of a differing economic analysis.

Furthermore, this provision obscures a major advantage of superport development: keeping tankers away from our crowded inshore ports, where the risk of environmental damage is greatest. Interior Secretary Rogers C. B. Morton, I note, "strongly" recommends that this dredging language be deleted.

Section 5(d) creates a procedure that directs the Secretary to define an "application area" for any deepwater port application. As conceived originally, an "application area" would enable the Secretary, the adjacent coastal states, and the public to weigh the merits of competing proposals covering a broad geographical area, such as the New England coast or the Texas coast. This would permit a true evaluation and ranking of various proposals on the basis of their economy and their environmental impact.

Subsequently, however, the Subcommittee reduced the size of any application area to one no greater in radius than the distance from the proposed port to the adjacent shoreline. Thus, the application area for a port 12 miles offshore would be a circle 24 miles in diameter. As a result, an application for a port 25 miles down the coast, designed to serve the same market, would have to be evaluated separately. This has particular significance since Section 5(f) requires that a single environmental impact statement be written for each application area.

Section 5(i) establishes an unnecessary priority scheme for granting deepwater port licenses in the event that more than one application is submitted for an application area. This priority scheme discriminates in favor of a governmental applicant over a private applicant and in favor of an applicant having no relationship to any aspect of oil and gas development or distribution over an applicant which happens to be somehow already involved in the oil industry. These distinctions do not necessarily ensure that the deepwater port will be constructed in a manner which "clearly best serves the national interest". Rather, each application for a given area should be considered on its own merits, without arbitrary or artificial constraints.

This bill also contains what must be characterized as scare language on the alleged antitrust implications of deepwater port development. Language in sections 4 and 7 requires that the Attorney General and the Federal Trade Commission give an opinion on whether each application might, among other things, "create a situation in contravention of the antitrust laws." There is no specified standard for that judgment. But the Secretary, according to the report, must give "serious consideration" to these opinions.

What the inclusion of this amorphous test ignores is the fact that this bill contains a strong common carrier provision. That provision includes the right of the Secretary, in section 8(b), to proceed "to suspend or terminate the license" of any owner that discriminates against any potential user of the port. If this common carrier provision or existing antitrust laws are insufficient to assure fair treatment, then we should amend those provisions. We should avoid building into this bill a vague test catering to bureaucratic whim.

In conclusion, while I take exception to some provisions of this bill and may offer floor amendments to correct them, I support the basic thrust of this bill, and urge its adoption.

JAMES L. BUCKLEY.

ADDITIONAL VIEWS OF MESSRS. FANNIN, HANSEN, McCLURE, AND BARTLETT

The economic and environmental superiority of importing petroleum products using supertankers and deepwater ports has been firmly established and is set out earlier in this report. In light of both the pressing need for importing fuels to meet U.S. demand, and the availability of technology and investment capital to do so safely and economically through deepwater ports, there is no excuse for Congress to delay in providing legislative guidelines for construction and operation of such facilities. In his legislative priorities outlined to Congress on September 12 of this year, President Ford listed deepwater port legislation as a key measure for action this session. The House has already acted on its own version.

It is with satisfaction that we voted to report the Deepwater Port Act of 1974 for Senate floor action. This bill is one of the few pieces of energy legislation to move through the 93rd Congress which would actually increase the supply of energy available to the American people. It was developed in commendably bipartisan fashion and reported by three separate committees, each of which recognized the necessity to waive their disagreements in the interest of moving this legislation to the floor.

We are prepared to support this bill, because it would meet critical national needs. There are, however, several provisions contained in or proposed for addition to the bill which give us concern. They are: (1) the licensing procedure now provided for in the bill; (2) Senator Metzenbaum's proposed amendment to Section 18(i) dealing with class action suits; (3) the Commerce Committee's proposed amendment prohibiting oil company ownership of deepwater ports; and (4) the licensing priorities provided in Section 5(i)(2).

(1) LICENSING PROCEDURE

The licensing authority for deepwater ports construction, granted in this legislation to the Department of Transportation, lies more properly in the Department of the Interior. Language earlier in this report endorsed by the members of the Commerce and Public Works Committees makes a case for granting full licensing authority to the Department of Transportation—it does so by listing deepwater port related functions of the Department of Transportation and the Coast Guard while failing to mention the qualifications of other agencies.

It should be pointed out, however, that it is the Interior Department, not the Department of Transportation, which has spent the last 20 years analyzing activities on and managing the resources of the Outer Continental Shelf. It is Interior that has jurisdiction over planning for management of energy resources. It is Interior which has through the U.S. Geological Survey—and particularly its Conservation Division—studied marine geological and geophysical

problems and landside development pertaining to facilities on the OCS. It is Interior which has experience in assessing regional energy demands, refinery and distribution systems, and land use planning.

While we agree that the Coast Guard by virtue of its proven ability and experience should be the lead agency in supervising the operation of deepwater ports, in our opinion, site assessment, licensing and construction supervision fall rightly within the jurisdiction of the Interior Department.

H.R. 10701, the High Seas Oil Port Act passed by the House, provides for a two-tier system granting Interior the lead agency role during construction, with Coast Guard assuming primary responsibility when port operations commence. This provision has the support of the Administration. In light of the imperative need for enacting deepwater port legislation, the wisest course is to minimize the differences to be overcome in conference. Accordingly, we join with our colleagues on the Interior Committee in recommending reconciliation of the licensing procedures of the two bills by accepting the House concept regarding division of authority.

(2) Class Action Suits

A majority of the Interior Committee endorsed an amendment concerning class actions recommended by Senator Metzenbaum. As we understand the Senator's proposal, it is intended to legislate exceptions to the laws presently limiting such suits, where litigation is brought to recover damages arising from an oil spill connected with a deepwater port. In addition it authorizes the Attorney General, rather than the Secretary of Transportation as presently provided in the bill, to act on behalf of any group of damaged citizens if he determines that such a group would be more adequately represented as a class in pursuing recovery of claims for damages sought as a result of oil spills arising out of the operation and use of a deepwater port. The Secretary is authorized so to act notwithstanding the provisions of 28 U.S.C. § 1332(a).

The proposal would waive the requirement in 28 U.S.C. 1331 and 1332 that *each* plaintiff joining in a class action claim more than $10,000 damages in order to have access to the federal district courts. Such a waiver as that proposed by the majority of our Interior Committee colleagues would permit class action suits by any group whose *aggregate* claim meets the required jurisdictional amount.

It should be noted that in a lengthy series of cases the Supreme Court has upheld the application of the $10,000 minimum in class action suits, recently—in *Zahn* v. *International Paper Co.*, 414 U.S. 291 (1973)—extending the requirement to unnamed members of the class. In *Eisen* v. *Carlisle & Jacquelin*, 417 U.S. — (1974), the Court further specified that individual notice of the suit must be sent to all class members who can be identified through reasonable effort. This amendment would waive even that requirement, making it a simple matter for anyone to bring a lawsuit in the name of persons not even aware of the litigation.

We do not object to reasonable and speedy access to the courts by those aggrieved. However, the liability provision as it stands provides sufficient remedy for restoration of damages sustained from oil spills at deepwater ports. There is no need, however, to present the courts with a logjam of litigation by groups of plaintiffs some of whom have only the slightest grounds for participation.

It is true that Congress has seen fit to exempt several major areas of federal jurisdiction from the $10,000 limitation—air and water quality among them. This shotgun approach to an important issue of judicial administration typifies the congressional method of handling critical issues broad in nature. Congress seems unable to resist the temptation to hack away piecemeal at whatever facets of a problem present themselves soonest or easiest, and at the same time more than able to ignore the need for a comprehensive solution.

We are of the opinion that before the books become laden with varying exceptions to these Rules of Civil Procedure, it would be much more beneficial to legislate a single comprehensive expression of congressional intent on the matter. Is this not a matter best left to the consideration of the Judiciary Committee, which has jurisdiction in this area? Is it not of sufficient importance to require careful hearings, none of which have been held? We believe so, and consequently urge our colleagues to consider with care whether Senator Metzenbaum's amendment is the judicious method of facilitating access for those seeking relief in such cases.

(3) Proposed Prohibition of Oil Company Ownership

Although the Special Joint Subcommittee rejected proposals to bar oil companies from being licensees of deepwater ports, the Committee on Commerce seeks to amend the bill to restrict eligibility for deepwater port ownership to persons and corporations not connected with the oil industry.

The primary interest in building deepwater port facilities in this country, as a less expensive and safer system for the transportation of petroleum and petroleum products, has been evidenced by American oil companies and their affiliates such as LOOP, Inc. (Louisiana Offshore Oil Port) and SEADOCK (offshore Texas Port). If deepwater ports are to be built, in most if not all cases it will be the oil companies or their affiliates that build and operate them. Practical considerations—both technical and financial—all point to that conclusion.

The bill as reported contains stringent environmental review criteria for these projects, consistent with the National Environmental Policy Act. In addition it provides for antitrust review by both the Attorney General and the Federal Trade Commission, and requires that such ports be common carriers guaranteeing nondiscriminatory access to all shippers. These provisions would obtain regardless of the ownership of the facility.

It is in the national interest that deepwater ports be licensed and constructed without further delay. Any provision which would arbitrarily discriminate against the potential applicant most able to safely and economically construct and operate such facilities is clearly *not* in the national interest, and is counterproductive to the expressed purpose of this legislation.

Further, it may well be that prohibiting oil companies from being eligible applicants for licenses and thus from owning deepwater ports is constitutionally defective. The following analysis bears out that conclusion.

The basic authority of Congress to regulate the construction, ownership and operation of offshore ports appears to be founded upon the powers given by the Constitution to regulate foreign and domestic commerce. The extensive power given to Congress with respect to economic regulation of commerce is nevertheless subject to the limitations of the due process requirements of the Fifth Amendment. *U.S.* v. *Carolene Products Co.*, 304 U.S. 144 (1937); *Morgan* v. *Virginia*, 328 U.S. 373 (1928); *Galvan* v. *Press*, 347 U.S. 522 (1954). Some earlier cases had indicated that because the Fifth Amendment contains no equivalent to the equal protection clause of the Fourteenth Amendment, which is applicable by its terms only to state action, the Fifth Amendment afforded no guarantee against discriminatory legislation by Congress.

Detroit Bank v. *U.S.*, 317 U.S. 329 (1943); *Helvering* v. *Lerner's Stores Corp.*, 314 U.S. 463 (1941). It is now well settled, however, that although "due process of law" and "equal protection of the laws" are not interchangeable phrases, both stem from the same American ideal of fairness, and therefore an unjustifiable discrimination may amount to a violation of due process. *Bolling* v. *Sharpe*, 347 U.S 497 (1954); *Schneider* v. *Rusk*, 377 U.S. 163 (1964); *Richardson* v. *Belcher*, 404 U.S. 78(1971). It is also undisputed that corporations are entitled to the equal protection and substantive due process protections of the Fifth and Fourteenth Amendments. *Sinking Fund Cases*, 99 U.S. 700 (1879); *Smyth* v. *Ames*, 169 U.S. 466 (1898); *Ligget Co.* v. *Baldridge*, 278 U.S. 105 (1928); *Grosjean* v. *American Press Co.*, 297 U.S. 244 (1936). Thus, a statute singling out certain businesses for special classification and regulation is subject both to the tests of equal protection of the laws and to prohibitions against deprivation of liberty or property without due process of law.

In applying the Constitutional tests of due process and equal protection to particular legislative enactments, the courts have developed a threefold test: (a) the legislative objective of the statute must promote a legitimate governmental interest; (b) there must be a reasonable relationship between the particular classification contained in the statute and the legislative objective; and (c) the means chosen to accomplish the legislative objective must be necessary and appropriate to achieving the desired end.

With respect to legislative objective, the courts have held that the statute must promote a legitimate governmental interest. Although the motives of Congress in enacting a particular statute may not be judicially questioned, *Flemming* v. *Nestor*, 363 U.S. 603 (1960); *Bulluck* v. *Washington*, 468 F. 2d 1096 (D.C. App. 1972), it has been held that the statute must be rationally related to a legitimate governmental interest and that Congress cannot ban an article from interstate commerce solely to favor its competitors or to aid another industry, nor may a congressional desire to harm a politically unpopular group constitute a legitimate governmental interest. *Carolene Products Co.* v. *U.S.*, 323 U.S. 18 (1944); *U.S. Dept. of Agriculture* v. *Moreno*, 413 U.S. 528 (1973). It has also been held that a mere fanciful conjecture of evils to be prevented will not support an otherwise discriminatory act. *Hartford Steam Boiler Inspection & Ins. Co.* v. *Harrison*, 301 U.S. 459 (1937). The objective of the legislation need not be

made explicit in the statute, however, but may be determined from its legislative history or inferred from the facts surrounding its enactment. *Local Union No. 300* v. *McCulloch*, 428 F. 2d 396 (5th Cir. 1970).

Once the legislative purpose of a particular statute has been determined, the classification contained in the statute must be found to bear a reasonable relationship to the objective sought. A statute based merely upon an "invidious discrimination" will not be upheld. The fact that the classification contained in the statute is imperfect in that it does not include all persons who should logically fall within its terms, or that it operates to the detriment of a particular group, will not necessarily form a basis for invalidation of the statute. However, a classification which is essentially arbitrary and unjustifiable or which does not promote a legitimate governmental interest will invalidate the statute.

The final requirement recognized by the courts for a statute to meet the due process and equal protection requirements is that the means chosen to achieve the legislative objective must be necessary and appropriate to the end sought. It has been held that the guarantee of due process may be infringed where the means chosen by Congress to effectuate a public interest are unnecessary or inappropriate to the proposed end, or unreasonably harsh or oppressive when viewed in the light of the expected benefit, or arbitrarily ignore recognized rights to enjoy or convey individual property. *Helvering* v. *City Bank Farmers' Trust Co.*, 296 U.S. 85 (1935); *Beltran* v. *Cohen*, 303 F. Supp. 889 (N.D. Cal. 1969).

In applying the tests discussed above, the courts have recognized a difference between economic or social legislation and legislation involving personal liberties. In the area of economic and social legislation, the courts have generally allowed the Congress or state legislatures wide latitude, and only when classifications contained in a statute affect or approach fundamental personal rights do the courts require that a "compelling state interest" be sought in support of the legislation. *Miller* v. *Laird*, 349 F. Supp. 1034 (D.D.C. 1972). Where no personal interests are involved, the courts have nevertheless required as a minimal test that the legislation bear some rational relationship to a legitimate governmental purpose. *Weber* v. *Aetna Cas. Sur. Co.*, 92 S. Ct. 1400 (1972); *U.S.* v. *Thoreson*, 428 F. 2d 654 (9th Cir. 1970); *Davis* v. *Richardson*, 342 F. Supp. 588 (D. Conn. 1972), aff'd 409 U.S. 1069 (1972).

When the concepts discussed above are applied to the proposed Commerce Committee amendment prohibiting oil companies and their affiliates from engaging in the ownership and effective construction and operation of offshore oil ports, it appears that the terms of the amendment are constitutionally defective. We do not concur that a prohibition against oil companies operating in this area serves any legitimate governmental interest. There has been no factual information presented to justify the enactment of such prohibitory legislation.

Even if some justification for the statute could be set forward, such as the enhancement of competition or protection of the environment, the absolute prohibition against the involvement of oil companies in offshore oil ports does not bear a reasonable relationship to the achievement of such goals. There is no showing that oil companies and their

affiliates are more likely than others to cause environmental damage in operating such facilities. On the contrary, because of their knowledge and experience in the area, there is every reason to conclude that oil companies are *best* qualified to safely operate such ports. Oil companies have built and operated them for several years in nearly every major oil producing and oil consuming nation. There is no legitimate reason to preclude oil companies from building and operating them in the United States as well. The exclusion of all oil companies and their affiliates from this important area would not only fail to enhance competition in the oil industry, but would most likely impair competition and result in additional costs to the consumer.

Constitutional questions aside, it would still appear that both the protection of the environment and enhancement of competition can be adequately achieved through other regulatory devices.

(4) Licensing Priorities

Section 5(i)(2) of the bill as reported provides that the Secretary, in deciding between competing applications for a deepwater port license, shall grant first priority to States or their affiliates, second priority to private concerns not affiliated with the oil and gas industries, and third priority to industry applicants. This provision is subject to the same constitutional objections raised to the Commerce Committee proposal.

Although the method used is not an *absolute* exclusionary provision, it is still questionable whether the classification is reasonable and bears a reasonable relationship to a legitimate governmental interest. In our opinion no arguments have been advanced to effectively support the discrimination against oil companies and in favor of state entities and other non-oil interests.

In summary, those portions of the Deepwater Port Act of 1974 which discriminate against oil companies and their affiliates in the granting of licenses to own and operate offshore oil ports are constitutionally objectionable and contrary to the national interest. We believe that those provisions should be eliminated from the bill.

Paul Fannin.
Clifford P. Hansen.
James A. McClure.
Dewey F. Bartlett.

ADDITIONAL VIEWS OF MR. McCLURE

During the Senate's debate on this bill, I shall offer an amendment to delete Section 5(i)(2). That is the portion of the legislation that creates a priority for units of government in the receipt of deepwater port licenses. My amendment would give each application an equal status, offering preference to no one.

I believe it would be unwise to give any governmental agency an automatic priority over tax-paying industry in this legislation. Governments already have access to tax-free bonding. They already can use tax monies in port development. And this bill gives any adjacent state a veto over applications it opposes (e.g., one from private industry). To place another hurdle before private development with this priority scheme, I believe, would discourage any assurance that we will have development of the best possible application.

The Committee on Commerce, I recognize, intends to offer an amendment that maintains the priority concept, but bars the granting of a license to anyone or any company associated with the oil industry. I believe it is both foolish and against the national interest to bar, in the words of the Interior Department, "the segment of the business community that is most qualified to construct and operate deepwater ports."

Restricting competition, either by excluding one segment of the economy or with a priority system, could prevent development of the best possible deepwater ports at the lowest possible cost to the consumer.

With an effective common carrier provision, such exclusions are unnecessary. To assure that the common carrier language in section 8 works effectively, it is essential that licensees maintain separate bookkeeping and records on all costs associated with the construction and operation of the port, and report these figures publicly. Port charges, of course, must be uniform, whether on its own tankers or those of a competitor.

For the reasons I have stated, the bill should be redrafted to allow all competitors to bid freely and equally for superport licenses.

James A. McClure.

ADDITIONAL VIEW OF MR. STEVENS

The Deepwater Port Act of 1974, S. 4076, establishes procedures for the location, construction and operation of deepwater ports off the coasts of the United States. S. 4076 is the result of a growing awareness that the future transport of oil and natural gas by ship will be accomplished by super tankers. This is a consequence of both economic and safety considerations. Deepwater ports must be constructed to accommodate the new super tanker, and I am in full support of the passage of enabling legislation as soon as possible.

The Committee on Commerce recommends the enactment of S. 4076. However, the Committee also recommends the adoption of an amendment which would prohibit companies engaged in the oil or natural gas business from being eligible for a license to operate a deepwater port. This amendment was also advanced before the Ad Hoc Subcommittee, but was rejected. In the interest of consumers of oil and gas, I opposed the amendment before the Ad Hoc Subcommittee and am opposed to the amendment as recommended by the Committee on Commerce.

The question of public versus private ownership of deepwater ports has generated vigorous controversy at the State level. I consider it a positive sign that States and local governments are exploring all avenues with regard to the ownership of deepwater ports. I will not support an amendment which would prohibit States from participating in this decision, knowing that in some instances private ownership may be the only feasible approach. States ay not wish to incur the huge indebtedness necessary for the construction of deepwater port facilities when private capital is available. Moreover, private ownership may be necessary to assure that the essential technology and expertise is available for the most economical and safe construction and operation. It would simply be inappropriate for the Federal Government to inject itself into this debate and dictate to the States the course they must take. It may well be that a particular State might prefer ownership of deepwater ports by oil companies to ownership by any other entity for reasons peculiar to that State. Under such circumstances a State should be allowed a course of self-determination.

One of the principal reasons that the Ad Hoc Subcommittee rejected the absolute prohibition against private ownership was that the Committee adopted a number of proposals which I supported and which call for stringent control if there is to be ownership by an oil company or natural gas company. A number of these changes were adopted as a result of the testimony of James T. Halverson, Director of the Bureau of Competition of the Federal Trade Commission. Mr. Halverson testified that since a deepwater port would effectively control access to imported oil in a particular area "special care must be exercised to prevent anticompetitive abuse."

I share Mr. Halverson's concern that special care be taken to prevent anticompetitive abuses in a deepwater port system. Further,

I believe that the bill as written takes great care to prevent the kind of anticompetitive practices that Mr. Halverson seeks to avoid. There are a number of provisions in the bill specifically designed for this purpose. Indeed, the bill as written would make it very difficult for oil companies to become owners of deepwater ports.

Section 5(i)(2) of the bill establishes an order of priorities according to which the Secretary shall issue a license in the event that more than one application is submitted for an application area. Under this set of priorities, oil companies are placed in the third and last priority.

A key provision of the bill designed to prevent anticompetitive practices is Section 4(c) which establishes prerequisites to the issuance of a license. Section 4(c)(7) requires the Secretary before he issues a license to receive the opinion of the Federal Trade Commission and the Attorney General 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." In addition, Section 7 of the bill requires the Secretary to receive the same opinion from the Federal Trade Commission and the Attorney General before he can transfer a license.

Another key provision is Section 8(b) which requires a licensee "to accept, transport, or convey without discrimination all oil and natural gas delivered to the deepwater port with respect to which its license is issued." This provision also gives the Secretary authority to enforce the antidiscrimination requirements before the appropriate agency or through the Attorney General. This provision would allow the Secretary to prohibit several of the anticompetitive practices envisioned by Mr. Halverson. Section 4(e) would authorize the Secretary to combat these subtle kinds of discrimination by placing antidiscriminatory conditions on the issuance of a license.

Finally, the anticompetitive and antidiscriminatory provisions of the bill can be enforced by the imposition of the heavy penalties established by Section 15. One would expect that the imposition of a criminal or civil penalty of as much as $25,000 per day for violations would be sufficient to deter anticompetitive abuses.

TED STEVENS.

93D CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 93-1042

HIGH SEAS OIL PORT ACT

MAY 15, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. SULLIVAN, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 11951]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 11951), to authorize the construction and operation of high seas oil ports, to be located in the offshore coastal waters of the United States, in order to facilitate the importation of petroleum and petroleum products into the United States, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause, and insert the following:

That this Act may be cited as the "High Seas Oil Port Act".

DECLARATION OF POLICY

SEC. 2. (a) FINDINGS.—The Congress finds—

(1) that the Nation's energy requirements will continue to increase for the foreseeable future and that energy demands will increasingly exceed available domestic sources of energy supply;

(2) that technological, economic, and environmental factors which will directly affect other potential sources of energy supply may dictate that the increased energy demand be met, for at least the near future, largely by the utilization of oil as the source of energy supply and that a substantial part of the needed oil must be imported from foreign sources;

(3) that the economic use of resources, the necessity for improving the national balance-of-payments position, the interest in transportation efficiency, and the maintenance of a competitive position in world trade demand the utilization of increasingly larger vessels to transport the needed quantities of foreign oil;

(4) that the physical limitations of present ports and port facilities in the United States render them incapable of accommodating the larger tankers that will be needed, and that it is not feasible, either economically or environmentally, to deepen the port waters and expand the port facilities to the extent required for the needed accommodation;

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(5) that, as an alternative solution, the use of smaller tankers which can be accommodated in the port areas of the United States would result in substantially increased port congestion and would constitute a massive threat, from environmental and safety viewpoints, from the increased vessel traffic and the expanded oil transfer activities;

(6) that the construction of a sufficient number of high seas oil ports, located in areas where existing water depths will permit the accommodation of the deep draft vessels needed, will be both economically advantageous and environmentally sound;

(7) that the licensing of such ports as to location, construction standards, and operational regulations is a matter primarily of national interest, and that the shoreside impact of such ports is a matter of both national and local interest; and

(8) that the construction and operation of high seas oil ports, in accordance with the provisions of this Act, in waters superjacent to the Continental Shelf of the United States would be a reasonable use of the high seas and would be consistent with recognized principles of international law.

(b) PURPOSES.—The Congress declares that the purposes of this Act are—

(1) to authorize the Secretary of the Interior to grant to eligible applicants licenses for the construction of high seas oil ports;

(2) to authorize the Secretary of the Department in which the Coast Guard is operating to issue necessary and reasonable regulations for the operation of high seas ports;

(3) to minimize any adverse impact on the marine environment which may result from the construction or operation of high seas oil ports; and

(4) to insure that all reasonable precautions are taken to protect the national interests of the United States in the construction and operation of high seas oil ports and to protect the national and local interests involved in the impact of such construction and operation on adjacent coastal States.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(a) "High seas oil port" or "oil port" means, in a structural sense, any complex, consisting of a permanently sited structure or structures, located in, or subjacent to, the offshore coastal waters of the United States, operated as a means for the unloading and further handling of petroleum or petroleum products for transshipment to the United States. The term includes all necessary components, such as vessel mooring facilities, storage facilities, cargo hose systems, pumping stations, operational platforms, pipelines, and their associated equipment and appurtenances. The term also includes any pipeline segment, lying in or subjacent to the territorial sea of the United States, designed to connect a component of the oil port to facilities located landward of the base line from which the territorial sea is measured. In a geographical sense, a high seas oil port shall consist of a circular zone, the center of which is the port reference point, and the diameter of which is not less than two, and not more than four nautical miles.

(b) "Offshore coastal waters of the United States" means the high seas, outside the territorial sea, superjacent to the Continental Shelf of the United States, as the latter term is delineated by the provisions of article 1 of the Convention on the Continental Shelf (15 U.S.T. 471; TIAS 5578).

(c) "United States" or "State" includes the several States, the District of Columbia, the territories and possessions of the United States, and the Commonwealth of Puerto Rico.

(d) "Costal State" means any State in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, or Gulf of Mexico.

(e) "Adjacent coastal State" means, as to a high seas oil port (either existing or proposed), a coastal State any point of which lies within ten miles of the high seas oil port, as that term is used in either a structural or geographical sense.

(f) "Port reference point" means a point designated by the Secretary of the Interior and defined by coordinates of latitude and longitude, located as nearly as possible at the center of activity of a high seas oil port.

(g) "Person" includes private individuals, associations, corporations, or other entities, and any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

(h) "Eligible applicant" means any citizen, or group of citizens, of the United States, any private corporation, or other private entity, created pursuant to the laws of the United States or of any State, or any public authority created, pursuant to Federal or State law, for the purpose of constructing and operating a high seas oil port. To qualify as an eligible applicant, any such private corporation or other private entity, must have as its president or other chief executive officer and as its chairman of the board of directors, or holder of a similar office, a citizen of the United States and may have no more of its directors who are not citizens of the United States than constitute a minority of the number required for a quorum necessary to conduct the business of the board.

(i) "Marine environment" means the offshore coastal waters of the United States; the coastal waters of a State, containing a measurable quantity or percentage of seawater, including, but not limited to, bays, sounds, lagoons, bayous, salt ponds, and estuaries; the living and nonliving resources of all such waters; and the economic, recreational, and esthetic values of those waters and their resources.

ACTIVITIES PROHIBITED

SEC. 4. (a) Except as specifically authorized by the laws of the United States (including the provisions of this Act), or pursuant to an authorized Federal program, no person may construct, maintain, or operate a high seas oil port or any other fixed structure in the offshore coastal waters of the United States.

(b) A high seas oil port, licensed pursuant to the provisions of this Act, may not be utilized—

(1) for the unloading of commodities or materials transported from the United States, other than materials to be used in the construction, maintenance, or operation of the high seas oil port, or to be used as ship supplies, including bunkering, for vessels utilizing the high seas oil port,

(2) for the transshipment of commodities or materials, to the United States, other than petroleum or petroleum products,

(3) for the transshipment of petroleum or petroleum products, destined for locations outside the United States,

(4) for the transportation of minerals, including oil and gas, which have been extracted from the subsoil or seabed of the Continental Shelf of the United States, in the coastal area in which the high seas oil port is located, nor

(5) by carriers of petroleum or petroleum products, unless such carriers are equipped with collision avoidance radar systems which meet or exceed such systems as are required by the United States Maritime Administration of vessels built with the assistance of United States Government subsidies.

TITLE I—CONSTRUCTION OF HIGH SEAS OIL PORTS

DEFINITION

SEC. 101. For the purposes of this title, the term "Secretary" means, except where its usage specifically indicates otherwise, the Secretary of the Interior.

LICENSE TO CONSTRUCT

SEC. 102. (a) GENERAL.—Pursuant to the provisions of this title, the Secretary may issue to any eligible applicant a license to construct a high seas oil port, if the Secretary, after consultation with other appropriate Federal agencies and departments, first determines—

(1) that the applicant is financially responsible and has demonstrated the ability to comply with applicable laws, regulations, and license conditions;

(2) that operations under the license will not adversely affect competition or result in restraint of trade;

(3) that the construction and operation of the high seas oil port will not pose an unreasonable threat to the integrity of the marine environment in which it is to be located, and that all reasonable precautions will be taken to minimize any adverse impact, actual or potential, on the marine environment, including the marine environment of any adjacent coastal State;

(4) that the high seas oil port will not unreasonably interfere with international navigation or other reasonable uses of the high seas, as defined by any treaty or convention to which the United States is signatory, or by customary international law;

(5) that the issuance of a license does not conflict otherwise with the international obligations of the United States;

(6) that the issuance of a license will not be contrary to the national security interests of the United States;

(7) that the location of a high seas oil port in the area for which the license is issued is in the national interest and will meet national needs, or regional needs, or both; and

(8) that the overall benefits resulting from the construction and operation of a high seas oil port will be greater than any potential adverse impact on existing nearby ports.

(b) TERM OF LICENSE.—Any license issued under the provisions of this title shall be for a term of five years and may be extended for such additional period of time as the Secretary finds is reasonably necessary for the completion of construction. Such license shall be converted into a license to operate the oil port in accordance with the provisions of title II of this Act.

(c) TRANSFER OF LICENSE.—Upon the application of a licensee, the Secretary may transfer a license issued under this title when he determines that the proposed transferee qualifies as an eligible applicant and otherwise meets the requirements of this title.

(d) LICENSE CONDITIONS.—(1) The Secretary is authorized to include in any license issued, or transferred, under this title, any reasonable conditions which he finds necessary to carry out the purposes of this Act. Such conditions shall include, but need not be limited to—

(A) such construction schedule requirements as the Secretary finds necessary to assure prompt and effective implementation of the license by the licensee;

(B) such fees as the Secretary may prescribe as reimbursement to the United States for administrative and other costs incurred in processing the application for, and in monitoring the construction of, the high seas oil port;

(C) such fees as the Secretary may prescribe as the fair market rental value of the subsoil and seabed subjacent to the high seas oil port, including the fair market rental value of the right-of-way necessary for the pipeline segment connecting the other components of the high seas oil port to the land, fifty per centum of any such fee to be disbursed to the adjacent coastal State or States;

(D) such measures as the Secretary may prescribe to prevent or minimize any adverse impact of the construction on the marine environment, including the marine environment of any adjacent coastal State;

(E) such requirements as the Secretary may find necessary to insure that, during the period of the license, the licensee shall continue to meet the qualifications required of an eligible applicant;

(F) such requirements as the Secretary may find necessary in order to insure nondiscriminatory access to the oil port at reasonable rates; and

(G) such bonding requirements or other assurances as the Secretary may find necessary in order to insure that, upon the revocation or surrender of a license, the licensee will remove from the seabed and subsoil all components of the high seas oil port: *Provided*, That in the case of components lying in the subsoil below the seabed, 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 to the environment: *Provided further*, That, at the request of the licensee, the Secretary is authorized to waive the removal requirement as to any components 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 (67 Stat. 462), after which waiver the utilization of such components shall be governed by the terms of the Outer Continental Shelf Lands Act.

(2) Prior to including any license condition which is designed to continue to be applicable after the license to construct is converted to a license to operate, pursuant to title II of this Act, the Secretary shall consult with, and give full consideration to the views of, the Secretary of the Department in which the Coast Guard is operating.

ENVIRONMENTAL CONSIDERATIONS

SEC. 103. (a) CRITERIA.—Prior to the issuance of a license under section 102 of this title, the Secretary, after consultation with other appropriate Federal agencies and departments, shall establish and apply, and may from time to time revise, criteria for evaluating the potential impact of the construction or operation of the proposed high seas oil port on the marine environment, including the marine environment of any adjacent coastal State. Such criteria shall include, but are not limited to—

(1) effects on aquatic plants and animals;

(2) effects on ocean currents or wave patterns, and on nearby shorelines or beaches, including bays and estuaries and other features of the coastal zone of any affected coastal State;

(3) effects on other uses of the high seas area, such as navigation, fishing, aquaculture, and scientific research;

(4) effects on other uses of the subjacent seabed and subsoil such as exploitation of resources and the laying of cables and pipelines;

(5) the dangers to any components of the oil port which might be occasioned by waves, winds, and other natural phenomena, and the steps which can be taken to protect against such dangers;

(6) effects on esthetic and recreational values;

(7) effects on land-based developments which are related to port development;

(8) effects on public health and welfare; and

(9) such other considerations as the Secretary finds reasonably necessary to fully evaluate the impact of any high seas oil port.

(b) ENVIRONMENTAL IMPACT STATEMENT.—In connection with the grant or denial of an application for a license under this title, the action of the Secretary will constitute a major Federal action in the sense of section 102(2)(C) of the National Environmental Policy Act of 1969 (83 Stat. 852), and the requirements of that Act will be applied accordingly.

LICENSING PROCEDURES

SEC. 104. (a) GENERAL.—The Secretary is authorized to issue reasonable rules and regulations prescribing procedures governing the application for and the issuance of licenses pursuant to this title. Such rules and regulations shall be issued in accordance with section 553 of title 5, United States Code, without regard to subsection (a) thereof. Such rules and regulations shall contain a mechanism for full consultation and cooperation with all other interested Federal agencies and departments and with any affected adjacent coastal State, and for the consideration of the views of any interested members of the general public.

(b) LICENSE APPLICATION.—Each application shall contain such financial, technical, and other information as the Secretary may find necessary to evaluate the application. Such information shall include, but is not limited to—

(1) the specific location of the proposed high seas oil port including all components thereof;

(2) the type and design of facilities;

(3) where construction in phases is intended, the detailed description of each phase, including the specific components thereof;

(4) the financial and technical capabilities of the applicant to construct and operate the oil port;

(5) the qualifications of the applicant to hold a license under this title, including, in the case of a private corporation or other private entity, necessary information relating to the citizenship of its officers and directors;

(6) an agreement that there will be no material change from the submitted plans without prior approval in writing from the Secretary;

(7) an agreement that the licensee, upon acceptance of the license, will comply with all conditions attached thereto; and

(8) an agreement that the licensee, upon termination of the license, pursuant to the provisions of this Act, will remove all components of the oil port from the seabed and subsoil, in accordance with the license conditions included pursuant to subsection 102(d) hereof.

(c) PUBLIC ACCESS TO INFORMATION.—(1) Copies of any communications, documents, reports, or information received or sent by any applicant shall be made available to the public upon identifiable request, and at reasonable cost, unless such information may not be publicly released under the terms of paragraph (2) of this section.

(2) The Secretary shall not disclose information obtained by him under this section which concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information—

(A) shall be disclosed,

(i) upon request, on a confidential basis, to a committee of Congress having jurisdiction over the subject matter to which the information relates, and

(ii) in any judicial proceedings under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; and

(B) may be disclosed,

(i) upon request, on a confidential basis, to another Federal department or agency, and

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

(3) Nothing contained in this subsection shall be construed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(d) AGENCY CONSULTATION.—(1) Notwithstanding any other provision of law, an application filed with the Secretary for a license under this title shall constitute an application for all Federal authorizations required for construction of a high seas oil port. The Secretary will furnish a copy of the application to all other Federal departments or agencies which would otherwise have permit authority over any aspect of the proposed construction and shall insure that the application contains all the information which would have otherwise been required by those agencies.

(2) Upon receipt of its copy of the application, each department or agency involved shall review the information contained therein and, based upon legal considerations within its area of responsibility, recommend to the Secretary the approval or disapproval of the application. In any case in which a department or agency recommends disapproval, it shall set out in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall notify the Secretary how the application may be amended so as to bring it into compliance with the law or regulation involved. The failure of any department or agency to forward its recommendation to the Secretary within sixty days after receiving a copy of the application shall be conclusively presumed as a recommendation by that department or agency that the application be approved.

(e) COORDINATION WITH ADJACENT COASTAL STATES.—(1) Prior to issuing a license under this title, the Secretary shall consult with, and give full consideration to the views of, the responsible officials of any adjacent coastal State.

(2) When an adjacent coastal State has an existing State program controlling, or other legislative requirements related to, land or water uses, upon which the construction of a high seas oil port will have a direct impact, the applicant shall include, in his application to the Secretary, a certification that in the applicant's best judgment the issuance of the license applied for would be consistent with

applicable State requirements. At the same time, the applicant shall furnish to the appropriate State officials a copy of the certification, with all necessary information and data. After completion of its established procedures for the consideration of such matters, the State involved shall, at the earliest practicable time, notify the Secretary that the State concurs with, or disagrees with, the applicant's certification, and in case of disagreement, the State shall specify the manner in which the certification is in error. The State shall also indicate how the application may be brought into compliance with State requirements, if such compliance is possible. In the event that the State fails to furnish the required notification of concurrence or disagreement, within six months after receipt of its copy of the applicant's certification, the State's concurrence with the certification shall be conclusively presumed. The Secretary may not grant a license under this title until the State has concurred wih the application or until, by its failure to act, the State's concurrence is conclusively presumed.

(3) In addition to following the procedures outlined in paragraph (2) thereof, the Secretary shall also take into account the views of appropriate officials of any State which will be indirectly affected by the issuance of a license under this title, to the extent that the overall project will have a secondary impact on that State because of needs related to the addition or expansion of supporting land-side facilities or the furnishing of expanded services.

(f) NOTICE, HEARINGS, AND REVIEW.—(1) Within thirty days after receipt of an application filed under subsection (b) hereof, and prior to granting any license, the Secretary shall publish in the Federal Register a notice containing a summary of the application and information as to where the application and supporting data required by subsection (b) may be examined, allowing interested persons at least sixty days for the submission of written data, views or arguments relevant to the grant of the license, with or without opportunity for oral presentation. Such notice shall also be furnished to the Governor of each adjacent coastal State, and the Secretary shall utilize such additional methods as he deems reasonable to inform interested persons and groups about the proceeding and to invite comments therefrom. Each such publication shall provide for a hearing or hearings which shall take place in the adjacent coastal State. After the completion of all hearings, the presiding officer shall submit to the Secertary a report of his findings and recommendations, and the participants in the hearings shall have an opportunity to comment thereon.

(2) The Secretary's decision granting or denying the license shall be in writing and shall be made within one hundred and twenty days following the conclusion of all hearings. The decision shall include a discussion of the issues raised in the proceeding and his conclusions thereon and findings on the issues of fact considered at any hearing. The decision shall be accompanied by the environmental impact statement as required by section 102(2)(C) of the National Environmental Policy Act of 1969.

(3) Judicial review of the Secretary's decision shall be in accordance with sections 701–706 of title 5, United States Code. A person shall be doomed to be agrieved by agency action within the meaning of this Act if he—

(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 notice required by this subsection) and

(B) is adversely affected by the agency action or asserts an interest and speaks knowingly for the environmental values asserted to be involved in the suit.

SUSPENSION OR REVOCATION OF LICENSE TO CONSTRUCT

SEC. 105. (a) Whenever a licensee, holding a license to construct, 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 Secetary, may file an appropriate action in the United States district court nearest to the location of the high seas oil port to be constructed or in the district in which the licensee resides or may be found, to—

(1) suspend operations under 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.

(b) When the licensee's failure to comply, in the judgment of the Secretary, creates a serious threat to the environment, the Secretary, in lieu of the action authorized under subsection (a), may suspend operations under the license forthwith and notify the licensee accordingly. Such suspension shall constitute final agency action for the purposes of section 704 of title 5, United States Code.

CERTIFICATION OF COMPLETION OF CONSTRUCTION

SEC. 106. (a) Upon completion of construction of a high seas oil port, the licensee shall notify the Secretary of such completion and of his readiness to commence operation of the oil port. Upon receipt of such notification, the Secretary shall cause an inspection to be made to assure himself that the licensee has completed construction in accordance with the licensee, including the conditions specified by the Secretary under section 102 of this title. If necessary, the Secretary may require such corrective measures as may be necessary to bring the construction into conformance with the provisions of this title.

(b) When the license to construct authorizes construction in designated phases, the licensee may notify the Secretary of the completion of a designated phase, and, upon the request of the licensee, the Secretary shall invoke the procedures of subsection (a) hereof, as if the construction had been fully completed. Subsequent phase completions shall be similarly treated.

(c) Having determined that the construction has been completed in accordance with the requirements of the license and of the provisions of this title, the Secretary shall collect from the licensee a fee equaling three per centum of the cost of construction of the high seas oil port. The Secretary shall disburse one-third of the fee to the United States Treasury and the remaining two-thirds to the adjacent coastal State, or to the adjacent coastal States in equal division. After collection of the fee, the Secretary shall certify the fact of the completion of construction to the Secretary of the department in which the Coast Guard is operating, and the latter official shall thereupon take appropriate action under the authority of section 202 of title II of this Act.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 107. There are authorized to be appropriated for fiscal year 1974 and for each of the two succeeding fiscal years such sums, not exceeding $500,000 for any fiscal year, for the administration of this title, and for succeeding fiscal years only such sums as may be specifically authorized by law.

TITLE II—OPERATION OF HIGH SEAS OIL PORTS

DEFINITION

SEC. 201. For the purposes of this title, the term "Secretary" means, except where its usage specifically indicates otherwise, the Secretary of the department in which the Coast Guard is operating.

LICENSE TO OPERATE

SEC. 202. (a) GENERAL.—Upon receipt of the certification of the Secretary of the Interior, as required by section 106 of title I of this Act and subject to the provisions of subsection (b) hereof, the Secretary shall convert the license to construct a high seas oil port to a license to operate the oil port.

(b) DURATION AND RENEWAL OF LICENSE.—Each license converted, or renewed, pursuant to this title shall be limited to a reasonable term in light of all circumstances concerning the project, but in no event for a term of more than thirty years. In determining the duration of the license, as converted or as renewed, the Secretary shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. Upon the expiration of any licensing period, and on application of the licensee, the Secretary shall renew any such license: *Provided*, That, at the time of the renewal, the high seas oil port is in commercial operation, is operating in accordance with the public interest, and the licensee is otherwise in compliance with the conditions of the licensee, with the requirements of this title and the regulations issued pursuant thereto, and with such other provisions of law as are applicable.

RULES AND REGULATIONS

SEC. 203. (a) GENERAL.—The Secretary is authorized to issue reasonable rules and regulations prescribing procedures under which the high seas oil ports shall be operated. Such rules and regulations shall be issued in accordance with section 553 of title 5, United States Code, without regard to the limitations of subsection (a) thereof. They shall include, but not be limited to, port operations, vessel movements, pilotage requirements, maximum vessel drafts, designation and marking of anchorage areas, facility maintenance, personnel health and safety measures, and the provision of all equipment necessary to prevent or minimize pollution of the marine environment, to clean up any pollutants which may be discharged, and to otherwise prevent or minimize any adverse impact from the operation of the oil port.

(b) LIGHTS AND OTHER WARNING DEVICES AND SAFETY EQUIPMENT.—The Secretary may issue and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on high seas oil ports or on the waters adjacent thereto as he may deem necessary.

(c) PROTECTION OF NAVIGATION.—The Secretary may mark for the protection of navigation any component of a high seas oil port whenever the licensee has failed suitably to mark the same in accordance with regulations issued hereunder, and the licensee shall pay the cost thereof.

(d) SAFETY ZONES.—Subject to recognized principles of international law, the Secretary, after consultation with the Secretary of State, the Secretary of Defense, and the Secretary of the Interior, shall designate a safety zone, surrounding any high seas oil port licensed under this Act, every point in the perimeter of which lies not less than two, and not more than ten, nautical miles from the port reference point. No other installations, structures, or uses incompatible with the operation of the high seas oil port will be permitted within the safety zone. The Secretary shall issue necessary rules and regulations relating to permitted activities within such zone. In promulgating such rules, the Secretary shall consult with the Secretary of State to insure that the rules are consistent with the international obligations of the United States.

(e) SPECIAL REGULATIONS FOR SAFETY OF NAVIGATION.—In addition to any other regulations, the Secretary, after consultation with the Secretary of the Interior, is authorized to establish a safety zone in the manner described in subsection (d) hereof, and to issue reasonable rules and regulations relating thereto, to be effective during the construction of a high seas oil port for the purpose of protecting navigation in the vicinity of the construction.

APPLICABLE LAWS

SEC. 204. (a) GENERAL.—High seas oil ports licensed under this Act do not possess the status of islands and have no territorial seas of their own. Except as specifically provided otherwise in this section, the Constitution and the laws and treaties of the United States shall apply to such high seas oil ports in accordance with their location on the high seas.

(b) STATE LAWS.—State taxation laws shall not apply to any high seas oil port or to any component thereof located outside the tax jurisdiction of the State. In other respects, and to the extent that they are not inconsistent with the provisions of this Act or the regulations issued pursuant thereto, or with other Federal laws and regulations now in effect or hereafter adopted, the civil and criminal laws of the State nearest to the high seas oil port, now in effect or hereafter adopted, are declared to be the law of the United States for the high seas oil port.

(c) NAVIGABLE WATERS OF THE UNITED STATES.—For the purposes of title I of the Ports and Waterways Safety Act of 1972 (86 Stat. 424; 33 U.S.C. 1221–1227); of titles 52 and 53 of the Revised Statutes of the United States, and of Acts amendatory and supplementary thereto, including, but not limited to, sections 4472 and 4417a thereof, as amended (46 U.S.C. 170, 391a); of title II of the Act of June 15, 1917 (40 Stat. 220), as amended (50 U.S.C. 191–194); and of sections 311 and 312 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321–1322), high seas oil ports, licensed under this Act, shall be deemed to be located within the navigable waters of the United States.

(d) Port or Place Within the United States.—For the purposes of the International Voyage Load Line Act of 1973 (87 Stat. 418); of the Coastwise Load Line Act, 1935 (49 Stat. 891), as amended (46 U.S.C. 88–88i); of section 4370 of the Revised Statutes of the United States, as amended (46 U.S.C. 316); of section 8 of the Act of June 19, 1886 (24 Stat. 81; 46 U.S.C. 289); of section 27 of the Act of June 5, 1920 (41 Stat. 998), as amended (46 U.S.C. 883); and of title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (86 Stat. 1052; 33 U.S.C. 1401–1421), high seas oil ports, licensed under this Act, shall be deemed to be ports or places within the United States.

(e) Transportation Between States: Common Carrier.—For the purposes of chapter 39 of title 18, United States Code (18 U.S.C. 831–837), and part 1 of the Interstate Commerce Act (24 Stat. 379), as amended (49 U.S.C. 1–27), movement of petroleum or petroleum products by a pipeline component of a high seas oil port, licensed under this Act, from outside, to within, the territorial jurisdiction of any coastal State shall be deemed to be transportation or commerce from one State to another State, and the licensee shall be deemed to be a common carrier for all purposes of regulation by the Interstate Commerce Commission and by the Secretary of Transportation.

(f) Compensation for Injury.—With respect to disability or death of an employee resulting from any injury occurring in connection with the construction, maintenance, or operations of, a high seas oil port, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424) as amended (33 U.S.C. 901–950). For the purposes of applying that Act to high seas oil ports—

(1) the term "employee" does not include a master or a crewmember of any vessel, or an officer or employee of the United States or any agency thereof, or of any State, or foreign government, or of any political subdivision;

(2) employment in the construction, maintenance, or operation of a high seas oil port shall be deemed to be "maritime employment"; and

(3) high seas oil ports shall be deemed to be located in the navigable waters of the United States.

(g) Labor Disputes.—For the purposes of the National Labor Relations Act (61 Stat. 136), as amended (29 U.S.C. 151–168), an unfair labor practices, as defined in that Act, occurring upon a high seas oil port, shall be deemed to have occurred within the nearest judicial district located in the coastal State nearest to the location of the oil port.

(h) Special Maritime and Territorial Jurisdiction.—For the purposes of section 7 of title 18, United States Code, high seas oil ports, licensed under this Act, shall be deemed to be within the special maritime and territorial jurisdiction of the United States.

(i) Customs Laws.—The customs laws of the United States shall not apply to any high seas oil port licensed under this Act, but all foreign articles to be used in the construction of any such high seas oil port, including any component thereof, shall first be made subject to a consumption entry in the United States and all applicable duties and taxes, which would be imposed upon or by reason of their importation if they were imported for consumption in the United States, shall be paid thereon in accordance with the laws applicable to merchandise imported into the customs territory of the United States.

FOREIGN-FLAG VESSELS

Sec. 205 Except in a situation involving force majeure, a licensee of a high seas oil port may not permit a vessel, registered in or flying the flag of a foreign state, to call at, or otherwise utilize, a high seas oil port licensed under this Act unless (a) the foreign-flag state involved, by specific agreement, or otherwise, has agreed to recognize the jurisdiction of the United States over the vessel and its personnel, in accordance with the provisions of this Act, while the vessel is at the high seas oil port, and (b) the vessel owner, or bareboat charterer, has designated an agent in the United States for the service of process in the case of any claim or legal proceeding resulting from the activities of the vessel or its personnel while at the high seas oil port.

INTERNATIONAL COOPERATION

Sec. 206. The Secretary of State, in consultation with the Secretary, shall seek effective international action and cooperation in support of the policy of this Act and may, for this purpose, 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 and operation of high seas oil ports, with particular regard for measures to promote the safety of navigation in the vicinity thereof.

OFFICIAL ACCESS

Sec. 207. All United States officials, including those officials responsible for the implementation and enforcement of United States laws applicable to a high seas oil port, shall at all times be afforded reasonable access to a high seas oil port licensed under this Act for the purpose of enforcing laws under their jurisdiction or otherwise carrying out their responsibilities.

PENALTIES

Sec. 208. (a) Any person who violates any provision of this title or any rule or regulation issued pursuant to section 203 hereof shall be liable to a civil penalty of $10,000 for each day during which the violation continues. The penalty shall be assessed by the Secretary, who, in determining the amount of the penalty, shall consider the gravity of the violation, any prior violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of the violation. No penalty may be assessed until the person charged shall have been given notice of the violation involved and an opportunity for a hearing. For good cause shown, the Secretary may remit or mitigate any penalty assessed. Upon failure of the person charged to pay an assessed penalty, the Secretary may request the Attorney General to commence an action in the appropriate district court of the United States for collection of the penalty, without regard to the amount involved, together with such other reliefs as may be appropriate.

(b) In addition to any other penalty, any person who willfully and knowingly violates any provision of this title, or any rule or regulation issued pursuant to section 203 hereof, shall be punished by a fine of not more than $25,000 for each day during which such offense occurs.

(c) Any vessel, except a public vessel engaged in non-commercial activities, used in a violation of this title or of any rule or regulation issued pursuant to section 203 hereof, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation, a consenting party or privy to such violation.

SUSPENSION OR REVOCATION OF LICENSE

Sec. 209. (a) Whenever a licensee, holding a license to operate, fails to comply with any applicable provision of this title or any applicable rule, regulation, restriction, or license condition issued or imposed under the authority of this Act, or fails to operate the high seas oil port consistent with the policy of this Act, by denying reasonable access or otherwise unreasonably restricting the amount of petroleum or petroleum products received at the oil port or transshipped to the United States, 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 high seas oil port or in the district in which the licensee resides or may be found, to—

(1) suspend operations under 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.

(b) When the licensee's failure to comply, in the judgment of the Secretary, creates a serious threat to the environment, the Secretary, in lieu of the action authorized under subsection (a), may suspend operations under the license forthwith. Such suspension shall constitute final agency action for the purposes of section 706 of title 5, United States Code.

(c) In any case in which a license is revoked under subsection (a) hereof, the Secretary, in lieu of requiring or permitting the licensee to remove any of the components of the high seas oil port, may—

(1) order forfeited the posted bond or, in the absence of a bond, collect payment of a sum of money representing the other assurances given under section 102(d)(1)(G),

(2) take custody of the high seas oil port, and

(3) transfer the license to any other eligible applicant, with payment from the new licensee for the value of the high seas oil port, such value to be determined by the Secretary and such payment thereafter to be transferred by the Secretary to the former licensee.

LIABILITY FOR DAMAGE

SEC. 210. (a) Notwithstanding any other provision of law, the High Seas Oil Port Liability Fund (hereafter referred to in this section as the "Fund") shall be liable without regard to fault, in accordance with the provisions of this section, for all damages (excluding cleanup costs) to real and personal property within the territorial jurisdiction of the United States that are sustained by any person or entity, public or private, as a result of operations or activities related to a high seas oil port and occurring at, along, or in the vicinity of, any high seas oil port.

(b) Liability may not be imposed under this section—

(1) if the Fund can prove that the damages concerned were caused by an act of war; or

(2) with respect to the claim of a damaged party if the Fund can prove that the damage was caused by the negligence of such party.

(c) Liability for all claims arising out of any one incident shall not exceed $100,000,000, and the Fund shall be liable for the claims that are allowed up to $100,000,000. If the total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable law.

(d) The Fund is hereby established as a nonprofit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General of the United States, and a copy of the audit shall be submitted to the Congress.

(e)(1) Each licensee shall collect from the owner of any oil offloaded at the high seas oil port operated by such licensee, at the time of offloading, a fee of 2 cents per barrel.

(2) The collections made under paragraph (1) shall be delivered to the Fund at such times and in such manner as shall be prescribed by the Secretary. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by such Secretary. Income from such securities shall be added to the principal of the Fund.

(f) Liability under this section shall cease with respect to any oil offloaded at any high seas oil port at such time when the oil has been removed from the onshore facilities of such high seas oil port.

(g)(1) In any case where liability without regard to fault is imposed pursuant to this section and the damages involved were caused by the unseaworthiness of the vessel or by negligence of the owner or operator or of the licensee, the Fund shall be subrogated under applicable State and Federal laws to the rights under such laws of any person entitled to recovery thereunder. If the Fund brings an action based on unseaworthiness of the vessel or negligence of its owner or operator or of the licensee, it may recover from any affiliate of the owner or operator or licensee, if the respective owner or operator or licensee fails to satisfy any claim by the Fund allowed under this paragraph.

(2) In any case where liability without regard to fault is imposed pursuant to this section and claims with respect to the damages involved may be made under any international agreement to which the United States is party, the Fund shall be subrogated to the rights of recovery under such agreements of the person compensated under this section.

(h) This section shall not be interpreted—

(1) to preempt the field of liability without regard to fault or to preclude any State from imposing additional requirements; or

(2) to affect in any manner the application of the Federal Water Pollution Control Act.

(i) If the Fund is unable to satisfy a claim asserted and finally determined under this section, the Fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest.

(j) For the purposes of this section—

(1) the term "affiliate" includes—

(A) any entity owned or effectively controlled by the vessel owner or operator or licensee;

(B) any entity that effectively controls or has the power effectively to control the vessel owner or operator or licensee by—

(i) stock interest,

(ii) representation on a board of directors or similar body,

(iii) contract or other agreement with other stockholders, or

(iv) otherwise; or

(C) any entity which is under common ownership with or control of the vessel owner or operator or licensee.

(2) Ther term "licensee" means any person holding a license to operate a high seas oil port under section 202.

(3) The term "entity" means an individual corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.

AUTHORITY FOR RESEARCH ACTIVITIES

SEC. 211. (a) The Secretary, in cooperation with other Federal agencies of the Government, or not, as may be in the national interest, shall—

(1) engage in such research, studies, experiments, and demonstrations as he deems appropriate with respect to (A) the removal from waters of oil spilled incident to high seas oil ports operations, and (B) the prevention and control of such spills; and

(2) publish from time to time the results of such activities.

(b) In carrying out this section, the Secretary may enter into contracts with, or make grants to, public or private agencies and organizations and individuals.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 212. (a) There are authorized to be appropriated for fiscal year 1976 and for each of the three succeeding fiscal years such sums, not exceeding $2,500,000 for any fiscal year, for the administration of this title (other than section 211 hereof), and for succeeding fiscal years only such sums as may be specifically authorized by law.

(b) There are authorized to be appropriated $10,000,000 for each of the fiscal years 1975, 1976, and 1977, to carry out the purposes of section 211 of this title.

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to authorize the issuance of licenses to eligible applicants for the construction and operation of high seas oil ports, as a means for the unloading and further handling of petroleum and petroleum products for transshipment to the United States. The high seas oil ports licensed under the Act would be located in the offshore coastal waters of the United States, where the depth of water is sufficient to accommodate Very Large Crude Carriers, and thereby take advantage of reduced transportation cost, as well as the environmental benefits resulting from a reduction in the volumes of oil which would otherwise be delivered by vessels in congested port areas.

In accomplishing the basic purpose, the Act would outline the procedures necessary to minimize any possible adverse impact on the marine environment which might result from the construction or operation of high seas oil ports and would further insure that all reasonable precautions are taken to protect the national interests of the United States in such construction and operation, and to protect both national and local interests which would be affected in adjacent coastal States, including nearby ports.

Background and Need for the Legislation

Energy consumption in the United States is a vital part of the nation's economy and is absolutely essential to the nation's well-being. To supply its energy needs in the past, the United States has been fortunate in its access to abundant fuels. The utilization of its available energy sources has enabled the nation to develop the world's highest industrial economy and to enjoy the world's highest standard of living. Anyone who earlier doubted the importance of energy in our national life has certainly become aware of that fact with recent developments. Without sufficient energy sources, the nation's economy will be seriously threatened, and without sufficient energy, decreases in production of food, in industrial activity, in commercial enterprises, in disposal of waste, and in adequate housing will ensue and unemployment will increase.

During recent years, the rising energy demands in the United States have been, in some part, met by increasing domestic capacity. However, today, there is little production capacity remaining and reserves in the major source of crude oil are continuing to decline. Since oil is the major energy source upon which the economy depends, the nation must look forward to increasing its oil imports unless drastic cutbacks in the national economy and substantial changes in the national standard of living are to be suffered.

While the need for additional oil imports has been apparent for sometime, it is only recently that the criticality of that need was brought home to the nation. The policies of Mideast oil exporting nations triggered an energy crisis. Drastic measures were necessary to solve the immediate crisis, but there is no question that if the nation is to satisfy its total energy needs, substantial oil imports will be required during the next few decades. Measures to develop new sources of energy, and to maximize presently available sources other than oil, in order to attain national self-sufficiency, as have been proposed, will take a substantial period of time, and even when successful, it is very likely that we will continue to import petroleum and petroleum products, as they are available, in order to maintain an appropriate balance in our energy supplies. This legislation is, therefore, based on an evaluation that recent restrictions on access to foreign imports will not be reimposed and that until at least the end of the century, oil imports will furnish a substantial part of our energy sources.

If we are to import substantial quantities of crude oil and petroleum products, and if that importation is to be done in the manner most economically and environmentally desirable, we will have to look to a change in our present transportation policy. Transportation tech-

nology has changed rapidly in the last few years. Only a few short years ago, the largest tankers in the world were less than 50,000 dead weight tons, and as late as 1960, the average tanker under construction or on order was less than 40,000 dead weight tons. Today, the picture has changed dramatically. Very Large Crude Carriers of 200,000 DWT are in operation and the average size of all crude oil tankers now on order is approximately 200,000 DWT. In a few years, 500,000 DWT tankers will no longer be a rarity.

With the advent of the increasingly larger crude carriers, transportation costs of petroleum and petroleum products are substantially decreased. For instance, in comparing costs of one 500,000 DWT tanker with ten 50,000 DWT tankers necessary to transport the same amount of oil, current figures indicate that the one VLCC can be built for slightly over one-half the cost of the ten smaller tankers and that the annual cost of operation, including wages, insurance, maintenance, repair, fuel, and overhead for the VLCC is slightly more than one-third of the annual cost of the ten smaller tankers. One study addressing the problem of offshore ports estimated that based on these cost differentials, there could be a net annual saving of transportation costs in utilizing a single high seas oil port (with VLCC delivery), as contrasted to importing oil into existing ports (by using smaller tankers) on the order of $250 million annually in 1985, and $500 million annually by the Year 2000.

If the savings referred to above are to be realized, either at the estimated level or even somewhat below, the construction of high seas oil ports would seem to follow as a matter of course. Existing ports in the United States are simply not capable of accommodating the Very Large Crude Carriers. Depths of approximately 100 feet are required by the largest vessels, and the possibility of dredging present ports, particularly on the East coast, to that depth are simply not economically feasible, aside from the major environmental considerations involved in such large scale dredging projects. In addition to the dredging costs that would necessarily accompany the need for removing solid rock in most port areas, physical limitations exist in many harbors due to harbor landside development and transportation systems, including tunnels crossing under harbor or harbor approach areas.

In addition to the economic benefits which would attach to direct delivery of oil by Very Large Crude Carriers, such delivery at points several miles offshore would result in substantial environmental benefits. An analysis of the pollution threat from the transportation of oil, based upon pollution incidents during the past few years, demonstrates that almost two-thirds of the pollution incidents involved groundings or collisions, and that, other than incidents of structural failures involving older vessels, only about four percent of the pollution incidents occurred at sea, as contrasted to the harbor areas and approaches. In addition to the clear indication that oil reception facilities offshore are basically safer because of the lack of congestion, the increasing size of the tanker fleet would reduce that potential congestion still further. The result will be that collision incidents in harbor and harbor approach areas will be substantially reduced, and that the danger of grounding by keeping the tankers in sufficiently deep water should be removed almost entirely. Finally, should a pol-

lution incident occur, either during transfer at the high seas oil port or for some other reason, the environmental impact of a discharge of oil on the ocean waters will be substantially less severe than a discharge of like magnitude in a harbor area or in the estuarine waters of the coast where the living resources of the sea, including fish, shellfish, crustaceans, and the marine food chain components would be more adversely affected.

In the cases of a few existing ports, deeper draft approach channels and harbors may be physically possible and the issue in such cases must be determined on economic feasibility and environmental impact. A careful balancing in those cases must be made as to the economic and environmental benefits attributable to the construction of a high seas oil port as opposed to the economic and environmental benefits resulting from the expansion of existing port capability. Such decisions would be made on a case-by-case basis before a license to construct a high seas oil port may be issued.

Based upon the economic and environmental considerations involved, the Committee believes that the need for offshore oil ports is clearly demonstrated. There is, however, no existing authority under which these oil ports can be constructed and operated. The present legislation involving structures on the Continental Shelf of the United States is limited to structures built for the purpose of exploiting the seabed and subsoil minerals of the Shelf. There is, therefore, need for the creation of a license system related to high seas oil ports if the nation is to be able to take advantage of this transportation system.

Committee Consideration

Recognizing the desirability for considering the best method of increasing our oil imports in substantial quantities, several bills have been introduced in the present Congress dealing with the problem. Two of those bills, H.R. 5091 and H.R. 5898, were introduced in March 1973, and were referred to the Committee on Merchant Marine and Fisheries. An Administration proposal on the same subject, H.R. 7501, was introduced in May 1973, and referred to the Committee on Interior and Insular Affairs. Other bills in the same subject area, H.R. 2020 and H.R. 10701, were referred to the Committee on Public Works.

The two bills referred to the Committee on Merchant Marine and Fisheries, one addressed to the environmental protection aspects of offshore structures and the other to a licensing system for the construction and operation of such structures, proposed to give the primary authority to the Secretary of Commerce, because of the National Oceanic and Atmospheric Administration involvement in environmental matters and the Maritime Administration involvement in transportation policy. Eight days of hearings were held on the two bills and more than 25 witnesses were heard, representing the various interested Federal departments and agencies, representatives of several States, representatives of groups interested in constructing such offshore ports, and representatives of environmental organizations. In addition, numerous letters and statements of policy, from various industry and public groups were received and more than ten studies on

economic and environmental aspects of the problem were submitted for consideration.

During the course of Committee hearings, which were conducted by the Full Committee, it became apparent that the Committee was faced with a unique problem, and that detailed legislation would be needed to resolve that problem. Furthermore, in receiving testimony from ten Federal departments and agencies, the Administration proposals contained in H.R. 7501 necessarily became involved in the hearings. Recognizing that fact, consultations were held with the Chairman and staffs of both the House Interior and Insular Affairs Committee and the House Committee on Public Works. It was agreed that each Committee would pursue its hearings and that an attempt would be made to coordinate the three approaches in presenting legislation to the House for consideration. As subsequently developed, H.R. 5898, as amended, reflected the consensus of the House Merchant Marine and Fisheries Committee, with language input from the House Committee on Interior and Insular Affairs. The Public Works Committee, on the other hand, while adopting some of the language contained within H.R. 5898, as amended, elected to take a somewhat different approach and has reported a separate bill, H.R. 10701, to the House.

There were several major issues which needed to be resolved in developing a bill. One of the first of those issues had to do with the Federal agency responsibility. While the bills pending before the Merchant Marine and Fisheries Committee proposed to give that responsibility to the Department of Commerce, and while the Administration bill proposed to give that responsibility to the Department of the Interior, the hearings developed information upon which the Committee reached a different conclusion. Although many Federal agencies have responsibilities in connection with offshore activities of the Federal Government, the Department with the direct responsibility for activities attendant upon the exploration and exploitation of oil and other mineral resources of the Outer Continental Shelf is the Department of the Interior.

In addition, legislation now pending in the House, and already enacted in the other body, would place in the Department of Interior major responsibilities related to onshore land use which will be directly affected by the establishment of offshore ports. Other than the Department of Commerce, with its responsibility for the implementation of the Coastal Zone Management Act of 1972, and the administration of legislation relating to the living resources of the sea, the Department of Transportation, through the Coast Guard and the Office of Pipeline Safety for safety measures relating to the Shelf area, and the Department of the Army, through the Corps of Engineers, for its responsibilities in connection with prevention of obstructions to navigation, the Department of the Interior has the major significant responsibilities in the area in which high seas oil ports would be located. In addition, the actual location of an oil port has most impact, as far as existing legislation is concerned, on the exploitation of Shelf resources under the Outer Continental Shelf Lands Act. Therefore, the Committee concluded that the responsibility for processing licenses to construct high seas oil ports could most efficiently be handled by designating the Department of the Interior as the lead agency for

such purposes. In reaching this conclusion, the Committee decided that present responsibilities and staff personnel could be utilized without creating any new institutional arrangements, and that the "lead agency" concept was compatible with the needs of the National Environmental Policy Act, which would bear heavily upon a project to construct and operate a high seas oil port.

As to the operation of the high seas oil port, once construction is completed, the Committee reached a different conclusion. After carefully considering all of the various laws of the United States which should be made specifically applicable to the oil port, it became clear that the United States Coast Guard was the agency most directly affected. Of the laws specifically referred to in section 204 of the bill, approximately three-fourths of them fall within the area of responsibility of the Coast Guard. In addition, title 14, United States Code, section 2, specifically designates the Coast Guard as the Federal agency generally responsible for the enforcement of United States laws on the high seas. Since the actual operation of the high seas oil port will involve primarily safety procedures and environmental protection measures related to marine transportation, the Committee believes that the Department of Transportation, as the department under which the Coast Guard operates, should be given the supervisory control over high seas oil port operation.

Another primary consideration of the Committee involved the international aspects of the proposed legislation. There is no specific international treaty or other agreement which authorizes any nation to build structures on the Continental Shelf other than those related to Shelf exploitation. Nevertheless, the hearings convincingly demonstrated that a coastal nation, in order to give full effect to its right of navigation on the high seas and to promote marine commerce necessary for its well-being, has a basic right to reasonably use the high seas as necessary for those purposes, and the only limitation on that right of reasonable use is the requirement that other reasonable uses of the high seas not be interfered with unduly. The legislation was drafted with those principles in mind. In addition, care was taken to insure that the legislation does not constitute an extension of the territory of the United States, but that it, in all respects, recognizes the rights of other nations, including the question of jurisdiction by other nations over their own vessels on the high seas.

A third major issue involved the role of coastal States in the area in which a high seas oil port would be licensed. While the oil port itself would be outside the jurisdiction of any State of the United States (other than the necessary connecting pipeline to shore), it is obvious that States nearby to the oil port will be affected by its presence. The purpose of the bill is to receive imports of foreign oil. That foreign oil will then be transferred, probably by pipeline, to nearby States. Land-based facilities will necessarily result in some areas. For that reason, the Committee elected to give the affected State a major role in the decision-making process. While the offshore port is a matter of general national interest, the State itself, upon whose lands new facilities must be built, or old facilities expanded, such as storage areas, pipelines, and refineries, must play a major role. The legislation, therefore, provides that where a State so directly affected has either

a State program concerning land or water uses, or other legal requirements relating to such uses, the Federal Government will not issue a license for a high seas oil port involving direct impact on that State without first assuring that all State program and legal requirements are met.

An additional collateral issue involving the State role was whether the State should be eligible as a license applicant. After careful consideration of all the factors involved, it was decided to include public entities as eligible applicants, standing on the same basis as any other applicant, and eligible to apply for a license under the Act subject to the same detailed requirements to which any other applicant would be subject.

Furthermore, the Committee considered, in detail, the problem of environmental protection. The provisions of the bill insure that no license can be issued without first considering its total potential impact on the environment during both the construction and operation phase. Specific criteria are required for the evaluation of any application and specific regulations are required in connection with full notice to all interested parties, including the general public, and full evaluation under an environmental impact statement. In addition, the legislation includes a provision for the establishment of a fund to be responsible, without regard to fault, for damages that may ensue within the United States from pollution incidents, resulting from activities related to the oil port and occurring at the oil port, or in its vicinity.

Finally, the legislation provides for specific research authority in connection with the prevention of pollution incidents and in connection with the response to such incidents as may occur.

At the conclusion of the hearings, the Committee met in four mark-up sessions. H.R. 5898, as amended, was ordered reported by a unanimous voice vote on November 28, 1973.

On November 30, 1973, the Chairmen of the Committees on Merchant Marine and Fisheries, Interior and Insular Affairs, and Public Works, jointly signed a request to the Chairman of the Rules Committee, seeking a rule on H.R. 5898, reported from the Merchant Marine and Fisheries Committee, with a provision that the language of H.R. 10701, reported from the Public Works Committee, could be proposed as a substitute on the Floor of the House. However, when a hearing was held by the Rules Committee on January 22, 1974, the granting of a rule was withheld pending consideration by the Merchant Marine and Fisheries Committee of two issues raised during the course of that hearing. One issue concerned the potential adverse impact of offshore oil ports on nearby existing ports. The second concerned the potential threat of foreign investment in offshore oil ports, with the possibility that the operation of those oil ports might then be tailored to foreign, rather than United States, interests.

In a subsequent session, the Committee considered amendatory language which would strengthen the control of the Secretary of Transportation over the operation of the licensed high seas oil ports, with the result that any attempt to operate the ports inconsisent with the overall national interest could result in revocation of the license. In addition, language was adopted which would insure that the managing personnel of any private entity licensee, as well as decision

makers, would be United States citizens. These features will insure that any licensed oil port will not be operated contrary to the interest of the United States, even if foreign investors are involved.

The issue as to the potential adverse impact on nearby existing ports was handled by two changes of language. First, the ports are specifically limited to the importation of petroleum and petroleum products, so that whatever impact is involved relates only to that type of commodity. Secondly, specific language was included to require that the Secretary of the Interior, before he may issue a license to construct a specific high seas oil port, must determine that the economic benefits, coupled with environmental benefits, will more than outweigh any adverse impact on nearby existing ports. The Committee recognizes that the construction of a high seas oil port will necessarily affect potential increases of imports of petroleum and petroleum products into presently existing ports. As a matter of fact, that very feature is considered to be environmentally beneficial by removing the potentially increased threat of tanker groundings and tanker traffic congestion in harbors. There is no reason, however, why existing harbors will not benefit from additional traffic in other commodities which do not constitute the same threat as petroleum in large tankers. The question of existing or future harbor expansion plans should also be able to stand on their own justification, and that justification, at least environmentally, should be improved by the fact that it would not be based on additional oil traffic.

H.R. 11951, as introduced on December 13, 1973, represents a clean version of H.R. 5898, as reported. In order to avoid an excessive number of amendments, it was decided to report that bill, H.R. 11951, with a single amendment, which would incorporate all necessary amendatory language. The Committee, therefore, ordered H.R. 11951, as amended, reported by a unanimous voice vote on May 1, 1974.

Title I

Title I of H.R. 11951, as amended, deals with the construction of high seas oil ports. It authorizes the Secretary of the Interior to issue licenses for such construction if the Secretary, after consultation with other appropriate Federal agencies and departments, determines that the applicant is, in all respects, entitled to a license under the various provisions of the Act, that operations under the license will not result in restraint of trade, that the construction and operation of the proposed port will not pose an unreasonable threat to the integrity of the marine environment in which it is to be located, that it will not unreasonably interfere with other permitted uses of the high seas, that it is not in conflict with international obligations or national security interests of the United States, that the location designated will meet national or regional needs, or both, and that the overall benefits resulting from the construction and operation of a high seas oil port will outweigh any potential adverse impact on existing nearby ports. The license would be issued for a specific term and the Secretary would be authorized to attach any reasonable conditions to the license which he finds necessary to carry out the purposes of the Act.

Prior to issuing any license, the Secretary, after appropriate consultation, is required to establish and apply specific criteria for evaluating the potential impact of construction and operation of the specific high seas oil port on the marine environment, including the marine environment of any adjacent coastal State. In addition, the bill specifically provides that the issuance of the license is a "major Federal action" in the sense of the National Environmental Policy Act, automatically invoking the requirements of that Act related to the preparation and publication of an environmental impact statement relative to the license. Specified licensing procedures are outlined, including the authority of the Secretary to implement those procedures by pertinent rules and regulations issued in accordance with the Administrative Procedures Act. Full consultation and cooperation with other interested Federal agencies, with affected adjacent coastal States, and with the general public is required in developing the appropriate regulations. In addition, the bill requires submission by the applicant of all information necessary to evaluate the application and requires, among other things, information relating to the proposed location, the proposed design, the construction schedule, the financial and technical capabilities of the applicant, the qualifications of the applicant, and specific agreements, to which the licensee would be required to adhere. All pertinent information, with certain specific limitations, is intended to be readily available to the public so that the public may participate intelligently in the agency consideration of the application.

As to other Federal departments and agencies, the Secretary is required to furnish to those agencies with a direct interest in any aspect of the proposed construction, a copy of the application together with all the information of interest to those agencies. Each such department and agency thereafter is required to review the information received and to recommend to the Secretary the approval or disapproval of the application. Where disapproval is recommended, the agency is also required to notify the Secretary as to the exact manner in which the application is in conflict with some specific requirement within its jurisdiction and shall specfy as to how the application may be amended so as to bring it into compliance. It is intended that the Secretary shall follow to the maximum extent feasible the suggestions of other agencies involved. However, there are no specific requirements preventing his approval of the application even though there may be agency opposition. Therefore, the Secretary may issue a license despite agency opposition if he determines that the policy of this Act should override a conflicting requirement which in the absence of this Act would be applicable.

The bill also requires close consultation with, and full consideration of the views of any adjacent coastal State. Where that State has an existing State program or other legislative requirements for land or water uses upon which the construction of a high seas oil port would have a direct impact, the applicant is required to include in his application a certification that, in his best judgment, the issuance of the desired license would be consistent with any State requirements. At the same time, the applicant is required to furnish a copy of his certification to the appropriate State, with all necessary information and data, and in the event that any State objections can not be resolved, the Secretary may not grant a license under that application. In addi-

tion to directly affected adjacent coastal States, the Secretary shall also, to the extent practicable, give effect to the views of any other State which will be indirectly affected because of additions to or expansion of supporting landside facilities in that State or the expansion of services furnished by that State.

The bill also includes specific procedures for necessary notices relating to license application to insure that all interested parties, governmental and non-governmental, are informed and given an opportunity to express their viewpoints. Public hearings are required in the case of each application to be held in the vicinity of the location site. At the conclusion of all hearings, the Secretary's decision shall be in writing and shall be made within 120 days thereafter. Judicial review of the decision shall be in accordance with the Administrative Procedures Act with a specific declaration as to the meaning of "aggrieved by agency action" as referred to in that Act.

This title also provides for the conditions under which a license granted may later be suspended or revoked, providing for full protection to both the public and to the licensee.

Upon completion of the construction of the high seas oil port in accordance with all statutory and regulatory requirements, and upon the collection of a fee amounting to three percentum of the construction cost (⅓ to be disbursed to the United States Treasury and ⅔s to the adjacent coastal State), the Secretary shall certify to the Secretary of the department in which the Coast Guard is operating that the construction has been completed and that operations under the license may commence.

Finally, the title authorizes appropriations necessary to administer the title.

Title II

Title II of H.R. 5898, as amended, deals with the operation of high seas oil ports. First of all, the responsibility for oversight of operations is placed in the Secretary of the department in which the Coast Guard is operating. That Secretary, upon receipt of the certification by the Secretary of the Interior, required by Title I, as to the completion of construction, shall convert the license to construct to a license to operate the high seas oil port. The license, as converted or renewed, shall be limited to a reasonable period of time, taking into account certain specific factors, but shall not be for a term of more than 30 years.

The Secretary is authorized to issue reasonable rules and regulations regarding the operation of the high seas oil port, in relation to general operations concerning port procedures, movements of vessels, facility maintenance, health and safety measures, and pollution prevention and clean-up requirements. In addition, the Secretary is given specific authority with respect to lights and warning devices and other matters concerning the promotion of safety of life and property on the high seas oil ports, and the adjacent waters, as well as marking any oil port component, at the expense of the licensee, in order to protect navigation in the vicinity. He is given further authority to designate a safety zone surrounding the oil port, in which zone other uses may be restricted as necessary to protect activities within the oil port, as well as

vessel traffic in the vicinity. Finally, the Secretary is given authority to establish safety zones during the construction period in order to protect navigation in the vicinity.

In addition to the regulatory authority of the Secretary, specific provisions are made as to the applicability of other laws to high seas oil ports. A specific statement is included that, in a general sense, high seas oil ports do not possess the status of islands and have no territorial seas of their own. In general, the Constitution and the laws and treaties of the United States shall apply to such oil ports in accordance with their high seas status. This provision makes clear that the United States is making no territorial claim outside its present territorial limits, and that the high seas oil ports are not to be construed as a part of the territorial jurisdiction of the United States or of any State thereof. Further provision is made that State taxation laws shall not apply to the high seas oil port or to any component thereof outside the tax jurisdiction of the State. In using the phrase "tax jurisdiction", it is intended that there should be no interpretation which would deprive the State of applying its tax laws to that part of the pipeline component within its jurisdiction, nor is it intended to prevent the State from applying any income tax laws applicable to the State's citizens earning income outside the State's borders.

In addition to the extent that Federal laws and regulations, in effect at the time of enactment or subsequently adoted, including this Act, do not cover a specific subject area, the civil and criminal laws of the State nearest to the high seas oil port will be assimilated as Federal law for the high seas oil port. Certain specific statutes are made applicable to the high seas oil port. These include statutes relating to vessel movements, vessel construction and standards, vessel personnel, the discharge of oil and hazardous substances, the discharge of sewage from vessels, vessel load lines, the carriage by vessels of cargo and passengers, the utilization of tugs, the transportation of material for discharge into oceans, the regulation of movement of petroleum by pipeline, standards for pipeline construction, compensation for disability or death of oil port employees, unfair labor practices, and certain provisions of the U.S. Criminal Code relating to the high seas. The customs laws of the United States are specifically made inapplicable with special provisions for foreign articles used in construction.

In order not to violate treaty commitments of the United States concerning the exercise of jurisdiction over foreign-flag vessels on the high seas, the bill prohibits the use of the high seas oil port by a foreign-flag vessel unless the foreign-flag State involved agrees to recognize the jurisdiction of the United States for that purpose, and unless the foreign-flag vessel owner has designated an agent in the United States for service of process.

The Secretary of State is enjoined to take certain action internationally in support of the policy of the Act.

All United States officials with responsibilities in relation to laws applicable to a high seas oil port shall be afforded access to the oil port in order that they may carry out their responsibilities.

A civil penalty of $10,000 is provided for each violation of the title or of any rule or regulation issued pursuant to section 203. In addi-

tion, a criminal fine of not more than $25,000 is provided for a willful and knowing violation of the title or of a section 203 regulation. Any vessel, except a public vessel, is made liable *in rem* for any penalty or fine resulting from a violation in which the vessel was used.

The Secretary is authorized under certain conditions to take appropriate action to suspend or revoke the license to operate. Once a license is revoked, the Secretary has the option of requiring the removal of oil port components from the area, or he may take custody of the oil port and transfer it, for value, to a new licensee.

The title further provides for the establishment of a High Seas Oil Port Liability Fund which shall be responsive without regard to fault for all damages occurring within the territorial limits of the United States as a result of operation or activities related to a high seas oil port. The Fund will respond to claims rising out of any one incident up to $100,000,000. It may sue, and be sued in its own name. The Fund will be created by a fee of $.02 per barrel, collected from the owner of any oil off-loaded at the high seas oil port, the Fund shall be subrogated to the rights of any claimant whose claim is satisfied by the Fund, and finally, where necessary, the Fund may borrow money needed to satisfy claims.

The title also authorizes the Secretary to engage in certain research activities and to enter into contracts, or make grants, for that purpose.

Finally, the title authorizes appropriations for fiscal years 1976, 1977, 1978, and 1979 of not more than $2.5 million for any fiscal year for the administration of Title II, other than section 211. It also authorizes $10 million for each of fiscal years 1975, 1976, and 1977, to carry out the purposes of section 211.

Section-by-Section Analysis

Section 1. Short title

This section provides for the short title of "High Seas Oil Port Act".

Section 2. Declaration of policy

This section outlines the national policy involved in the enactment of the Act, by listing certain findings which outline the justification for, and declaring the specific purposes to be accomplished in, that enactment. The findings in subsection (a) relate (1) to the fact of an anticipated increase in the nation's energy requirements and the conclusion that the national energy demands cannot, for the foreseeable future, be met by the domestic sources of energy supply; (2) to the fact that certain factors affecting other potential sources of energy supply may require that increased demands be met by the utilization of oil as the supply source and that a substantial part of that oil must be imported; (3) to the fact that the economic resource use, the protection of the national balance of payments position, transportation efficiency, and the maintenance of a competitive position in world trade, demand the utilization of increasingly larger tankers to transport the needed oil; (4) to the physical limitations of present port areas and port facilities which render them incapable of accommodating the needed larger tankers and the lack of feasibility, either from a cost or environmental protection viewpoint of rendering the port waters or port facilities capable of accommodating such larger tankers; (5) to the fact that importation of the additional quantities of oil in smaller tankers would constitute substantial port congestion; (6) to the fact the construction of oil ports on the high seas in water sufficiently deep to accommodate the larger tank vessels is both economically and environmentally advantageous; (7) to the fact that there is primarily a national interest in the location, construction standards, and operational control of the high seas oil ports and that there is both national and local interest in the resultant shoreside impact which such ports necessarily will have as the oil is transferred ashore, and (8) that the construction and operation of such high seas oil ports is a reasonable use of the high seas and would be consistent with recognized principles of international law. In subsection (b), the purposes of the Act are declared to be the authorization of construction licenses by the Secretary of the Interior, the authorization of operation regulations by the Secretary of the Department in which the Coast Guard is operating, the minimization of any adverse impact which either the construction or operation would have on the marine environment, and the protection of the national interests of the United States in such construction and operation, as well as the protection of the national and local interests related to the impact of adjacent coastal States.

Section 3. Definitions

(*a*) This subsection defines "high seas oil port" or "oil port" to mean, in a structural sense, any complex consisting of a structure or structures, permanently sited, whether floating or bottom-bearing, to be located in or subjacent to, the offshore coastal waters of the United States, to be operated as a means for unloading and further transfer of petroleum or petroleum products for transshipment to the United States. In a structural sense, "high seas oil port" includes all necessary components, together with their associated equipment and appurtenances. It also includes that segment of the pipeline connection to the shore, which segment, while strictly speaking, not located beyond the territorial limits of a State, is a constituent part of the permit process and is intended to be covered by the single permit issued. In addition, in a geographical sense, the high seas oil port is defined as a circular zone, of not less than two and not more than four nautical miles, the center of which circular zone is described as the port reference point.

(*b*) "Offshore coastal waters of the United States, refers to the high seas, beyond the territorial limits of the United States, and superjacent to the Continental Shelf of the United States, as the Continental Shelf is delineated by the provisions of the Convention on the Continental Shelf, to which the United States is signatory. By virtue of this definition, the intent is made clear that the authority under this Act to construct and to operate high seas oil ports does not extend into any waters located within the territorial limits of the United States, with the single exception that where there is a pipeline connection from a permitted high seas oil port, that segment of the pipeline component within the territorial limits of the United States shall be included as a part of the overall construction and operation license.

(*c*) This subsection defines "United States" or "State" to include the several States, the District of Columbia, the territories and possessions of the United States, and the Commonwealth of Puerto Rico.

(*d*) This subsection defines "coastal State" to include any State, as defined above, which lies in, or borders on, the Atlantic, Pacific, or Arctic Ocean, or Gulf of Mexico.

(*e*) This subsection defines "adjacent coastal State" to mean, as to any high seas oil port, either existing or proposed, a coastal State, as defined above, any point of which lies within ten miles of any component of the high seas oil port. This definition is designed to include, therefore, the coastal State nearest to the high seas oil port, in its geographical sense, as well as any State which lies within ten miles of any component, and, in particular, a pipeline segment which connects the high seas oil port to the land. This definition relates only to the actual territorial limits of the State involved, and is not intended to refer in any way to an extension of lines of demarcation beyond the territorial limits of that State.

(*f*) This subsection defines the "port reference point" to be designated by the Secretary of the Interior for purposes of charting and measurements for other purposes. The port reference point is to be defined by the coordinates of latitude and longitude and is to be selected as that point located as nearly as possible at the center of the high seas oil port activity. In other words, if the high seas oil port consists of one basic sea island or artificial island, the port reference point would be the center of the structure. In the case of single buoy or multi-buoy systems with associated platforms, some element of judgment for the exact reference point must be exercised.

(*g*) This subsection defines "person" to include private individuals or entities, and officers, employees, or instrumentalities of the Federal Government, of any State or local government, or of any foreign government.

(*h*) This subsection defines "eligible applicant" as meaning (1) any citizen or group of citizens of the United States, (2) any private corporation or other private entity which has been created pursuant to the laws of the United States or of any State, or (3) any public authority created pursuant to State or Federal law, for the purpose of constructing and operating a high seas oil port. This provision makes public entities eligible to apply for licenses, but in view of the many and varied types of entities, those eligible are limited to ones which have been created under Federal or State law for the specific purpose of constructing and operating a high seas oil port. As to private entities, additional requirements are imposed. Not only must they have been created under United States law, whether Federal or State, but the chief executive and policy-making officers must be United States citizens. In addition, there may be on the board of directors or other governing body of such an entity no more persons who are not United States citizens than constitute a minority of the number required for a quorum for the purpose of doing business. For example, on a board of directors consisting of nine members, where five members are necessary for a quorum to do business, no more than two of the directors could be non-citizens, requiring that the other seven necessarily be citizens of the United States. This provision is similar to existing requirements relating to certain United States companies owning vessels registered under the United States-flag. It is intended to give greater domestic control over the personnel of any licensed private entity, including a greater ability to reach such personnel should a civil or criminal penalty under Section 208 be found necessary.

(*i*) This subsection defines "marine environment" to include the offshore coastal waters of the United States, as earlier defined, the coastal waters of a State within its territorial limits, which contain a measurable amount or percentage of sea water, the resouces, both living and non-living, of each of the cited bodies of water, and the economic, recreational, and esthetic values of the listed waters and the resources located therein and thereunder.

Section 4. Activities prohibited

This section outlines the activities prohibited under the Act. First, it specifies that, except as specifically authorized by the laws of the United States, including this Act, or pursuant to an authorized Federal program (even though that program is not authorized in specific terms by law) no person, as defined in the Act, may construct, maintain, or operate, either a high seas oil port or any other fixed structure in waters superadjacent to the Continental Shelf of the United States. "Fixed" in the sense used here refers to a permanently sited structure, whether that structure is floating or bottom-bearing. The type of Federal program referred to could include such programs as the establishment and maintenance of fishing reefs, research platforms, and national defense installations.

The section also prohibits the use of the high seas oil port for purposes other than its defined purpose. It may not be utilized, except for materials or supplies to be used in the construction, maintenance, or operation of the high seas oil port, for the unloading of any commodities or materials brought to the oil port from the United States. It may not be used for transshipping to the United States any commodities or materials other than petroleum or petroleum products. It may not be used for the transshipment of petroleum or petroleum products which are destined for locations outside the United States. This would not prohibit the unloading of petroleum or petroleum products from foreign sources, the first destination of which would be the United States, even though the ultimate destination might be elsewhere. It may not be used for transportation of minerals extracted from the seabed and subsoil of the Continental Shelf in the coastal area in which the high seas oil port is located. This prohibition is intended to apply to the utilization of the high seas oil port for the transshipment of oil extracted in the same area. It would not prohibit, for materials or supplies to be used in the construction, maintenance, nia, of oil extracted from the Continental Shelf of the Alaskan North Slope. Finally, it may not be used by any vessel which is not equipped with collision avoidance radar system meeting or exceeding such systems as are required by the United States Maritime Administration of vessels built with United States Government subsidies.

Title I—Construction of High Seas Oil Ports

Section 101. Definition

This section defines the term "Secretary" as referring to the Secretary of the Interior.

Section 102. License to construct

This section outlines the basis upon which the Secretary may issue construction licenses, including the determination of the applicant's responsibility and general capability to comply with license conditions; the assurance of competition; the protection of the marine environment in which the port is to be located; the assurance that the port will not unreasonably interfere with other high seas uses; the assurance that the location chosen will meet national needs, or regional needs, or both, and the assurance that, taking into account the transportation cost savings, the economic advantages of increased supply and support activities and the environmental advantages of receiving the expected increase in oil imports several miles offshore, the total benefits will outweigh any adverse economic impact on nearby ports resulting from a potential loss of oil imports. It is anticipated that the reduction of oil imports into existing ports will be minimal, particularly in the near term, since the smaller tankers which those ports can accommodate will continue to use present port facilities and where future changes to larger tankers occur as the economics may dictate, the lost oil imports will be replaced by increased cargo movements in other commodities less threatening to the port area when accidents occur.

In addition, the section provides for a license term of five years with necessary extension authority; authorizes the transfer of a construction license; and outlines the authority of the Secretary to attach conditions to the construction license including construction schedule requirements, necessary fees, environmental protection measures, assurance of nondiscriminatory access at reasonable rates, and bonding requirements to make certain that the licensee, upon termination of license, will remove such components as may have been put in place, subject to certain waiver authority by the Secretary. In relation to fees for pipeline rights-of-way, the section provides that one-half of any such fee shall be disbursed to the adjacent coastal State, or where more than one State fits that description, shall be divided equally between them. The pipeline right-of-way fee, which the Secretary may prescribe, is limited to that part of the pipeline lying outside the seaward boundaries of any State, leaving to the involved State the question of assessing right-of-way fees for the pipeline component within that State's boundaries. The section also requires consultation with the Secretary of the department in which the Coast Guard is operating as to any license conditions which are intended to continue after the license to construct becomes a license to operate. The license conditions referred to in this regard would include, but would not necessarily be limited to, design and construction standards as they would later relate to operating conditions. In addition, the Secretary would be expected to consult in the same manner as to any other aspect of the construction, such as the siting, which would impact on the operational authority of the Secretary of the department in which the Coast Guard is operating.

Section 103. Environmental considerations

This section provides that the Secretary, prior to the issuance of a construction license, shall establish certain criteria for evaluating the

potential environmental impact of the construction on the marine environment. The critieria specifically listed relate to the various aspects of marine environment protection. Included are related land-based developments to the extent that they may impact on that environment. The other aspects of land-based developments would be considered primarily by the State under the provisions of section 104. In addition, the section defines the issuance of such a license as a "major Federal action" in the sense of NEPA, thereby automatically requiring an impact statement.

Section 104. Licensing procedures

This section authorizes the issuance of rules and regulations concerning issuance of licenses; lists the information to be required in license applications; provides for public access to information related to the license application; outlines the procedures to be followed by the Secretary in consulting with other Federal agencies and adjacent coastal States prior to issuing a license; states the requirements of publication of notice; specifies the holding of public hearings; and outlines the procedures to be followed in the review of the Secretary's decision relating to the license application.

As to the public access to information, it is expected that all information reasonably necessary for an intelligent participation in the decision-making process will be made readily available to the interested public. As to the consultation with other agencies, the Secretary is expected to give full and complete consideration to the comments and recommendations of those agencies, with the caveat that where objections cannot be resolved, the Secretary will have to make a decision as to whether the general need and justification for the particular license should override the objection of another agency. In any such override, the Secretary will, of course, be expected to justify his decision to the public, to the Congress, and, if court action ensues, to the court. As to the consultation with adjacent coastal States, subsection (e) outlines the procedures therefor, and requires the resolution of the coastal State's objections before a license may be issued, when the license has a direct impact on the State. Where an adjacent coastal State's objections cannot be resolved, the Secretary may not grant a license under this title. It should be noted, however, that the State's objections must be based upon the fact that the issuance of the license and the necessary secondary impact thereof would be inconsistent with applicable State programs or other legislative requirements related to land or water uses. The controlling State objections would not be determinative of the issue unless they were so founded. In considerating the views of any State which would be indirectly, rather than directly, affected, for instance, a State in whose borders the overall project could, but need not necessarily include, land-based facilities, the views of that State should be considered, but would not be dispositive of the question of issuing the license, in view of the fact that that State could grant or withhold its permission for the expansion of facilities or services in accordance with other laws.

As to notice, hearing and review, the Secretary shall take every appropriate action to insure full and complete notice related to a license application. He is required to hold full public hearings and to make

his decision in writing within a definite time period. The judicial review of his decision is available in accordance with the procedures contained in Chapter 7 of title 5, United States Code. Paragraph (3) of subsection (f) of this section defines what is meant by the phrase "aggrieved by agency action within the meaning of a relevant statute", as included within title 5, United States Code, section 702.

Section 105. Suspension or revocation of license to construct

This section outlines the Secretary's authority to suspend or revoke a construction license when the licensee fails to comply with any applicable provision of the title or any applicable rule, regulation, restriction, or condition issued or imposed by the Secretary. It is intended that the Secretary will, by rule, prescribe the conditions and time limitations under which a suspension may be terminated and construction resumed.

Section 106. Certification of completion of construction

This section includes the provisions under which the Secretary may certify the proper completion of construction, so that the license to construct may ripen into a license to operate under Title II. After he finds that construction has been properly completed, the Secretary is required to collect from the licensee a fee equaling three per centum of the cost of construction of the high seas oil port. The construction cost involved is, of course, limited to the construction of components as licensed by the Secretary and does not extend to any construction cost of associated land-based facilities. He shall then disburse one-third of the fee to the United States Treasury and the remaining two-thirds to the adjacent coastal State, or to the adjacent coastal States in equal division. This disbursement to the States, to the extent that the amount involved will do so, is intended to reimburse those States for any associated costs related to the high seas oil port construction. The requirement for a construction fee will, of course, apply when a public entity is the licensee, as well as when individuals or private entities are involved.

Section 107. Authorization for appropriations

This section authorizes not to exceed $500,000 for each of the fiscal years 1974, 1975, and 1976, for administration of the title.

Title II—Operation of High Seas Oil Ports

Section 201. Definition

This section defines the term "Secretary" as referring to the Secretary of the department in which the Coast Guard is operating.

Section 202. License to operate

This section provides for the conversion of a license to construct to a license to operate. It also provides for the renewal of such converted license. The period of the license to operate, as converted or renewed, shall be specified for a period of years in the light of all circumstances, but for a period of no more than thirty years. In determining such duration, the Secretary shall consider various pertinent factors including cost, useful life, and the public purpose served. When any licensing period expires, and upon application of the licensee, the Secretary is required to renew the license, provided he finds at that time that the high seas oil port is in commercial operation, is operating in accordane with the public interest, and that the licensee is in compliance with license conditions, with title requirements including regulations thereunder, and with such other provisions of law as may be applicable at that time relating to the operation of the high seas oil port.

Section 203. Rules and regulations

This section authorizes the Secretary to issue reasonable rules and regulations under which the oil port shall be operated, and provides specifically for regulations with respect to matters concerning safety of life and property, the protection of navigation, and the establishment of safety zones. Special regulations may also be issued by the Secretary, after consultation with the Secretary of the Interior, in order to protect navigation during the construction period of the high seas oil port.

Section 204. Applicable laws

This section specifies that high seas oil ports do not possess the status of islands and have no territorial seas of their own, and makes applicable to the high seas oil port, except as specifically provided in the section, the Constitution and the laws and treaties of the United States in accordance with the high seas status of the oil port. The above provision is intended to make clear that, in enacting this Act, the United States is making no territorial claims beyond its present territorial limits. The high seas oil ports are recognized as being a part of the high seas, and the extension of United States jurisdiction over them for various purposes is restricted to the supervision of their operation and does not constitute a claim of territorial jurisdiction. State taxation laws are specifically not applicable to the high seas oil port or any part thereof located outside the tax jurisdiction of a State. There is no intention by this provision to change the right of a State to apply its tax laws to its citizens as they may otherwise be applied to those citizens while outside the State jurisdiction, nor is there any intent to preclude a State from applying its taxation laws to any pipeline segment of the high seas oil port lying within the State jurisdiction. In other respects, certain civil and criminal laws of the State nearest to the high seas oil port are declared to be the law of the United States for the oil port.

Certain laws are made specifically applicable to the high seas oil port as if it were located within the United States, including Title I of the Ports and Waterways Safety Act of 1972, laws relating to merchant vessel inspection and merchant seamen, the so-called Magnuson Act relating to port security, sections of the Federal Water Pollution Control Act relating to oil and hazardous substance discharges and to sewage discharges from vessels, the International and Coastwise Load Line Acts, laws relating to the carriage of passengers and cargo and the utilization of towing vessels, Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 relating to the transportation of material for dumping into ocean waters, provisions of the Longshoremen's and Harbor Workers' Compensation Act, and the National Labor Relations Act, and provisions of law relating to pipeline move-

ments of petroleum and petroleum products, as to the regulatory authority of the Interstate Commerce Commission as to rates, and the Secretary of Transportation as to pipeline safety, the latter in relation to pipeline safety. Finally, by definition, certain Federal criminal laws, applicable to the special maritime and territorial jurisdiction of the United States are made applicable to the oil port. The customs laws of the United States will not apply to the high seas oil port, but foreign articles used in construction will be subject to applicable duties and taxes. It should be noted that some difficulty may be created in the application of some of these specific laws to a high seas oil port when a public entity is the licensee. This, of course, is a matter that the Secretary should consider in connection with whether the eligible applicant is capable of complying with the overall scheme of the Act.

Section 205. Foreign-flag vessels

The purpose of this section is to insure that the United States, in this Act, does not violate its treaty commitments under the Convention on the High Seas. Article 6 of that Convention specifically provides that "ships shall sail under the flag of one State only and, save in exception cases *expressly provided for in international treaties or in these Articles*, shall be subject to its exclusive jurisdiction on the high seas" (emphasis added). In order that there can be no question relating to the various laws made applicable to the high seas oil port under this title, it is considered necessary from a legal standpoint and desirable from an international relations standpoint, that any jurisdiction asserted over foreign-flag vessels is based upon clear legal authority, and is not dependent upon a theory of consent by the foreign-flag vessel owner, as contrasted to the foreign-flag nation.

Section 206. International cooperation

This section directs the Secretary of State to take appropriate action internationally relating to construction and operation of high seas oil ports, with particular regard for navigational safety measures.

Section 207. Official access

This section requires reasonable access to the high seas oil port for all United States officials for the purpose of carrying out their responsibilities.

Section 208. Penalties

This section provides for a civil penalty of $10,000 per day for violations of the title, or of applicable rules and regulations. It provides in addition for a criminal penalty of not more than $25,000 per day when any such violation is committed willfully or knowingly. Finally, it subjects certain vessels to liability *in rem* for any penalty assessed or fine imposed when the vessel is used in committing the violation. The exemption of public vessels is intended to apply to those vessels entitled to sovereign immunity under international law. This would include vessels owned or bareboat chartered by the Federal Government, by a State Government, or by a foreign government, but would not include such vessels if they were being used at the time for commercial purposes.

Section 209. Suspension or revocation of license

This section provides for the authority to suspend or revoke licenses when the licensee fails to comply with appropriate rules, regulations, restrictions, or conditions of the license, or operates the high seas oil port contrary to the policy of the Act as expressed in Section 2, by denying reasonable access to the oil port for importation of oil by persons or companies not involved in the operation of the oil port, or by otherwise unreasonably restricting the amount of oil that may be imported and thereby not utilizing the oil port to its full capacity to meet the needs outlined in Section 2. The section also provides for appropriate court process and, in appropriate cases, summary action by the Secretary.

In the case of summary action by the Secretary, appellate review is provided for. Finally, the section provides that where a license has been revoked under the authority of the Act, the Secretary, instead of requiring or permitting the former licensee to remove any of the oil port components, as otherwise required by the Act, has the option of ordering the forfeiture of the bond or other assurance required under Section 102(d)(G), and may thereafter, having taken custody of the oil port, transfer the license to any other eligible applicant, requiring the new applicant to pay for the value of the oil port components in place and transferring that payment to the former licensee.

Section 210. Liability for damage

This section creates a High Seas Oil Port Liability Fund which shall be liable without regard to fault, for all damages, (not including clean-up costs) which may be suffered to property located within the territorial jurisdiction of the United States because of operations related to the high seas oil port and occurring at the oil port or in its vicinity. The purpose of including activities in the vicinity of the oil port is to cover pollution incidents that may occur involving a vessel approaching the port prior to its actual arrival. Claims arising from any one incident may not be settled by the Fund in an amount in excess of $100,000,000. The Fund will be established by collecting a fee of two cents per barrel, from the owner of the oil, for any oil off-loaded at the high seas oil port. After settling claims, the Fund will be subrogated to the rights of the claimant against any third party up to the amount of the claim. The Fund does not supersede the requirements of rights of recovery of damage under other law, and does not affect the clean-up requirements contained in section 311 of the Federal Water Pollution Control Act.

Section 211. Authority for research activities

This section authorizes the Secretary to engage in certain research and study activities related to removal of oil and the prevention of oil spills.

Section 212. Authorization for appropriations

This section authorizes appropriations of not to exceed $2.5 million for any of the fiscal years 1976, 1977, 1978, and 1979, for general administration and further authorizes $10 million per year for fiscal

years 1975, 1976, and 1977, in order to carry out the research authority under section 211.

COST OF THE LEGISLATION

Pursuant to Clause 7 of Rule VIII of the Rules of the House of Representatives, the Committee estimates the cost of the legislation as follows:

Current fiscal year: $500,000

Next five fiscal years:

[In millions of dollars]

	Fiscal year—				
	1975	1976	1977	1978	1979
Title I (administration)	0.5	0.5			
Title II (administration)		2.5	2.5	2.5	2.5
Title II (research)	10.0	10.0	10.0		
Total	10.5	13.0	12.5	2.5	2.5

The total estimated cost for the current fiscal year, plus the five succeeding fiscal years is $31.5 million. The estimate relating to the administration of Title I is to provide for additional administrative expenses not attributable to any particular oil port. Costs attributable to any individual high seas oil port in relation to processing of the license and monitoring of the construction will be recovered by a fee assessment of the Secretary. It is anticipated that the issuance of construction licenses will occur within a three year period. Any additional authorization of Title I administration will have to be specifically authorized by the Congress.

As to the administration of Title II, such costs should not commence until fiscal year 1976. Additional administrative costs after fiscal year 1979, will have to be specifically authorized by the Congress.

As to section 211 research costs, it is anticipated that all such research should be completed within a three year time span, commencing in fiscal year 1975. If additional research authorization is found to be necessary, it must be specifically enacted at a subsequent time.

The Committee has not received any specific estimates of cost from any Federal agency.

There is no authorization for appropriations in relation to the High Seas Oil Port Liability Fund in view of the fact that that Fund, including its administration, will be created and maintained by a fee of two cents per barrel for each barrel of oil off-loaded at the high seas oil port. The fee will be collected from the owner of the oil.

CHANGES IN EXISTING LAW

Clause 3 of Rule VIII of the Rules of the House of Representatives, as amended, does not apply, in view of the fact that the bill, as reported, would, if enacted, make no change in existing law.

DEPARTMENTAL REPORTS

No departmental reports were received on H.R. 11951. However, reports were received on similar language provisions in H.R. 5898 and are filed herewith.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 28, 1973.

Hon. LEONOR K. (Mrs. JOHN B.) SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This will acknowledge receipt of your letter of November 12 asking this Department's views on the committee print dated October 17, 1973, of H.R. 5898.

I do not believe I need to dwell on the factors which make this legislation so important. All of the committees of Congress which have studied this legislation seem to agree on the necessity of a system to license the construction of deepwater ports beyond the United States territorial sea.

During the deliberation, the primary issue which has emerged is the proper role of the various Federal agencies and the States in the licensing and regulatory process, particularly with regard to protecting the environment.

The Administration's proposal was very carefully drafted in these regards, after lengthy consultation with all interested Federal agencies. The formula arrived at was that each Federal regulatory agency would exercise its jurisdiction over the facility as if it were located in territorial waters. This would avoid the necessity for any Federal agency to create a regulatory program that might duplicate one already in operation in another agency. To expedite and facilitate the licensing it was decided to designate a single agency to act as a clearinghouse, receiving a single application and distributing it among the Federal agencies which have statutory authority over some aspect of the project. The lead agency would issue the license only after being notified by these other Federal agencies that the application meets the requirements of the laws which each agency administers.

While we would have preferred the Administration's proposal, H.R. 7501, we feel that the October 17, 1973, print of the bill, H.R. 5898 captures the essence of that approach by designating the Interior Department as the licensing authority and by giving the Coast Guard the primary responsibility for monitoring the operation after the facility is constructed.

We have noted that the Subcommittee on the Environment of the House Committee on Interior and Insular Affairs has voted to report a bill to the full committee which is very similar to the October 17 print of H.R. 5898. A major departure is a provision which requires that before issuing any license, the Congress must be notified of the intent to issue a license and given a fixed period of time in which to disapprove it by joint resolution. The criteria for issuance of licenses

are spelled out in considerable detail in the legislation. Evaluating a specific application against these criteria will involve the technical expertise of at least six agencies of the Federal Government. The environmental impact statement will be comprehensive. To add to this process a requirement that Congress review individual applications is we feel unnecessary and unwise. It will interject a note of uncertainty into the process which might well discourage companies from investing the time and effort necessary in submitting an application for a license.

In conclusion, we believe that the committee print of H.R. 5898 will achieve the major objective of authorizing the building of deepwater ports under a system designed to assure the protection of the environment and other important national interests.

We do have some reservations on specific wording and a few minor provisions to add but it is my understanding that our respective staffs have been discussing these matters and no major problems are envisaged.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 29, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAME CHAIRMAN: This responds to your request for this Department's views on H.R. 5898 as reported yesterday by your Committee and specifically whether the Administration prefers that bill to H.R. 10701.

The Administration has, of course, proposed a bill, H.R. 7501, which it hoped would form the basis of a bill which the three committees in the House, Merchant Marine and Fisheries, Interior and Public Works, could all agree upon. We understand that agreement between all three committees now appears unlikely.

Enclosed is a letter dated November 13, 1973 to the House Public Works Committee recommending against enactment of H.R. 10701 because of eight major differences between that bill and the Administration's proposal. The Committee has eliminated some of these differences but not the most significant ones.

While there are some points of difference between H.R. 5898 and the Administration's proposal, we feel that H.R. 5898 meets the basic objectives of the Administration and that it is far more acceptable than H.R. 10701.

Under separate cover we are forwarding our comments on H.R. 5898.

Sincerely yours,

JOHN C. WHITAKER,
Acting Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 13, 1973.

Hon. JOHN A. BLATNIK,
Chairman, Committee on Public Works, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for this Department's report on H.R. 10701, a bill "To amend the Act of October 27, 1965, relating to public works on rivers and harbors to provide for construction and operation of certain port facilities."

We recommend that H.R. 10701 not be enacted, but that H.R. 7501, the Administration's proposed Deepwater Port Facilities Act of 1973 be enacted instead.

The two bills address the very pressing problem of developing a means of handling the high levels of imported crude oil which we will need in years ahead with the minimum adverse impact on the environment. We believe there is general agreement that carrying this oil in large tankers and unloading these tankers in deepwater offshore is far preferable, environmentally and economically, to the only reasonable alternative of bringing a great many more small tankers into our already crowded shoreside ports.

There are several important differences between the Administration's proposal and H.R. 10701 which we cannot support.

1. *Charge by Adjacent State.* Section 411(d) of H.R. 10701 allows an "adjacent state," to fix "reasonable fees, tolls, or charges for the use of any deepwater port facility located on or off its shores." We strongly oppose this provision and believe it is contrary to the national interest and the general scheme for handling imports reflected in the U.S. Constitution.

The Constitution, in Article 1, Section 8, gives Congress the exclusive right to regulate interstate and foreign commerce and to charge duties on imports and requires that duties shall be uniform throughout the United States. Moreover, Article 1, Section 10 provides that even when Congress allows a State to place a duty or impost on imports in an amount greater than necessary to enforce the State's inspection laws, the "net produce" of such duty or impost shall be for the U.S., not the State, Treasury. This general constitutional scheme was designed in part to prevent those States with seaports from capitalizing on their geographic advantage, to the economic disadvantage of the rest of the country. And, without regard to the question whether section 411(d) of H.R. 1071 would be legal, we believe it would be bad policy because it would permit the very type of economic discrimination the Constitution attempted to avoid. We know of no reason why Congress should allow this discriminatory action.

"Adjacent state" is defined in section 402(1) as a coastal State off whose coast a deepwater port facility is to be located and in which all or part of the directly related land based facilities will be located. Unless the phrase "off whose coast a deepwater port facility is to be located" has the effect of limiting the possible number of adjacent States to one, as we would urge, then the taxing power in 411(d) could extend to two or more coastal States with respect to the same deep-

water port, thereby greatly compounding the problems I have already mentioned.

Because section 403(c) gives the governor of an "adjacent state" a veto over a deepwater port, it is also possible that H.R. 10701 will have the effect of allowing a neighboring State to preclude a facility desired by another State.

2. *Licensing Commission.* Section 404(a) would create a licensing commission composed of representatives of several agencies.

The Administration's proposal H.R. 7501 would vest licensing authority in a single Federal agency—the Department of the Interior—but preserve the interests of other Federal agencies by requiring that the Secretary of the Interior shall not issue a license if he is notified by any agency that the application fails to meet the requirements of any law which that agency administers. He may also not issue a license where the President determines that it would be contrary to the National interest. We feel that this is a far better administrative mechanism than the 5 Agency Commission approach of H.R. 10701. Interagency groups, because of their lack of centralized authority, are invariably less efficient than a single agency for purposes of administering a licensing program. Since the interests of all Federal agencies are adequately provided for in the Administration proposal, we see no reason to resort to this cumbersome approach.

3. *State Preference as Licensee.* Section 403(b) would give adjacent States exclusive, preferential rights to obtain a license for a deepwater port off their shores, and allow that State to assign the license on such terms as it chooses, provided the basic provisions of the Act are met. This could amount, in effect, to making the adjacent States conduits through which Federal licenses will flow.

We recognize that adjacent States have many legitimate concerns connected with the licensing of deepwater ports. These concerns relate to the impact of the facility on the State's land and water resources. We have provided for these concerns in the Administration bill by section 103(e) which insures that the siting of the facility will be consistent with the State's land use program and we have provided that a State, or subdivision of the State, may be a licensee. H.R. 10701 goes beyond this, however, in allowing the State to exercise authority beyond its territorial jurisdiction, and in allowing it to establish a monopoly position for itself.

4. *Prohibition for Foreign Corporations.* Section 103(a) of the Administration's bill prohibits any commodities from being shipped to the United States from a deepwater port which is not licensed. This was included to prevent foreign corporations from operating deepwater ports off the U.S. coast without a license. Section 403(a) of H.R. 10701 has not included such a prohibition.

5. *State Exemption.* Section 403(b) would exempt States applying for licenses from certain provisions until construction begins. Those provisions relate to the effect of the construction on international navigation and on the environment and on other interested parties. To require compliance with these provisions prior to issuing a license

is a very much more effective way of assuring their observation than deferring them until construction commences. While it could be argued that a State licensee could more readily be relied upon to comply with these statutory requirements than a private party—thereby justifying this discrimination—section 403(b) would allow the State to pass on its preferred position to a private assignee. In any event, we see no sound basis for this exemption and we strongly oppose it.

6. *Effect on Nearby Ports.* Section 403(h) of H.R. 10701 requires the Commission to consider the effect of the deepwater port on nearby existing ports. This intrudes the Federal Government into the broad questions of economic planning on a regional basis and raises issues of such scope and complexity that it is doubtful that any licenses could be issued in time to meet the pressing need for these facilities. Moreover, if the intent of this section is to deny deepwater port licenses where small tankers are already bringing in crude to shoreside ports, then we would be foregoing the environmental and economic benefits available from deepwater ports. The Administration's proposal would leave the economic decisions involved in siting these facilities to private industry and to market forces and free completition.

7. *Time Requirements.* Section 404(d) provides that Federal agencies with jurisdiction over the construction and operation of a deepwater port facility have 60 days to certify to the Commission their approval or disapproval of an application. The Commission then has 60 days after receipt of the certifications to issue or deny the license. To fulfill this requirement, we would have to ignore the spirit of the National Environmental Policy Act because the 120 days between receipt of the application and the requirement of the Commission to approve or deny will probably not provide time for the preparation of an environmental impact statement, much less meaningful public review. We would expect that preparation of an Environmental Impact Statement would proceed concurrently with the review of the application, and we fully intend to act upon applications in the shortest practicable time. However, we do not believe that specific time periods—particularly those as short as in section 404(d)—will be beneficial.

8. *Federal Subsidy.* We see no reason to provide a Federal subsidy, in the form of tax free bonds, to deepwater port licenses. H.R. 10701 would do this in section 411(b) and (c). Industry has given every indication of its willingness to finance the construction of these facilities without Federal assistance and will undoubtedly do so absent the threat of heavy charges from the adjacent State.

The Office of Management and Budget has advised that there is no objection to the presentation of this report and that enactment of H.R. 7501 would be in accord with the Administration's program.

Sincerely yours,

John C. Whitaker,
Acting Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 15, 1974.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: On November 28 and 29 this Department sent you letters endorsing the Committee Print dated October 17, 1973 of H.R. 5898 and expressing our opposition to H.R. 10701. H.R. 5898 was subsequently reported by the Committee on Merchant Marine and Fisheries on December 3. This letter is to reaffirm our support and preference for that bill.

As you are aware, the issuance of licenses for the construction of deepwater ports beyond the territorial sea of the United States will fall under the jurisdiction of several Federal agencies. The primary issue in developing deepwater port legislation has therefore been the proper role of each agency. We feel that the Administration's proposal, H.R. 7501, satisfactorily resolved this problem by making the Department of the Interior the coordinating agency. However, we find that H.R. 5898 addresses the issue in a similar and acceptable manner by dividing the coordination responsibilities between this Department and the Department of Transportation.

Although we oppose some provisions in the bill including section 102(d)(C) which provides for a sharing of rental fees with adjacent coastal states and section 106(c) which imposes a 3% tax on the construction cost of deepwater port faciilties, we feel that H.R. 5898 generally meets the objectives of the Administration's bill. It not only coordinates agency responsibilities to ensure efficient licensing procedures but it also ensures protection of the environment and other national interests.

Again, we urge prompt enactment of this very important legislation to help us meet our increasing energy demands.

Sincerely yours,

ROGERS C.B. MORTON,
Secretary of the Interior.

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H. R. 10701

Ninety-third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-first day of January, one thousand nine hundred and seventy-four

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 superjacent airspace, or the seabed and subsoil, including the Continental Shelf.

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires, the term—

(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(a)(2) 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 73 and 74 of the Act of August 27, 1894, 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 law, birth or naturalization and which has no 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 conduct the business of the board;

(6) "coastal environment" means the navigable waters (including the lands therein and thereunder) and the adjacent shorelines including waters therein and thereunder). The term includes transitional and intertidal areas, bays, lagoons, salt marshes, estuaries, and beaches; the fish, wildlife and other living resources thereof; and the recreational and scenic values of such lands, waters and resources;

(7) "coastal State" means any State of the United States in or bordering on the Atlantic, Pacific, or Arctic Oceans, or the Gulf of Mexico;

(8) "construction" means the supervising, inspection, actual building, and all other activities incidental to the building, repairing, or expanding of a deepwater port or any of its components, including, but not limited to, pile driving and bulkheading, and alterations, modifications, or additions to the deepwater port;

(9) "control" means the power, directly or indirectly, to 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;

(10) "deepwater port" means any fixed or floating manmade structures other than a vessel, or any group of such structures, 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 23. The term includes all associated components and equipment, including pipelines, pumping stations, service 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;

(11) "Governor" 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;

(12) "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 pursuant to this Act;

(13) "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;

(14) "oil" means petroleum, crude oil, and any substance refined from petroleum or crude oil;

(15) "person" includes an individual, a public or private corporation, a partnership or other association, or a government entity;

(16) "safety zone" means the safety zone established around a deepwater port as determined by the Secretary in accordance with section 10(d) of this Act;

(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 (other than oil) transported from the United States, other than materials to be used in the construction, maintenance, or operation of the high seas oil port, to be used as ship supplies, including bunkering for vessels utilizing the high seas oil port,
(2) for the transshipment of commodities or materials, to the United States, other than oil,
(3) except in cases where the Secretary otherwise by rule provides, for the transshipment of oil, destined for locations outside the United States,

(b) The Secretary is authorized, upon application and in accordance 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 provisions of this Act if—

(1) he determines that the applicant is financially responsible and will meet the requirements of section 18(l) 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 unreasonably interfere with international navigation or other reasonable uses of the high seas, as defined by treaty, convention, or customary 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 constructed 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 provisions of the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, or the Marine Protection, Research and Sanctuaries Act, as amended;

(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;

(8) he has consulted with the Secretary of the Army, the Secretary of 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.

(d) 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—

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

(2) 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. 1121), for such construction; and

(3) applies to the Secretary for a determination under this section within 30 days of the date of the license application;

the Secretary shall not 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 nonreviewable.

(e) (1) 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 provisions of this Act, or which are otherwise required by any Federal department or agency pursuant to the terms of this Act.

(2) No license shall be issued, transferred, or renewed under this Act unless the licensee or transferee first agrees in writing that (A) there will be no substantial change from the plans, operational systems, and methods, procedures, and safeguards set forth in his application, as approved, without prior approval in writing from the Secretary; and (B) he will comply with any condition the Secretary may prescribe in accordance with the provisions of this Act.

(3) The Secretary shall establish such bonding 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. In the case of components lying in the subsoil below the seabed, 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 to the environment. At the request of the licensee, the Secretary, after consultation with the Secretary of the Interior, is authorized to waive the removal requirement as to any components 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 (67 Stat. 462), after which waiver the utilization of such components 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 the 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. 5. (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. Such 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 and cooperation with all 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 thenceforth not be undertaken except in accordance with 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 21 days after the receipt of an application, the Secretary shall determine whether the application appears to contain all of the information required by paragraph (2) hereof. 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 a determination, publish notice of the application 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 3 per centum;

(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 thereof;

(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 any existing and proposed refineries which will receive oil transported through the deepwater port, the location and capacity of each such refinery and the anticipated volume of such oil to be refined by each such refinery, to the extent known by the applicant or any person required to be disclosed pursuant to subparagraphs (A), (B), or (C) of this paragraph;

(I) the financial and technical capabilities of the applicant to construct or operate the deepwater port;

(J) other qualifications of the applicant to hold a license under this Act;

(K) a description of procedures to be used in constructing, operating, and maintaining the deepwater port, including systems of oil spill prevention, containment, and cleanup; and

(L) such other information as may be required by the Secretary to determine the environmental impact of the proposed deepwater port.

(d)(1) At the time notice of an application is published pursuant to subsection (c) of this section, the Secretary shall publish a description in the Federal Register of an application area encompassing the deepwater port site proposed by such application and within which construction of the proposed deepwater port would eliminate, at the time such application was submitted, the need for any other deepwater port within that application area.

(2) As used in this section, "application area" means any reasonable geographical area within which a deepwater port may be constructed and operated. Such application area shall not exceed a circular zone, the center of which is the principal point of loading and unloading at the port, and the radius of which is the distance from such point to the high water mark of the nearest adjacent coastal State.

(3) The Secretary shall accompany such publication with a call for submission of any other applications for licenses for the ownership, construction, and operation of a deepwater port within the designated application area. Persons intending to file applications for such license shall submit a notice of intent to file an application with the Secretary not later than 60 days after the publication of notice pursuant to subsection (c) of this section and shall submit the completed application no later than 90 days after publication of such notice. The Secretary shall publish notice of any such application received in accordance with subsection (c) of this section. No application for a license for the ownership, construction, and operation of a deepwater port within the designated application area for which a notice of intent to file was received after such 60-day period, or which is received after such 90-day period has elapsed, shall be considered until the application pending with respect to such application area have been denied pursuant to this Act.

(e) (1) Not later than 30 days after the date of enactment of this Act, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Chief of Engineers of the United States Army Corps of Engineers, the Administrator of the National Oceanic and Atmospheric Administration, and the heads of any other Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the construction or operation of deepwater ports shall transmit to the Secretary written comments as to their expertise or statutory responsibilities pursuant to this Act or any other Federal law.

(2) An application filed with the Secretary shall constitute an application for all Federal authorizations required for ownership, construction, and operation of a deepwater port. At the time notice of any application is published pursuant to subsection (c) of this section, the Secretary shall forward a copy of such application to those Federal agencies and departments with jurisdiction over any aspect of such ownership, construction, or operation for comment, review, or recommendation as to conditions and for such other action as may be required by law. Each agency or department involved shall review the application and, based upon legal considerations within its area of responsibility, recommend to the Secretary the approval or disapproval of the application not later than 45 days after the last public hearing on a proposed license for a designated application area. In any case in which the agency or department recommends disapproval, it shall set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall notify the Secretary how the application may be amended so as to bring it into compliance with the law or regulation involved.

(f) 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 requirement 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.

(g) 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 adjudicatory hearing shall be held in accordance with the provisions of section 554 of title 5, United States Code, in the District of Columbia. The record developed in any such adjudicatory hearing shall be basis 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 concluded not later than 240 days after notice of the initial application has been published pursuant to section 5(c) of this Act.

(h) (1) Each person applying for a license pursuant to this Act shall remit to the Secretary at the time the application is filed a nonrefundable 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, and such State and any other State in which land-based facilities directly related to a deepwater port facility are located may set 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 such deepwater port and such land-based facilities, which cannot be recovered under other authority of such State or political subdivision thereof, including, but not limited to, ad valorem taxes, and for environmental 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 economic, environmental, 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 subsoil and seabed 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 subsoil and seabed.

(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 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 date of 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 effect 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 opinions 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 private right of action under such laws.

(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 CARRIER STATUS

SEC. 8. (a) For the purpose of chapter 39 of title 18, United States Code (18 U.S.C. 831–837), 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 licensee 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

SEC. 9. (a)(1) The Secretary, in issuing notice of application pursuant to section 5(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 the risk posed to 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 5(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 complete copy of the application 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 on 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.

(c) 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.

(d) 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 agencies, joint or otherwise, as are deemed necessary or appropriate for implementing and carrying out the provisions of any such agreement or compact. Such agreement or compact 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, 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 prevent or minimize any adverse impact from the construction and operation of such deepwater port.

(b) The Secretary shall issue and enforce regulations with respect to lights and other warning devices, safety equipment, and other mat-

ters relating to the promotion of safety of life and property in any deepwater port and the waters adjacent thereto.

(c) The Secretary shall mark, for the protection of navigation, any component of a deepwater port whenever the licensee fails to mark such component in accordance with applicable regulations. The licensee shall pay the cost of such marking.

(d)(1) Subject to recognized principles of international law and after consultation with the Secretary of the Interior, the Secretary of Commerce, the Secretary of State, 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. In such zone, no installations, structures, or uses will be permitted that are incompatible with the operation of the deepwater port. 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

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

SEC. 12. (a) Whenever a licensee 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 licensee 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 or any component thereof is necessary to protect public health or safety or to eliminate imminent and substantial danger to the environment, he shall order the licensee to cease or alter such construction or operation pending the completion of a judicial proceeding pursuant to subsection (a) of this section.

RECORDKEEPING AND INSPECTION

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 provision 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 request.

(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 laws 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.

PUBLIC ACCESS TO INFORMATION

SEC. 14. (a) Copies of any communication, document, report, or information transmitted between any official of the Federal Government and any person concerning a deepwater port (other than contracts referred to in section 5(c)(2)(B) of this Act) shall be made available to the public for inspection, and shall be available for the purpose of reproduction at a reasonable cost, to the public upon identifiable request, unless such information may not be publicly released under the terms of subsection (b) of this section. Except as provided in subsection (b) of this section, nothing contained in this section shall be construed to require the release of any information of the kind described in subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(b) The Secretary shall not disclose information obtained by him under this Act that concerns or relates to a trade secret, referred to in section 1905 of title 18, United States Code, or to a contract referred to in section 5(c)(2)(B) of this Act, except that such information may be disclosed, in a manner which is designed to maintain confidentiality—

(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 proceedings; and

(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).

REMEDIES

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, regulation, 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 (3) 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) 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) Any vessel, except a public vessel engaged in noncommercial activities, used in a violation of this Act or of any rule or regulation issued pursuant to this Act, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation, a consenting party or privy to such violation.

CITIZEN CIVIL ACTION

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

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) (1) 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) (2) 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 any such decision is made, seek judicial review of such decision in the United States Court of Appeals for the circuit within 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 he—

(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.

No penalty shall be assessed unless the owner or operator or the licensee has been 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 section 4197 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.

(b) Any individual in charge of a vessel or a deepwater port shall notify the Secretary as soon as he has knowledge of a discharge of oil. Any such individual who fails to notify the Secretary immediately of such discharge shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than 1 year, or both. Notification received pursuant to this subsection, or information obtained by the use of such notification, shall not be used against any such individual in any criminal case, except a prosecution for perjury or for giving a false statement.

(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) Removal of oil 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(c)(2) of the Federal Water Pollution Control Act, as amended.

(3) Whenever the Secretary acts to remove a discharge of oil pursuant to this subsection, he is authorized to draw upon money available in the Deepwater Port Liability Fund established pursuant to subsection (f) of this section. Such money shall be used to pay promptly for all cleanup costs incurred by the Secretary in removing or in minimizing damage caused by such oil discharge.

(d) Notwithstanding any other provision of law, except as provided in subsection (g) 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 within any safety zone, or from 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 such 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 the full amount of all cleanup costs and damages.

(e) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the licensee of a deepwater port shall be liable, without regard to fault, for cleanup costs and damages that result from a discharge of oil from such deepwater port or from a vessel moored at such deepwater port. Such liability shall not exceed $50,000,000, except that if it can be shown that such damage was the result of gross negligence or willful misconduct within the privity and knowledge of the licensee, such licensee shall be liable for the full amount of all cleanup costs and damages.

(f)(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 licensee 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 after 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 claims 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 not 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.

(g) Liability shall not be imposed under subsection (d) or (e) of this section if the owner or operator of a vessel or the licensee can show that the discharge was caused solely by (1) an act of war, or (2) negligence on the part of the Federal Government in establishing and maintaining aids to navigation. In addition, liability with respect 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 solely by the negligence of such party.

(h)(1) 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 licensee, the owner or operator of a vessel held liable shall be subrogated to the rights of any person entitled to recovery against such licensee.

(2) 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 licensee shall be subrogated to the rights of any person entitled to recovery against such owner or operator.

(3) 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.

(4) 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 party whose act may in any way have caused or contributed to a discharge of oil.

(5) In any case where the owner or operator of a vessel or the licensee 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 licensee 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.

(i)(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. Sums 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 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 23(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.

(j)(1) The Secretary shall establish by regulation procedures for the filing and payment of claims for cleanup costs and damages pursuant to this Act.

(2) 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.

(3) Appeals from any final determination of the Secretary pursuant to this section shall be filed not later than 30 days after such determination in the United States Court of Appeals of the circuit within which the nearest adjacent coastal State is located.

(k)(1) This section shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil from a deepwater port or a vessel within any safety zone.

(2) Any person who receives compensation for damages pursuant to this section shall be precluded from recovering compensation for the same damages pursuant to any other State or Federal law. Any person who receives compensation for damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same damages as provided in this section.

(l) the Secretary shall require that any 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.

(m) As used in this section the term—

(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;

(2) "damages" means all damages (except cleanup costs) suffered by any person, or involving real or personal property, the natural resources of the marine environment, or the coastal environment of any nation, including damages claimed without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or natural resources;

(3) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil determined to be harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency; and

(4) "owner or operator" means any person owning, operating, or chartering by demise, a vessel.

(n) (1) The Attorney General, in cooperation with the Secretary, the Secretary of State, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Council on Environmental Quality, and the Administrative Conference of the United States, is authorized and directed to study methods and procedures for implementing a uniform law providing liability for cleanup costs and damages from oil spills from Outer Continental Shelf operations, deepwater ports, vessels, and other ocean-related sources. The study shall give particular attention to methods of adjudicating and settling claims as rapidly, economically, and equitably as possible.

(2) The Attorney General shall report the results of his study together with any legislative recommendations to the Congress within 6 months after the date of enactment of this Act.

RELATIONSHIP TO OTHER LAWS

SEC. 19. (a) (1) The Constitution, laws, and treaties of the United States shall apply to a deepwater port licensed under this Act and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State. Nothing in this Act shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty. Deepwater ports licensed under this Act do not possess the status of islands and have no territorial seas of their own.

(2) Except as otherwise provided by this Act, nothing in this Act shall in any way alter the responsibilities and authorities of a State or the United States within the territorial seas of the United States.

(b) The law of the nearest adjacent coastal State, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to any deepwater port licensed pursuant to this Act, to the extent applicable and not inconsistent with any provision or regulation under this Act or other Federal laws and regulations now in effect or hereafter adopted, amended, or repealed. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. For purposes of this subsection, the nearest adjacent coastal State shall be that State whose seaward boundaries, if extended beyond 3 miles, would encompass the site of the deepwater port.

(c) Except in a situation involving force majeure, a licensee of a deepwater port shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, or otherwise utilize a deepwater port licensed under this Act unless (1) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessel and its personnel, in

accordance with the provisions 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 while 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 articles to be used in the construction of any such deepwater port, including any component thereof, shall first be made subject to all applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States. Duties and taxes shall be paid thereon in accordance with laws applicable to merchandise imported into the customs territory of the United States.

(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.

(f) Section 4(a)(2) of the Act of August 7, 1953 (67 Stat. 462) 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 ", now in effect or hereafter adopted, amended, or repealed".

ANNUAL REPORT BY SECRETARY TO CONGRESS

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 the 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.

PIPELINE SAFETY AND OPERATION

SEC. 21. (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) The Secretary, in cooperation with the Secretary of the Interior, is authorized and directed to report to the Congress within 60 days after the date of enactment of this Act on appropriations and staffing needed to monitor 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 review all laws and regulations relating to the construction, operation, and maintenance of pipelines on Federal lands and the Outer Continental Shelf and 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.

NEGOTIATIONS WITH CANADA AND MEXICO

SEC. 22. The President of the United States is authorized and requested to enter into negotiations with the Governments of Canada and Mexico to determine:

(1) the need for intergovernmental understandings, agreements, or treaties to protect the interests of the people of Canada, Mexico, and the United States and of any party or parties involved with the construction or operation of deepwater ports; and

(2) the desirability of undertaking joint studies and investigations designed to insure protection of the environment and to eliminate any legal and regulatory uncertainty, to assure that the interests of the people of Canada, Mexico, and the United States are adequately met.

The President shall report to the Congress the actions taken, the progress achieved, the areas of disagreement, and the matters about which more information is needed, together with his recommendations for further action.

PUBLIC LAW 93–153

SEC. 23. Nothing in this Act shall be construed to amend, restrict, or otherwise limit the application of section 28(u) of the Mineral Leasing Act of 1920, as amended by Public Law 93–153.

GENERAL PROCEDURES

SEC. 24. The Secretary or his delegate shall have the authority to issue and enforce orders during proceedings brought under this Act. Such authority shall include the authority to issue subpenas, administer oaths, compel the attendance and testimony of witnesses and the production of books, papers, documents, and other evidence, to take depositions before any designated individual competent to administer oaths, and to examine witnesses.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 25. There is authorized to be appropriated for administration of this Act not to exceed $2,500,000 for the fiscal year ending June 30, 1975, not to exceed $2,500,000 for the fiscal year ending June 30, 1976, and not to exceed $2,500,000 for the fiscal year ending June 30, 1977.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

FOR IMMEDIATE RELEASE JANUARY 4, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I have approved H.R. 10701, the Deepwater Ports Act of 1974.

Since taking office, I have urged on several occasions that the Congress give high priority to our Executive Branch request for legislation dealing with deepwater ports. I considered this an important step in our national effort to provide an adequate supply of energy at reasonable prices, and I therefore commend the 93rd Congress for completing work on the measure before adjournment.

Deepwater Ports can provide the safest, most efficient and least expensive means for transporting petroleum supplies that we obtain from foreign sources. This Act establishes the necessary legal framework for licensing the construction and operation of port facilities in naturally deep water distant from our coastlines where supertankers can unload their cargo into underwater pipelines.

Because of their immense capacity supertankers can reduce by nearly one-third the cost of hauling a barrel of oil. The use of deepwater ports also reduces the danger of oil spills since fewer conventional tankers would be required to deliver oil to our crowded inshore harbors. Our existing ports are not deep enough to handle supertankers safely and dredging existing ports can be very expensive as well as environmentally undesirable.

The Deepwater Ports Act is a significant addition to our program for supplying the Nation's energy needs. I am pleased to be able to sign it into law as one of my first acts of the new year.

# # # # #

December 24, 1974

Dear Mr. Director:

The following bills were received at the White House on December 24th:

S.J. Res. 40
S.J. Res. 133
S.J. Res. 262
S. 251
S. 356
S. 521
S. 544
S. 663
S. 754
S. 1017
S. 1083
S. 1296
S. 1418
S. 2149
S. 2446
S. 2807
S. 2854
S. 2888
S. 2994
S. 3022
S. 3289
S. 3358
S. 3359
S. 3394
S. 3433
S. 3481
S. 3548
S. 3934
S. 3943
S. 3976
S. 4073
S. 4206
H.J. Res. 1178
H.J. Res. 1180
H.R. 421
H.R. 1715
H.R. 1820
H.R. 2208
H.R. 2933
H.R. 3203
H.R. 3339
H.R. 5264
H.R. 5463
H.R. 5773
H.R. 7599
H.R. 7684
H.R. 7767
H.R. 8214
H.R. 8322
H.R. 8591
H.R. 8958
H.R. 8981
H.R. 9182
H.R. 9199
H.R. 9588
H.R. 9654
H.R. 10212
H.R. 10701
H.R. 10710
H.R. 10827
H.R. 11144
H.R. 11273
H.R. 11796
H.R. 11802
H.R. 11847
H.R. 11897
H.R. 12044
H.R. 12113
H.R. 12427
H.R. 12884
H.R. 13022
H.R. 13296
H.R. 13869
H.R. 14449
H.R. 14461
H.R. 14600
H.R. 14689
H.R. 14718
H.R. 15173
H.R. 15223
H.R. 15229
H.R. 15322
H.R. 15977
H.R. 16045
H.R. 16215
H.R. 16596
H.R. 16925
H.R. 17010
H.R. 17045
H.R. 17085
H.R. 17468
H.R. 17558
H.R. 17597
H.R. 17628
H.R. 17655

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.