

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
S. 4706



OCTOBER 2, 1974.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1974

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island	NORRIS COTTON, New Hampshire
VANCE HARTKE, Indiana	JAMES B. PEARSON, Kansas
PHILIP A. HART, Michigan	ROBERT P. GRIFFIN, Michigan
HOWARD W. CANNON, Nevada	HOWARD H. BAKER, Jr., Tennessee
RUSSELL B. LONG, Louisiana	MARLOW W. COOK, Kentucky
FRANK E. MOSS, Utah	TED STEVENS, Alaska
ERNEST F. HOLLINGS, South Carolina	J. GLENN BEALL, Jr., Maryland
DANIEL K. INOUYE, Hawaii	
JOHN V. TUNNEY, California	
ADLAI E. STEVENSON III, Illinois	

FREDERICK J. LORDAN, *Staff Director*

MICHAEL PERTSCHUE, *Chief Counsel*

JAMES P. WALSH, *Staff Counsel*

JOHN F. HUSSEY, *Professional Staff Member*

ARTHUR PANOFF, Jr., *Minority Staff Director*

EARLE E. COSTELLO, *Minority Professional Staff Member*

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

HENRY M. JACKSON, Washington, *Chairman*

ALAN BIBLE, Nevada	PAUL J. FANNIN, Arizona
FRANK CHURCH, Idaho	CLIFFORD P. HANSEN, Wyoming
LEE METCALF, Montana	MARK O. HATFIELD, Oregon
J. BENNETT JOHNSTON, Jr., Louisiana	JAMES L. BUCKLEY, New York
JAMES ABOUREZK, South Dakota	JAMES A. McCLURE, Idaho
FLOYD K. HASKELL, Colorado	DEWEY F. BARTLETT, Oklahoma
GAYLORD NELSON, Wisconsin	
HOWARD M. METZENBAUM, Ohio	

JERRY T. VERELER, *Staff Director*

WILLIAM J. VAN NESS, *Chief Counsel*

C. SUZANNE REED, *Professional Staff Member*

D. MICHAEL HARVEY, *Special Counsel*

HARRISON LOESCH, *Minority Counsel*

ROMA SKEEN, *Minority Staff Assistant*

COMMITTEE ON PUBLIC WORKS

JENNINGS RANDOLPH, West Virginia, *Chairman*

EDMUND S. MUSKIE, Maine	HOWARD H. BAKER, JR., Tennessee
JOSEPH M. MONTROYA, New Mexico	JAMES L. BUCKLEY, New York
MIKE GRAVEL, Alaska	ROBERT T. STAFFORD, Vermont
LLOYD BENTSEN, Texas	WILLIAM L. SCOTT, Virginia
QUENTIN N. BURDICK, North Dakota	JAMES A. McCLURE, Idaho
DICK CLARK, Iowa	PETE V. DOMENICI, New Mexico
JOE BIDEN, Delaware	

M. BARRY MEYER, *Chief Counsel and Chief Clerk*

BAILEY GUARD, *Minority Clerk*; RICHARD A. HELLMAN, *Minority Counsel*

LEON G. BILLINGS, *Senior Staff Member*

PHILIP T. CUMMINGS, *Assistant Chief Counsel*

JOHN W. YAGO, JR., *Assistant Chief Clerk*

HAROLD H. BRAYMAN, ANN GARRABRANT, WESLEY F. HAYDEN, LARRY MEYERS, SALLY W. WALKER,
Professional Staff Members

SPECIAL JOINT SUBCOMMITTEE ON DEEPWATER PORTS

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington	TED STEVENS, Alaska
RUSSELL B. LONG, Louisiana	J. GLENN BEALL, JR., Maryland
ERNEST F. HOLLINGS, South Carolina	

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

HENRY M. JACKSON, Washington	CLIFFORD P. HANSEN, Wyoming
LEE METCALF, Montana	MARK O. HATFIELD, Oregon
J. BENNETT JOHNSTON, JR., Louisiana	

COMMITTEE ON PUBLIC WORKS

MIKE GRAVEL, Alaska	JAMES L. BUCKLEY, New York
LLOYD BENTSEN, Texas	WILLIAM L. SCOTT, Virginia
JOE BIDEN, Delaware	

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.

CONTENTS

	Page
I. Purpose and description.....	1
1. Federal coordination.....	1
2. Preference.....	2
3. State coordination.....	2
4. Liability.....	3
5. Applicable law.....	4
6. Additional provisions.....	4
7. Procedural requirements.....	4
II. Background and need.....	5
III. Major issues.....	7
1. International legal basis.....	7
2. Federal administration organization.....	8
3. State role.....	10
4. Competitive impacts of deepwater port development.....	13
5. Liability.....	15
IV. Legislative history.....	17
V. Committee recommendations.....	19
1. Commerce.....	19
2. Interior and Insular Affairs.....	28
3. Public Works.....	30
VI. Section-by-Section Analysis.....	34
VII. Cost.....	61
VIII. Tabulation of votes cast in committee.....	62
IX. Changes in existing law.....	63
X. Executive communications.....	63
XI. Additional views:	
Additional views of Mr. Buckley.....	95
Additional views of Messrs. Fannin, Hansen, McClure, and Bartlett.....	97
Additional views of Mr. McClure.....	103
Additional views of Mr. Stevens.....	105

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:

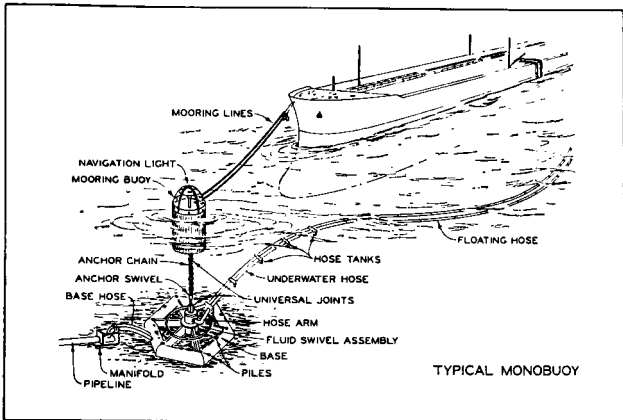
1. Deepwater ports offer a cheaper means of transporting imported petroleum supplies and can stimulate beneficial economic growth in adjacent coastal areas;

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



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.

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 super-tankers, 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.

* * * * *

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 practices. 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 subsidiaries 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 anti-competitive 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 De-

partment 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 section 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 plan-, 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

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 jurisdiction, 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 environmental 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 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 \$10,600 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 deep-water 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

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 unanimously 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 transferring 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.

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 inevi-

table. 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 re-drafted 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 anti-trust 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 OBCD 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. NOAM 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 stand-

point 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 (7 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 deep-water 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.

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); *Liggett 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 may 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.

