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DEEPWATER PORT ACT OF 1974

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February 24, 2004

DEEPWATER PORT ACT OF 1974

[As Amended Through P.L. 108–201, February 24, 2004]

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

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

(33 U.S.C. 1501 nt)

DECLARATION OF POLICY

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

(1) authorize and regulate the location, ownership, construction, and operation of deepwater ports in waters beyond the territorial limits of the United States;

(2) provide for the protection of the marine and coastal environment to prevent or minimize any adverse impact which might occur as a consequence of the development of such ports;

(3) protect the interests of the United States and those of adjacent coastal States in the location, construction, and operation of deepwater ports;

(4) protect the rights and responsibilities of States and communities to regulate growth, determine land use, and otherwise protect the environment in accordance with law;

(5) promote the construction and operation of deepwater ports as a safe and effective means of importing oil or natural gas into the United States and transporting oil or natural gas from the outer continental shelf while minimizing tanker traffic and the risks attendant thereto; and

(6) promote oil or natural gas production on the outer continental shelf by affording an economic and safe means of transportation of outer continental shelf oil or natural gas to the United States mainland.

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

(33 U.S.C. 1501)

DEFINITIONS

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

(1) “adjacent coastal State” means any coastal State which (A) would be directly connected by pipeline to a deepwater port, as proposed in an application; (B) would be located within 15 miles of any such proposed deepwater port; or (C) is designated by the Secretary in accordance with section 9(a)(2) of this Act;

(2) “affiliate” means any entity owned or controlled by, any person who owns or controls, or any entity which is under common ownership or control with an applicant, licensee, or any person required to be disclosed pursuant to section 5(c)(2)(A) or (B);

(3) “application” means an application submitted under this Act for a license for the ownership, construction, and operation of a deepwater port;

(4) “citizen of the United States” means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State or a group of States, or any corporation, partnership, or association organized under the laws of any State which has as its president or other executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth or naturalization and which has no more of its directors who are not United States citizens by law, birth or naturalization than constitute a minority of the number required for a quorum necessary to conduct the business of the board;

(5) “coastal environment” means the navigable waters (including the lands therein and thereunder) and the adjacent shorelines including¹ waters therein and thereunder). The term includes transitional and intertidal areas, bays, lagoons, salt marshes, estuaries, and beaches; the fish, wildlife and other living resources thereof; and the recreational and scenic values of such lands, waters and resources;

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

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

(8) “control” means the power, directly or indirectly, to determine the policy, business practices, or decisionmaking process of another person, whether by stock or other ownership interest, by representation on a board of directors or similar body, by contract or other agreement with stockholders or others, or otherwise;

(9) “deepwater port”—

¹ So in original. Probably should be preceded by an opening parenthesis.

(A) means any fixed or floating manmade structure other than a vessel, or any group of such structures, that are located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any State, except as otherwise provided in section 23, and for other uses not inconsistent with the purposes of this Act, including transportation of oil or natural gas from the United States outer continental shelf;

(B) includes all components and equipment, including pipelines, pumping stations, service platforms, buoys, mooring lines, and similar facilities to the extent they are located seaward of the high water mark;

(C) in the case of a structure used or intended for such use with respect to natural gas, includes all components and equipment, including pipelines, pumping or compressor stations, service platforms, buoys, mooring lines, and similar facilities that are proposed or approved for construction and operation as part of a deepwater port, to the extent that they are located seaward of the high water mark and do not include interconnecting facilities; and

(D) shall be considered a "new source" for purposes of the Clean Air Act (42 U.S.C. 7401 et seq.), and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(10) "Governor" means the Governor of a State or the person designated by State law to exercise the powers granted to the Governor pursuant to this Act;

(11) "licensee" means a citizen of the United States holding a valid license for the ownership, construction, and operation of a deepwater port that was issued, transferred, or renewed pursuant to this Act;

(12) "marine environment" includes the coastal environment, waters of the contiguous zone, and waters of the high seas; the fish, wildlife, and other living resources of such waters; and the recreational and scenic values of such waters and resources;

(13) "natural gas" means either natural gas unmixed, or any mixture of natural or artificial gas, including compressed or liquefied natural gas;

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

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

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

(17) "Secretary" means the Secretary of Transportation;

(18) "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States; and

(19) “vessel” means every description of watercraft or other artificial contrivance used as a means of transportation on or through the water.

(33 U.S.C. 1502)

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

SEC. 4. (a) No person may engage in the ownership, construction, or operation of a deepwater port except in accordance with a license issued pursuant to this Act. No person may transport or otherwise transfer any oil or natural gas between a deepwater port and the United States unless such port has been so licensed and the license is in force.

(b) The Secretary may—

(1) on application, issue a license for the ownership, construction, and operation of a deepwater port; and

(2) on petition of the licensee, amend, transfer, or reinstate a license issued under this Act.

(c) The Secretary may issue a license in accordance with the provisions of this Act if—

(1) he determines that the applicant is financially responsible and will meet the requirements of section 1016 of the Oil Pollution Act of 1990¹

(2) he determines that the applicant can and will comply with applicable laws, regulations, and license conditions;

(3) he determines that the construction and operation of the deepwater port will be in the national interest and consistent with national security and other national policy goals and objectives, including energy sufficiency and environmental quality;

(4) he determines that the deepwater port will not unreasonably interfere with international navigation or other reasonable uses of the high seas, as defined by treaty, convention, or customary international law;

(5) he determines, in accordance with the environmental review criteria established pursuant to section 6 of this Act, that the applicant has demonstrated that the deepwater port will be constructed and operated using best available technology, so as to prevent or minimize adverse impact on the marine environment;

(6) he has not been informed, within 45 days of the last public hearing on a proposed license for a designated application area, by the Administrator of the Environmental Protection Agency that the deepwater port will not conform with all applicable provisions of the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, or the Marine Protection, Research and Sanctuaries Act, as amended;

(7) he has consulted with the Secretary of the Army, the Secretary of State, and the Secretary of Defense, to determine

¹ So in original. A semicolon probably should be added. See section 2003(a)(1) of the Oil Pollution Act of 1990, 104 Stat. 507.

their views on the adequacy of the application, and its effect on programs within their respective jurisdictions;

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

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

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

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

(2) has either (A) an active study by the Secretary of the Army relating to the construction of a deep draft channel and harbor, or (B) a pending application for a permit under section 10 of the Act of March 3, 1899 (30 Stat. 1121), for such construction; and

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

(e)(1) In issuing a license for the ownership, construction, and operation of a deepwater port, the Secretary shall prescribe those conditions which the Secretary deems necessary to carry out the provisions and requirements of this title or which are otherwise required by any Federal department or agency pursuant to the terms of this title. To the extent practicable, conditions required to carry out the provisions and requirements of this title shall be addressed in license conditions rather than by regulation and, to the extent practicable, the license shall allow a deepwater port's operating procedures to be stated in an operations manual, approved by the Coast Guard, in accordance with section 10(a) of this title, rather than in detailed and specific license conditions or regulations; except that basic standards and conditions shall be addressed in regulations. On petition of a licensee, the Secretary shall review any condition of license issued under this Act to determine if that condition is uniform, insofar as practicable, with the conditions of other licenses issued under this Act, reasonable, and necessary to meet the objectives of this Act. The Secretary shall amend or rescind any condition that is no longer necessary or otherwise required by any Federal department or agency under this Act.

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

(3) The Secretary shall establish such bonding requirements or other assurances as he deems necessary to assure that, upon the revocation or termination of a license, the licensee will remove all components of the deepwater port. In the case of components lying in the subsoil below the seabed, the Secretary is authorized to waive the removal requirements if he finds that such removal is not otherwise necessary and that the remaining components do not constitute any threat to navigation or to the environment. At the request of the licensee, the Secretary, after consultation with the Secretary of the Interior, is authorized to waive the removal requirement as to any components which he determines may be utilized in connection with the transportation of oil, natural gas, or other minerals, pursuant to a lease granted under the provisions of the Outer Continental Shelf Lands Act (67 Stat. 462), after which waiver the utilization of such components shall be governed by the terms of the Outer Continental Shelf Lands Act.

(f) AMENDMENTS, TRANSFERS, AND REINSTATEMENTS.—The Secretary may amend, transfer, or reinstate a license issued under this title if the Secretary finds that the amendment, transfer, or reinstatement is consistent with the requirements of this Act.

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

(h) A license issued under this Act remains in effect unless suspended or revoked by the Secretary or until surrendered by the licensee.

(33 U.S.C. 1503)

PROCEDURE

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

(b) The Secretary, in consultation with the Secretary of the Interior and the Administrator of the National Oceanic and Atmospheric Administration, shall, as soon as practicable after the date

of enactment of this Act, prescribe regulations relating to those activities involved in site evaluation and preconstruction testing at potential deepwater port locations that may (1) adversely affect the environment; (2) interfere with authorized uses of the Outer Continental Shelf; or (3) pose a threat to human health and welfare. Such activity may thenceforth not be undertaken except in accordance with regulations prescribed pursuant to this subsection. Such regulations shall be consistent with the purposes of this Act.

(c)(1) Any person making an application under this Act shall submit detailed plans to the Secretary. Within 21 days after the receipt of an application, the Secretary shall determine whether the application appears to contain all of the information required by paragraph (2) hereof. If the Secretary determines that such information appears to be contained in the application, the Secretary shall, no later than 5 days after making such a determination, publish notice of the application and a summary of the plans in the Federal Register. If the Secretary determines that all the required information does not appear to be contained in the application, the Secretary shall notify the applicant and take no further action with respect to the application until such deficiencies have been remedied.

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

(A) the name, address, citizenship, telephone number, and the ownership interest in the applicant, of each person having any ownership interest in the applicant of greater than 3 per centum;

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

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

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

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

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

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

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

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

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

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

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

(3) Upon written request of any person subject to this subsection, the Secretary may make a determination in writing to exempt such person from any of the informational filing provisions enumerated in this subsection or the regulations implementing this section if the Secretary determines that such information is not necessary to facilitate the Secretary's determinations under section 4 of this Act and that such exemption will not limit public review and evaluation of the deepwater port project.

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

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

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

shall be considered until the application pending with respect to such application area have been denied pursuant to this Act.

(4) This subsection shall not apply to deepwater ports for natural gas.

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

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

(f) NEPA COMPLIANCE.—For all applications, the Secretary, in cooperation with other involved Federal agencies and departments, shall comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4332). Such compliance shall fulfill the requirement of all Federal agencies in carrying out their responsibilities under the National Environmental Policy Act of 1969 pursuant to this Act.

(g) A license may be issued only after public notice and public hearings in accordance with this subsection. At least one such public hearing shall be held in each adjacent coastal State. Any interested person may present relevant material at any hearing. After hearings in each adjacent coastal State are concluded, if the Secretary determines that there exists one or more specific and material factual issues which may be resolved by a formal evidentiary hearing, at least one adjudicatory hearing shall be held in accordance with the provisions of section 554 of title 5, United States Code, in the District of Columbia. The record developed in any such adjudicatory hearing shall be basis for the Secretary's decision to approve or deny a license. Hearings held pursuant to this subsection shall be consolidated insofar as practicable with hearings held by other agencies. All public hearings on all applications for any designated application area shall be consolidated and shall be

concluded not later than 240 days after notice of the initial application has been published pursuant to section 5(c) of this Act.

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

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

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

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

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

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

(B) to a person who is neither (i) engaged in producing, refining, or marketing oil, nor (ii) an affiliate of any person who is engaged in producing, refining, or marketing oil or an affiliate of any such affiliate;¹

(C) to any other person.

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

¹ So in original. Probably should end with "and".

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

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

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

(4) The Secretary shall approve or deny any application for a deepwater port for natural gas submitted pursuant to this Act not later than 90 days after the last public hearing on a proposed license. Paragraphs (1), (2), and (3) of this subsection shall not apply to an application for a deepwater port for natural gas.

(33 U.S.C. 1504)

ENVIRONMENTAL REVIEW CRITERIA

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

- (1) the effect on the marine environment;
- (2) the effect on oceanographic currents and wave patterns;
- (3) the effect on alternate uses of the oceans and navigable water, such as scientific study, fishing, and exploitation of other living and nonliving resources;
- (4) the potential dangers to a deepwater port from waves, winds, weather, and geological conditions, and the steps which can be taken to protect against or minimize such dangers;
- (5) effects of land-based developments related to deepwater port development;
- (6) the effect on human health and welfare; and
- (7) such other considerations as the Secretary deems necessary or appropriate.

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

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

(33 U.S.C. 1506)

【Section 7 repealed by section 506 of Public Law 104–324 (110 Stat. 3927).】

SEC. 8.¹ (a) A deepwater port and a storage facility serviced directly by that deepwater port shall operate as a common carrier under applicable provisions of part I of the Interstate Commerce Act and subtitle IV of title 49, United States Code, and shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued, except as provided by subsection (b) of this section.

(b) A licensee is not discriminating under this section and is not subject to common carrier regulations under subsection (a) of this section when that licensee—

(1) is subject to effective competition for the transportation of oil from alternative transportation systems; and

(2) sets its rates, fees, charges, and conditions of service on the basis of competition, giving consideration to other relevant business factors such as the market value of services provided, licensee's cost of operation, and the licensee's investment in the deepwater port and a storage facility, and components thereof, serviced directly by that deepwater port.

(c) When the Secretary has reason to believe that a licensee is not in compliance with this section, the Secretary shall commence an appropriate proceeding before the Federal Energy Regulatory Commission or request the Attorney General to take appropriate steps to enforce compliance with this section and, when appropriate, to secure the imposition of appropriate sanctions. In addition, the Secretary may suspend or revoke the license of a licensee not complying with its obligations under this section.

(d) **MANAGED ACCESS.**—Subsections (a) and (b) shall not apply to deepwater ports for natural gas. A licensee of a deepwater port for natural gas, or an affiliate thereof, may exclusively utilize the entire capacity of the deepwater port and storage facilities for the acceptance, transport, storage, regasification, or conveyance of natural gas produced, processed, marketed, or otherwise obtained by agreement by such licensee or its affiliates. The licensee may make unused capacity of the deepwater port and storage facilities available to other persons, pursuant to reasonable terms and conditions imposed by the licensee, if such use does not otherwise interfere in any way with the acceptance, transport, storage, regasification, or conveyance of natural gas produced, processed, marketed, or otherwise obtained by agreement by such licensee or its affiliates.

(e) **JURISDICTION.**—Notwithstanding any provision of the Natural Gas Act (15 U.S.C. 717 et seq.), any regulation or rule issued thereunder, or section 19 as it pertains to such Act, this Act shall apply with respect to the licensing, siting, construction, or operation of a deepwater natural gas port or the acceptance, transport, storage, regasification, or conveyance of natural gas at or through a deepwater port, to the exclusion of the Natural Gas Act or any regulation or rule issued thereunder.

(33 U.S.C. 1507)

¹ So in original. Section 3(a) of P.L. 98-419, 98 Stat. 1608 struck section 8 and inserted a new section 8 shown above. Probably should have a section heading.

ADJACENT COASTAL STATES

SEC. 9. (a)(1) The Secretary, in issuing notice of application pursuant to section 5(c) of this Act, shall designate as an "adjacent coastal State" any coastal State which (A) would be directly connected by pipeline to a deepwater port as proposed in an application, or (B) would be located within 15 miles of any such proposed deepwater port.

(2) The Secretary shall, upon request of a State, and after having received the recommendations of the Administrator of the National Oceanic and Atmospheric Administration, designate such State as an "adjacent coastal State" if he determines that there is a risk of damage to the coastal environment of such State equal to or greater than the risk posed to a State directly connected by pipeline to the proposed deepwater port. This paragraph shall apply only with respect to requests made by a State not later than the 14th day after the date of publication of notice of an application for a proposed deepwater port in the Federal Register in accordance with section 5(c) of this Act. The Secretary shall make the designation required by this paragraph not later than the 45th day after the date he receives such a request from a State.

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

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

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

(d) The consent of Congress is given to two or more coastal States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, (1) to apply for a license for the ownership, construction, and operation of a

deepwater port or for the transfer of such license, and (2) to establish such agencies, joint or otherwise, as are deemed necessary or appropriate for implementing and carrying out the provisions of any such agreement or compact. Such agreement or compact shall be binding and obligatory upon any State or party thereto without further approval by Congress.

(33 U.S.C. 1508)

MARINE ENVIRONMENTAL PROTECTION AND NAVIGATIONAL SAFETY

SEC. 10. (a) Subject to recognized principles of international law and the provision of adequate opportunities for public involvement, the Secretary shall prescribe and enforce procedures, either by regulation (for basic standards and conditions) or by the licensee's operations manual, with respect to rules governing vessel movement, loading and unloading procedures, designation and marking of anchorage areas, maintenance, law enforcement, and the equipment, training, and maintenance required (A) to prevent pollution of the marine environment, (B) to clean up any pollutants which may be discharged, and (C) to otherwise prevent or minimize any adverse impact from the construction and operation of such deepwater port.

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

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

(d)(1) Subject to recognized principles of international law and after consultation with the Secretary of the Interior, the Secretary of Commerce, the Secretary of State, and the Secretary of Defense, the Secretary shall designate a zone of appropriate size around and including any deepwater port for the purpose of navigational safety. In such zone, no installations, structures, or uses will be permitted that are incompatible with the operation of the deepwater port. The Secretary shall by regulation define permitted activities within such zone. The Secretary shall, not later than 30 days after publication of notice pursuant to section 5(c) of this Act, designate such safety zone with respect to any proposed deepwater port.

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

(33 U.S.C. 1509)

INTERNATIONAL AGREEMENTS

SEC. 11. The Secretary of State, in consultation with the Secretary, shall seek effective international action and cooperation in support of the policy and purposes of this Act and may formulate, present, or support specific proposals in the United Nations and other competent international organizations for the development of

appropriate international rules and regulations relative to the construction, ownership, and operation of deepwater ports, with particular regard for measures that assure protection of such facilities as well as the promotion of navigational safety in the vicinity thereof.

(33 U.S.C. 1510)

SUSPENSION OR TERMINATION OF LICENSES

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

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

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

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

(33 U.S.C. 1511)

RECORDKEEPING AND INSPECTION

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

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

tion shall be conducted with reasonable promptness, and such licensee shall be notified of the results of such inspection.

(33 U.S.C. 1512)

PUBLIC ACCESS TO INFORMATION

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

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

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

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

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

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

(33 U.S.C. 1513)

REMEDIES

SEC. 15. (a) Any person who willfully violates any provision of this Act or any rule, order, or regulation issued pursuant thereto commits a class A misdemeanor for each day of violation.

(b)(1) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any provision of this Act or any rule, regulation, order, license, or condition thereof, or other requirements under this Act, he shall issue an order requiring such person to comply with such provision or requirement, or he shall bring a civil action in accordance with paragraph (3) of this subsection.

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

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

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

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

(33 U.S.C. 1514)

CITIZEN CIVIL ACTION

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

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

(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this Act which is not discretionary with the Secretary. Any action brought against the Secretary under this paragraph shall be brought in the district court for the District of Columbia or the district of the appropriate adjacent coastal State.

In suits brought under this Act, the district court shall have jurisdiction, without regard to the amount in controversy or the citizen-

ship of the parties, to enforce any provision of this Act or any condition of a license issued pursuant to this Act, or to order the Secretary to perform such act or duty, as the case may be.

(b) No civil action may be commenced—

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

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

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

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

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

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

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

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

(33 U.S.C. 1515)

JUDICIAL REVIEW

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

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

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

(33 U.S.C. 1516)

[Section 18 repealed by section 2003(a)(2) of P.L. 101-380, 104 Stat. 507]

RELATIONSHIP TO OTHER LAWS

SEC. 19. (a)(1) The Constitution, laws, and treaties of the United States shall apply to a deepwater port licensed under this Act and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same man-

ner as if such port were an area of exclusive Federal jurisdiction located within a State. Nothing in this Act shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty. Deepwater ports licensed under this Act do not possess the status of islands and have no territorial seas of their own.

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

(3) The Secretary of State shall notify the government of each foreign state having vessels registered under its authority or flying its flag which may call at or otherwise utilize a deepwater port but which do not currently have an agreement in effect as provided in subsection (c)(2)(A)(i) of this section that the United States intends to exercise jurisdiction over vessels calling at or otherwise utilizing a deepwater port and the persons on board such vessels. The Secretary of State shall notify the government of each such state that, absent its objection, its vessels will be subject to the jurisdiction of the United States whenever they—

(A) are calling at or otherwise utilizing a deepwater port; and

(B) are within the safety zone of such a deepwater port and are engaged in activities connected, associated, or potentially interfering with the use and operation of the deepwater port.

The Secretary of State shall promptly inform licensees of deepwater ports of all objections received from governments of foreign states in response to notifications made under this paragraph.

(b) The law of the nearest adjacent coastal State, not in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to any deepwater port licensed pursuant to this Act, to the extent applicable and not inconsistent with any provision or regulation under this Act or other Federal laws and regulations now in effect or hereafter adopted, amended, or repealed. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. For purposes of this subsection, the nearest adjacent coastal State shall be that State whose seaward boundaries, if extended beyond 3 miles, would encompass the site of the deepwater port.

(c)(1) The jurisdiction of the United States shall apply to vessels of the United States and persons on board such vessels. The jurisdiction of the United States shall also apply to vessels, and persons on board such vessels, registered in or flying the flags of foreign states, whenever such vessels are—

(A) calling at or otherwise utilizing a deepwater port; and

(B) are within the safety zone of such a deepwater port, and are engaged in activities connected, associated, or potentially interfering with the use and operation of the deepwater port.

The jurisdiction of the United States under this paragraph shall not, however, apply to vessels registered in or flying the flag of any

foreign state that has objected to the application of such jurisdiction.

(2) Except in a situation involving force majeure, a licensee shall not permit a vessel registered in or flying the flag of a foreign state to call at or otherwise utilize a deepwater port licensed under this Act unless—

(A)(i) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessels registered in or flying the flag of that state and persons on board such vessels in accordance with the provisions of paragraph (1) of this subsection, while the vessel is located within the safety zone, or

(ii) the foreign state has not objected to the application of the jurisdiction of the United States to any vessel, or persons on board such vessel, while the vessel is located within the safety zone; and

(B) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

(3) For purposes of paragraph (2)(A)(ii) of this subsection, a licensee shall not be obliged to prohibit a call at or use of a deepwater port by a vessel registered in or flying the flag of an objecting state unless the licensee has been informed by the Secretary of State as required by subsection (a)(3) of this section.

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

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

(33 U.S.C. 1518)

(f) Section 4(a)(2) of the Act of August 7, 1953 (67 Stat. 462) is amended by deleting the words “as of the effective date of this Act” in the first sentence thereof and inserting in lieu thereof the words “, now in effect or hereafter adopted, amended, or repealed”.

【Section 20 repealed by section 1121(a) of Public Law 104-66 (109 Stat. 724).】

PIPELINE SAFETY AND OPERATION

SEC. 21. (a) The Secretary, in cooperation with the Secretary of the Interior, shall establish and enforce such standards and reg-

ulations as may be necessary to assure the safe construction and operation of oil or natural gas pipelines on the Outer Continental Shelf.

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

(c) The Secretary, in cooperation with the Secretary of the Interior, is authorized and directed to review all laws and regulations relating to the construction, operation, and maintenance of pipelines on Federal lands and the Outer Continental Shelf and to report to Congress thereon within 6 months after the date of enactment of this Act on administrative changes needed and recommendations for new legislation.

(33 U.S.C. 1520)

NEGOTIATIONS WITH CANADA AND MEXICO

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

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

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

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

(33 U.S.C. 1521)

PUBLIC LAW 93-153

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

(33 U.S.C. 1522)

GENERAL PROCEDURES

SEC. 24. The Secretary or his delegate shall have the authority to issue and enforce orders during proceedings brought under this Act. Such authority shall include the authority to issue subpoenas, administer oaths, compel the attendance and testimony of witnesses and the production of books, papers, documents, and other

evidence, to take depositions before any designated individual competent to administer oaths, and to examine witnesses.

(33 U.S.C. 1523)

AUTHORIZATION FOR APPROPRIATIONS

SEC. 25. There is authorized to be appropriated for administration of this Act, not to exceed \$2,500,000 per fiscal year for the fiscal years ending June 30, 1975, June 30, 1976, September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980.

(33 U.S.C. 1524)