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ARTIFICIAL ISLANDS FOR CLUSTER-SITING OF OFFSHORE ENERGY FACILITIES: AN ASSESSMENT OF THE LEGAL AND REGULATORY FRAMEWORK

TIMOTHY D. BACKSTROM AND MICHAEL BARAM

June 1976

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CHAPTER I

INTRODUCTION

As the needs of American society for additional energy become increasingly urgent, the technical and institutional issues to be addressed in forging public policy and encouraging responsible development become increasingly complex. The need for rational and coordinated regulation is particularly apparent with regard to the siting of major energy facilities. As increased attention is directed at the continental shelf for both exploitation of resources and facility siting, it has become clear that the applicable legislation and corresponding regulatory authority are inadequate to the task, confusing, and overlapping.

In this study we examine one of the ways in which offshore coastal regions can be used in energy development, namely through the construction of offshore islands for the siting of energy related facilities. The purpose of the study is to review and assess the significant sectors of this accumulation of legal and regulatory authority, in order that those proposing and supervising such offshore development can formulate suggestions for coordination and rational allocation of responsibility.

The potential demands on offshore resources are considerably greater than many would expect.¹ In addition to offshore drilling and other mineral exploitation, there is increasing interest in safety of navigation, harvest and aquaculture of living marine resources, recreation, and preservation of uniquely valuable marine landscapes and ecosystems.²

Within this dynamic context, the offshore implications of the energy needs of the United States must be fully evaluated. New energy installations might be appropriately sited offshore on artificial islands. However, other uses such as geothermal development,

seawater desalinization, and industrial development have been suggested for such islands; and the text which follows provides information of substantial applicability to offshore facilities and islands for these uses, as well.

The legal and regulatory assessment which follows contains little case law, new Congressional enactments, or proposed regulations and is, in general, a first-order analysis of the legal context for a new concept--the multiple-facility artificial island--which has not yet been tested, but which merits serious study as an alternative for uses of the offshore regions to meet energy requirements.

CHAPTER II

SOME BASIC JURISDICTIONAL QUESTIONS - THE SUBMERGED LANDS ACT AND THE OUTER CONTINENTAL SHELF LANDS ACT

Prerequisite to examination of the current legislative and regulatory apparatus is an understanding of certain basic jurisdictional questions. Such questions are inextricably intertwined with questions of international law and policy. The effect of international treaties and understandings and the potential impacts of international proposals on offshore jurisdiction will be examined in detail in a later section. Current United States legislation is generally consistent with international law regarding offshore development: however, domestic statutes and international law now in effect refer primarily to artificial islands and structures which have been proposed or constructed as part of the process of extraction of oil, gas and other seabed resources. In spite of this limitation, United States legislation can be reasonably interpreted to at least infer comparable jurisdiction for artificial islands unrelated to the oil and gas extraction processes, particularly since comparable issues of energy resource availability are involved, and international initiatives resulting from the activities of the Third Conference on the Law of the Sea make explicit provision for islands serving other functions.

Prior to 1945, there was no specific American policy with regard to offshore development outside the territorial sea, and the question of jurisdiction within the territorial sea was not resolved. In 1945, President Truman issued his landmark Truman Proclamation on the Continental Shelf, Proclamation 2667, which provided that,

... "[I]t is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf is reasonable

and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it . . .

. . . the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control . . ."

President Truman also attempted to resolve domestic jurisdictional confusion by issuing Executive Order 9633, which ordered that "the natural resources of the continental shelf . . . contiguous to the coasts of the United States . . . be placed under the jurisdiction and control of the Secretary of the Interior for administrative purposes, pending the enactment of legislation in regard thereto." Prior to this time, California, Texas, and other states had actually granted offshore mineral leases without federal opposition.

The Truman proclamation and the accompanying executive order set the stage for the first legal confrontation between conflicting federal and state notions of jurisdiction, U.S. v. California.³ This case was brought as an original action in the Supreme Court in order to determine whether California had jurisdiction to exploit and regulate sea bed resources in the three-mile territorial waters contiguous to its coast. The Court determined that all jurisdictional rights to the entire offshore region inhere in the United States, as a natural concomitant of national responsibilities in the conduct of foreign affairs. The Court held,

"The ocean, even its three-mile belt, is thus of vital consequence to the nation in its desire to engage in commerce and to live in peace with the world . . . And as peace and world commerce are the paramount responsibilities of

the nation, rather than an individual state, so if wars come, they must be fought by the nation . . . The state is not equipped in our constitutional system with the powers or the facilities for exercising the responsibilities which would be concomitant with the dominion which it seeks . . ."

The Supreme Court's decision disturbed many members of Congress, who felt that limited jurisdiction in the territorial sea had historically belonged to the states. The Submerged Lands Act⁴ was then enacted to return to the states this historical jurisdiction. Examination of the legislative history confirms that passage of the Submerged Lands Act was meant to operate as a quitclaim to the states of certain jurisdictional rights in the territorial sea and was directly traceable to dissatisfaction with the position of the Supreme Court.⁵ The seaward boundary of each coastal state was established as a line three geographical miles distant from its coast, or beyond three miles if the boundary was farther seaward prior to the time when the State joined the Union.⁶ Section 1311(a) provided that

"(1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and
(2) the right and power to manage, administer, lease, develop, and use said lands and natural resources . . . are . . . recognized, confirmed, established, and vested in and assigned to the respective States . . ."

This section clearly applies to artificial islands, should they be constructed within the three-mile or established historical boundaries, particularly as "lands beneath navigable waters" are expressly defined to include "all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters . . ."⁷

Certain limitations on state jurisdiction would apply even to artificial islands constructed in the territorial sea. Jurisdiction

is reserved to the United States for the constitutional purposes of navigation, flood control, and production of power.⁸ Whether the phrase "production of power" would apply to offshore nuclear, fossil fuel, or geothermal power plants is difficult to ascertain, and it is doubtful if Congress originally intended the term to encompass such aspects of power production.

In addition, Section 1314(a) provides,

"The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development . . ."

Thus, though the construction of an artificial island within the territorial sea would take place within the basic framework of state jurisdiction and regulation, the island and associated offshore activities would be subject to applicable maritime law, and federal environmental constraints would apply to the same degree as to onshore development. Though the basic objective of the Submerged Lands Act was to allow states to benefit from mineral leases in the territorial sea, the language is broad enough to apply to construction of artificial islands for energy facilities, though state action must be tempered by recognition of the Federal Government's constitutional powers and regulatory programs.

Though the passage of the Submerged Lands Act pleased most coastal states, Alabama and Rhode Island sought to challenge the Act on the basis that the rights of the United States to jurisdiction in the territorial sea were an integral part of the sovereign power over foreign affairs and could not be delegated to individual states.⁹ In a per curiam opinion denying standing to file an original

action, the Supreme Court held that such rights were property of the United States and could be disposed of without review, according to Article IV, Section 3 of the Constitution, which provides; "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory and other property belonging to the United States." Thus, the validity of the Submerged Lands Act was clearly established.

In order to reduce the likelihood of endless litigation as to the location of state boundaries prior to admission to the Union, the Submerged Lands Act limits the grant of state jurisdiction by providing that "in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coastline more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico."¹⁰ Thus, only the Gulf states could claim greater jurisdiction without challenging the validity of the legislation. In 1960, the Supreme Court determined that only Florida and Texas could provide the necessary quantum of proof to establish historical claims in the Gulf, and accordingly they were granted jurisdiction of three marine leagues, or 10.35 miles.¹¹

Numerous cases have been brought in the Supreme Court to further refine and adjudicate the exact limits of state and federal power. In the most recent of these, U.S. v. Maine,¹² thirteen Atlantic states sought to justify claims of jurisdiction beyond the three-mile territorial sea by asserting sovereignty over the sea bed, as direct successor in title to the Crown of England. The Court determined that previous decisions precluded such an interpretation, and found on the basis of a Special Master's report that the historical foundation for such a claim was inadequate in any case.¹³

Though technical and logistical considerations prevent, at least for the present, the location of artificial islands in water

depths much in excess of 60 to 100 feet, other considerations, including access for deepdraft vessels, protection of delicate coastal ecosystems, onshore safety, and aesthetics, might preclude construction of such islands in the three mile contiguous zone. Thus, an examination of the legislation relating to areas of exclusive federal jurisdiction is indicated.

In 1953, Congress also enacted the Outer Continental Shelf Lands Act,¹⁴ which applies to "all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title [Submerged Lands Act], and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control. . ."¹⁵ The outer boundaries of this region are defined by international treaty, as will be discussed in a later section. Section 1333(a)(1)(2), as amended January 3, 1975, provides,

"(a)(1) The Constitution and laws and civil and political jurisdiction of the United States are 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 subchapter.

(2) To the extent that they are applicable and not inconsistent with this subchapter 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, Now in effect or hereafter adopted, amended, or repealed are 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." [Emphasis added]

Section 1333 (e) gives the Coast Guard authority to promulgate regulations regarding marking of such artificial islands and safety of life and property on the islands,¹⁶ while Section 1333(f) extends the authority of the Secretary of the Army to prevent obstruction to navigation in navigable waters to artificial islands and fixed structures located on the outer continental shelf.¹⁷

The extension of jurisdiction to artificial islands on the outer continental shelf is strictly limited. The approach of the legislature in subjecting such islands to federal law, supplemented by applicable state law of the adjacent state, was deliberately taken rather than and in lieu of treating such fixed structures as vessels subject to maritime law.¹⁸ Federal jurisdiction under the Outer Continental Shelf Lands Act does not include the sea above the subsoil and seabed, or the air above the sea.¹⁹ The application of state law as surrogate federal law, to the extent "applicable and not inconsistent" with federal law, requires that "applicable" be read in terms of the "necessity to fill a significant void or gap."²⁰

The most crucial question here is whether or not Section 1333 is applicable to artificial islands which are not designed for "exploring for, developing, removing, and transporting" natural resources from the continental shelf, e.g. which are not oil and gas drilling rigs. An examination of the congressional history of the Act fails to disclose a wider

intention. House Report #413, 83rd Cong., 1st Sess. states,

"Representatives of the Federal departments, the States, and the off-shore operators all urged the importance and necessity for the enactment of legislation enabling the Federal Government to lease for oil and gas operations the vast areas of the Continental Shelf outside of State boundaries."²¹

Though a deepwater port might conceivably be interpreted to be "transporting" resources within the meaning of the act, this question is not important, as specific legislation has been enacted to regulate such facilities, which will be discussed in greater detail in the following section. However, the construction of artificial islands for other purposes such as the siting of nuclear power and oil refinery facilities is not specifically addressed in any current legislation.

An argument could be made that the construction of an artificial island is implicitly a "development" of a natural resource within the meaning of the Act. The question here is whether or nor mere seabed is a natural resource meant to be included in the scope of the Act by the legislature. Natural resources are defined as including "Without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power."²² In United States v. Ray,²³ two competing developers were constructing island resort property on barely submerged coral reefs, with the objective of the creation of a new sovereign state. The District Court found that the coral reefs in question and their living marine inhabitants were natural resources within the meaning of the Outer Continental Shelf Lands Act and also held that the reefs were "part of the 'seabed' and 'subsoil' of the Outer Continental Shelf within the . . . Act." However, the court placed a great

deal of emphasis on the potential environmental damage and the living character of the reefs. The District Court granted an injunction on the basis of failure to obtain a permit from the Corps of Engineers. The Appeals Court granted an additional permanent injunction against the developments to restrain "interference with rights to an area which appertains to the United States and which under national and international law is subject not only to its jurisdiction but its control as well."

One might conclude from a reading of the Outer Continental Shelf Lands Act in perspective that, while it was not designed to assert control over or regulate the construction of all artificial islands, the Act codifies generally the assertion of sovereign jurisdiction over all offshore development on the outer continental shelf. However, though courts might be disposed to prohibit such offshore development in the absence of federal approval, it would clearly be a questionable interpretation of legislative intent to define the body of federal and state law applicable to such structures based on Section 1333. In any case, the amendment of Section 1333 to include offshore islands in general would not be difficult, and there is no reason to assume that such structures would require a substantively different assertion of jurisdiction.

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CHAPTER III
THE DEEPWATER PORT ACT OF 1974

Of the alternative uses for offshore artificial islands, a use which has been given extensive consideration recently is the deepwater port installation. The need for increasingly large quantities of imported oil and the economies of scale have forced consideration of greater utilization of supertankers or deep draft vessels. Coastal harbor facilities are generally not equipped to handle these ships, and dredging of channels wide and deep enough to accomodate them has been estimated to be environmentally unacceptable and prohibitively expensive. In addition, the danger of large oil spills near shore is considerable, unless double-hull designs for the ships are forced by regulation.

Deepwater ports constructed offshore in waters of sufficient depth provide an attractive alternative.²⁴ In anticipation of such development, Congress enacted the Deepwater Port Act of 1974,²⁵ and declared its policy:

"(a) It is declared to be the purposes of the Congress in this Act to--

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

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

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

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

(b) The Congress declares that nothing in this Act shall be construed to affect the

legal status of the high seas, the super-jacent airspace, or the seabed and subsoil, including the Continental Shelf."²⁶

The Act defines "deepwater port" as "any fixed or floating man-made structure other than a vessel, or any group of such structures, located beyond the territorial sea and off the coast of the United States and which are used or intended for use as a port or terminal for the loading or unloading and further handling of oil for transportation to any State" including "all associated components and equipment, . . . pipelines, pumping stations, service platforms, mooring buoys, and similar appurtenances to the extent they are located seaward of the high water mark."²⁷

Congress, in creating this framework for the siting of deep water ports, avoided the region under state jurisdiction as defined by the Submerged Lands Act. Of course, state approval of on-shore support and related facilities would inevitably be required for any offshore port, and the Act makes specific provision for state review and approval, as will be discussed shortly. The application of federal and state law to a deepwater port exactly parallels the procedure for supplementation of federal law with applicable state law enunciated in Section 1333 of the Outer Continental Shelf Lands Act.²⁸

The Secretary of State, in consultation with the Secretary of Transportation, is empowered to seek international action consonant with the provisions of the Act.²⁹ All foreign ships and personnel wishing to use the deepwater port facilities must recognize the jurisdiction of the United States and designate an agent in the United States to receive service in the event of a legal claim.³⁰

However, the uses of a deepwater port installation are restricted, and may not allow:

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

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

(3) except in cases where the Secretary otherwise by rule provides, for the transshipment of oil, destined for locations outside the United States."³¹

This restriction on the use of deepwater port facilities has obvious implications for the concept of cluster-siting several other types of energy facilities at a deepwater port installation, such as a nuclear power plant, oil refinery or liquified natural gas terminal. Further, the clustering of non-energy facilities would also be obstructed, such as plants for washing and processing marine minerals such as sand and gravel, manganese and phosphorus, and plants for the handling and degrading of hazardous industrial wastes. Amendment of the Act would be the most efficient method of enabling implementation of the cluster-siting concept, if it were to become appropriate for certain coastal regions and their needs.

The Secretary of Transportation is assigned the basic statutory authority for licensing deepwater ports.³² In order to issue a license, the Secretary must conduct an extensive review which concludes that:

- 1) the applicant is financially responsible,
- 2) the applicant can and will comply with applicable laws, regulations, and license conditions,
- 3) the construction of the port will be in the national interest, consistent with national security, and compatible with national objectives related to energy sufficiency and environmental quality,

- 4) the port will not unreasonably impede navigation,
- 5) the port will be constructed and operated utilizing best available technology, in order to minimize adverse impact on the marine environment,
- 6) the port will conform to all provisions applicable to "new sources" under the Clean Air Act and the Federal Water Pollution Control Act and will not violate the Marine Protection, Research, and Sanctuaries Act (Ocean Dumping Act),
- 7) the port will not restrain trade or otherwise violate the antitrust laws,
- 8) the Secretaries of the Army, State, and Defense have adequately communicated their views on the sufficiency of the application,
- 9) the Governor of each adjacent coastal state has approved the plan, and
- 10) the adjacent coastal state to which the port will be connected by pipeline has developed or is developing a coastal zone management program pursuant to the Coastal Zone Management Act of 1972.³³

In the event that more than one application for a site region or "application area"³⁴ is received, unless the Secretary can determine that one of the proposed ports "clearly best serves the national interest," licenses are to be issued according to the prescribed order of priorities:

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

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

(C) to any other person."³⁵

Public hearings,³⁶ one of which must be held in each "adjacent coastal state,"³⁷ must precede the issuance of a licence.

"Adjacent coastal States" have been defined to include states directly connected to the port by pipeline, as proposed in the application, or located within 15 miles of the proposed port.³⁸ States not automatically eligible may nevertheless be so designated by the Secretary of Transportation, after consultation with the Administrator of the National Oceanic and Atmospheric Administration, and determination that the risk of damage to the coastal environment of such states is equal to or greater than the risk to a state which would be directly connected to the port by pipeline.³⁹

Licensing is contingent on consistency of the proposed facility with existing state programs of environmental protection, land and water use, and coastal zone management,⁴⁰ as determined by the governors of "adjacent states;" but this state function is conditioned on state development of a coastal zone management program.⁴¹ Each adjacent state may set reasonable fees for the use of the deepwater port facility which may not exceed the economic, environmental, and administrative costs to that state of the port's operation.⁴² In the event that an adjacent coastal state is planning or actively studying the construction of an onshore deepwater port,

"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."⁴³

The Secretary of Transportation is designated by the Act as the party responsible, in consultation with other involved Federal agencies and departments, for preparation of a single, detailed

environmental impact statement. This single statement, if satisfactory, would fulfill the separate requirements of each agency under the National Environmental Policy Act.⁴⁴ The criteria used in preparing the statement are prescribed, and include:

- "(1) the effect on the marine environment;
- (2) the effect on oceanographic currents and wave patterns;
- (3) the effect on alternate uses of the oceans and navigable waters, such as scientific study, fishing, and exploitation of other living and nonliving resources;
- (4) the potential dangers to a deepwater port from waves, winds, weather, and geological conditions, and the steps which can be taken to protect against or minimize such dangers;
- (5) effects of land-based developments related to deepwater port development;
- (6) the effect on human health and welfare; and
- (7) such other considerations as the Secretary deems necessary or appropriate." ⁴⁵

The Secretary of Transportation is required by the Act to develop a full regulatory program, which would include regulations pertaining to "application, issuance, transfer, renewal, suspension, and termination of licenses" which "provide for full consultation and cooperation with all interested federal agencies and departments and with any affected coastal State, and for consideration of the views of any interested members of the general public."⁴⁶ He must also issue regulations relating to site evaluation and pre-construction testing which may adversely affect the environment, conflict with authorized uses of the Outer Continental Shelf, or pose a threat to human health or welfare.⁴⁷ In addition, he is required to prescribe deepwater port procedures by regulation "including, but not limited to, rules governing vessel movement, loading and unloading procedures, designation and marking of anchorage areas, maintenance, law enforcement," and to make

provision for prevention of pollution discharge into the marine environment, clean up of any such pollutants, and prevention of other adverse impacts resulting from deepwater port construction and operation.⁴⁸ He must also promulgate regulations regarding lights and other aids to navigation and rules promoting safe operation of the port.⁴⁹ Finally, the Secretary is empowered to establish "safety zones" of appropriate size around each deep-water port and to define permitted activities within each such zone.⁵⁰

The authority of the Coast Guard (Department of Transportation) for navigational and operational safety of off-shore installations on the outer continental shelf is well established, and Coast Guard regulations have been promulgated to promote safety for offshore installations erected under the authority of the Outer Continental Shelf Lands Act.⁵¹ Pursuant to authority delegated by the President under the Federal Water Pollution Control Act,⁵² the Coast Guard has also issued regulations on the prevention, containment, and clean-up of oil spills from "vessels and transportation-related onshore and offshore facilities."⁵³ The definition of "transportation-related" created a great deal of confusion originally as to the exact extent of Coast Guard jurisdiction, for, as will be discussed in a later section, the Environmental Protection Agency was given responsibility for prevention and containment of discharges from "non-transportation related" facilities. The nature of each agency's jurisdiction was clarified in a subsequent Memorandum of Understanding,⁵⁴ which provides that, "The Department of Transportation will generally be responsible for regulating the transferring of oil to or from a vessel at any facility including terminal facilities...." Thus, it was logical that the Secretary of Transportation would delegate the authority to make regulations under Sections 1504 and

1509 of the Deepwater Port Act to the Coast Guard. Proposed regulations have recently been published in the Federal Register,⁵⁵ and cover the following matters:

"Personal and financial data required of a prospective deepwater port operator; environmental data to be provided with application for a license to operate a deepwater port; construction standards to be met; operational constraints to be followed; and proposed oil spill prevention measures and operator clean-up capabilities."

The division of regulatory authority and jurisdiction in the coastal and offshore regions has been confusing and overlapping. The Deepwater Port Act recognizes this difficulty and requires the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Chief of Engineers of the Army Corps of Engineers, the Administrator of the National Oceanic and Atmospheric Administration, and the heads of all other federal departments and agencies having expertise concerning, or jurisdiction over, any aspect of the construction or operation of deepwater ports to transmit to the Secretary of Transportation written comments regarding their expertise and statutory responsibilities.⁵⁶ The approval of deepwater port licenses is also subject to review by federal agencies with relevant jurisdiction.⁵⁷

The Department of Interior has statutory jurisdiction, under the Outer Continental Shelf Lands Act, over the leasing of portions of the seabed on the outer continental shelf for exploration and exploitation of its mineral resources.⁵⁸ The Secretary of the Interior is also empowered to grant pipeline rights-of-way on the outer continental shelf for the transportation of oil and natural gas.⁵⁹ These functions have been assigned to the Bureau of Land Management, which has issued regulations.⁶⁰ Congress, in writing the Deepwater Port Act, chose to assign comparable functions

relating to deepwater port siting and operation in a manner which recognizes the Secretary of the Interior's knowledge and current jurisdiction. Licensees will pay annual rental fees to the Secretary of the Interior for offshore lands and pipeline rights-of-way utilized by the deepwater port.⁶¹ Regulations relating to safety of pipeline construction and operation are to be drafted by the Secretary of Transportation, in cooperation with the Secretary of the Interior.⁶² Though this Congressional approach to a new form of offshore development applies only to deepwater ports at this time, the incorporation of relevant provisions of the Outer Continental Shelf Lands Act and the recognition of traditional and established jurisdiction in the offshore area obviously has important implications for other types of offshore facilities on artificial islands.

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CHAPTER IV

ENVIRONMENTAL IMPACT STATEMENTS AND NEPA

The passage of the National Environmental Policy Act⁶³ had a dramatic and fundamental impact on agency decision making processes. The most important provision of this legislation requires all agencies to prepare a detailed analysis of environmental impact, or environmental impact statement, as a fundamental component of any decision making which may significantly affect environmental quality. Section 102 of the Act⁶⁴ states,

"The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall--

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,
(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."

The effect of this legislative mandate was to broaden in one hold stroke the scope of all federal decisionmaking. In Calvert Cliffs Coordinating Committee v. Atomic Energy Commission,⁶⁵ the court remarked

"NEPA, first of all, makes environmental protection a part of the mandate of every federal agency and department.... It is not only permitted, but compelled to take environmental values into account. Perhaps the greatest importance of NEPA is to require... agencies to consider environmental issues just as they consider other matters within their mandates."

NEPA also created the Council on Environmental Quality which is required, as one of its duties, "to review and appraise the various programs and activities of the Federal Government in the light of the policy...of this Act."⁶⁶ Copies of impact statements must be delivered to the Council,⁶⁷ which also issues guidelines to assist federal agencies in proper and timely preparation of impact statements.⁶⁸

Preparation of an environmental impact statement must precede any federal agency decision or recommendation on a proposal which will "significantly" affect the human environment.⁶⁹ Any proposed project qualifies as sufficiently federal which is either directly undertaken by a federal agency, or is supported in whole or in part by federal funding, or involves a federal lease, permit, license, or other entitlement to use.⁷⁰ Thus, any proposed offshore

artificial island would inevitably be subject to immediate environmental scrutiny. In Sierra Club v. Mason,⁷¹ an injunction was granted against dredging of a harbor to allow access by oil tankers because an impact statement had not been completed. The risks of adverse impact from artificial island construction would seem to be at least as significant. However, each agency must make an independent threshold determination of "significant".⁷² The agency is required to:

"review the proposed action in the light of at least two factors: (1) the extent to which the action will cause adverse environmental effects in excess of those created by existing uses in the area affected by it; and (2) the absolute quantitative adverse environmental effects of the action itself, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area." ⁷³

Any proposed major federal action which is "likely to be highly controversial" should be covered by an impact statement in any case.⁷⁴ The conclusion is inescapable that construction of an offshore artificial island would require preparation of at least one environmental impact statement.

The initial environmental assessment of a proposal should be undertaken concurrently with technical and economic studies.⁷⁵ Section 102 of NEPA requires that preparation of the impact statement be done "to the fullest extent possible." This phrase has been judicially defined as follows:

"In reviewing the sufficiency of an agency's compliance with Sec. 102, we do not fathom the phrase 'to the fullest extent possible' to be an absolute term requiring perfection. If perfection were the standard, compliance would necessitate the accumulation of the sum total of scientific knowledge of the environmental elements affected by a proposal. It is unreasonable to impute to the Congress such an edict....the phrase 'to the fullest extent possible' clearly imposes a standard of environmental management

requiring nothing less than comprehensive and objective treatment by the responsible agency..."⁷⁶

The statement should contain all the information necessary to alert the President, the Council on Environmental Quality, and the public to all known possible environmental consequences of the proposed agency action.⁷⁷

The application of NEPA's requirements to artificial island proposals will involve detailed study of practical alternatives to the proposed uses and other uses of the offshore regions involved. Section 102(2) specifically requires agencies to

"(D) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources....."

In Natural Resources Defense Council v. Morton,⁷⁸ an environmental impact statement describing the effects of proposed offshore leasing of submerged oil and gas tracts was found to be inadequate because it did not sufficiently explore possible alternative sources of energy, even though the Secretary of Interior had no statutory authority to approve or implement many of the alternatives. An implicit part of the insufficiency of the impact statement was the absence of an analysis of the competing demands for offshore resources. The court wrote,

"Congress contemplated that the Impact Statement would constitute the environmental source material for the information of the Congress as well as the Executive, in connection with the making of relevant decisions, and would be available to enhance enlightenment of--and by--the public... The impact statement is not only for the exposition of the thinking of the agency, but also for the guidance of these ultimate decision-makers, and must provide them with the environmental effects of both the proposal and the alternatives, for their consideration along

with the various other elements of the public interest."

The availability of the impact statement for public review is also emphasized repeatedly in Council on Environmental Quality guidelines.⁷⁹

One of the most important questions to be resolved with regard to agency preparation of environmental impact statements for artificial island construction concerns the determination of primary responsibility for the statement. As is clear from an examination of overlapping agency jurisdictions in the offshore area and the projected multiplicity of island uses, automatic designation of a single responsible agency would be misleading for any such development. The Council on Environmental Quality Guidelines suggest,

"Agencies in such cases should consider the possibility of joint preparation of a statement by all agencies concerned, or designation of a single 'lead agency' to assume supervisory responsibility for preparation of the statement. Where a lead agency prepares the statement, the other agencies involved should provide assistance with respect to their areas of jurisdiction and expertise. In either case, the statement should contain an environmental assessment of the full range of Federal actions involved, should reflect the views of all participating agencies, and should be prepared before major or irreversible actions have been taken by any of the participating agencies. Factors relevant in determining an appropriate lead agency include the time sequence in which the agencies become involved, the magnitude of their respective involvement, and their relative expertise with respect to the project's environmental effects."⁸⁰

The Deepwater Port Act designates the Department of Transportation as the "lead agency" for impact statement preparation regarding deepwater port proposals.⁸¹ Joint statement preparation and

designation of a "lead agency" each have certain advantages. Jointly prepared statements would probably reflect greater coordination and sharing of expertise, but would not possess the advantage of the "lead agency" concept in terms of ultimate definition or responsibility for administration and enforcement.

In any event, the responsible federal official must consult with all federal agencies possessing jurisdiction by law or special expertise, with reference to the proposed development.⁸² In the hypothetical instance of the development of an artificial island on the outer continental shelf with potential provision for a deepwater port, a nuclear power plant, and an oil refinery, the following agencies should probably be consulted: (this list is not necessarily complete).

Department of Agriculture	Department of the Treasury
--Soil Conservation Service	--U.S. Customs Bureau
Department of Commerce	Environmental Protection Agency
--National Oceanic and	
Atomospheric Administration	
Administration	Federal Energy Administration
Department of Defense	Federal Power Commission
--Army Corps of Engineers	Federal Trade Commission
Department of the Interior	Interstate Commerce Commission
--Bureau of Land Management	Nuclear Regulatory Commission
--Geological Survey	Water Resources Council
--Office of Land Use and	
Water Planning	
--Office of Oil and Gas	Regional River Basins Commission
--Bureau of Outdoor	
Recreation	State Coastal Zone Management Agency
--Bureau of Sport Fisheries	
and Wildlife	State Environmental Agencies
Department of State	
Department of Transportation	Local Port Authority
--Coast Guard	Local Zoning Boards
--Office of Pipeline Safety	
--Office of Hazardous	
Materials	

The need for assignment of some sort of definite responsibility for impact statement preparation, as in the "lead agency" concept, obviously becomes more acute when multiple uses or facilities are contemplated for a single artificial island or a series of artificial islands in close proximity.

Each agency is charged with conducting an independent assessment, even though its finding must eventually be integrated into the final statement. Abdication or delegation to other agencies or parties of the statutory obligation under NEPA has been held to violate the legislative purpose of the requirement of impact statements. The court in Greene County Planning Board v. Federal Power Commission⁸³ observed,

"The Federal Power Commission has abdicated a significant part of its responsibility by substituting the statement of PASNY for its own. The Commission appears to be content to collate the comments of other federal agencies, its own staff and the intervenors and once again to act as an umpire. The danger of this procedure, and one obvious shortcoming is the potential, if not likelihood, that the applicant's statements will be based upon self-serving assumptions."

Section 309 of the Clean Air Act, as amended,⁸⁴ requires the Administrator of the Environmental Protection Agency to "review and comment in writing on the environmental impact of any matter relating to duties and responsibilities" of the EPA. This has been interpreted to mean that

"wherever an agency action related to air or water quality, noise abatement and control, pesticide regulation, solid waste disposal, generally applicable environmental radiation criteria and standards, or other provision of the authority of the Administrator is involved, Federal agencies are required to submit such proposed actions and their environmental impact statements, if such have been prepared, to the

Administrator for review and comment in writing." 85

This additional review would clearly apply to a proposed artificial island project. However, in practice this provision has had little impact on decisionmaking, due to apparent EPA reluctance to fully perform its statutory responsibility.⁸⁶

The necessity for thoroughness and extensive consultation in preparation of an environmental impact statement may seem to impose a heavy burden on the federal decision makers who would review artificial island proposals, due to the complicated and far-reaching nature of the associated economic and environmental impacts. Yet, it is just these characteristics of such an endeavor which so clearly necessitate penetrating examination. The balancing of the potential societal benefits of offshore artificial islands against the fragility of the marine environment, the associated perils to navigation, and the other demands on offshore resources, both preservationist and developmental, is an indispensable precedent to enlightened policy making.

CHAPTER V

COASTAL ZONE MANAGEMENT AND STATE AUTHORITY

Artificial islands constructed on the outer continental shelf, beyond the limits of state jurisdiction would nevertheless have substantial and dramatic impact on the nearest onshore regions. The requirements in land area onshore for ongoing support facilities and for construction staging area uses would be substantial, and range upwards to several hundred acres. The potential adverse environmental impact would be most severe in the fragile and ecologically important coastal waters and estuaries even if the land for construction staging was subsequently liquidated. Consequently, in addition to state environmental safeguards, the establishment of rational environmental and developmental management practices in the coastal regions proximate to artificial island construction is imperative. Congress has passed legislation designed to encourage the institution of such management programs by the coastal states. In the Coastal Zone Management Act of 1972,⁸⁷ Congress determined that,

"(g) In light of competing demands and the urgent need to protect and to give high priority to natural systems in our coastal zone, present coastal state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.

(h) The key to more effective use of the land and water resources of the coastal zone is to encourage the coastal states to exercise their full authority over the lands and waters in the coastal zone by assisting the coastal states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone..."⁸⁸

The Secretary of Commerce is authorized to provide federal assistance to the thirty coastal states in the development of coastal zone management proposals. Every such management proposal must include:

- 1) an identification of the boundaries of the coastal zone,
- 2) a definition of permissible land and water uses within the coastal region,
- 3) an inventory and designation of areas of particular concern within the coastal zone,
- 4) an identification and analysis of the legal authorizations for exercise of regulatory jurisdiction by the state agency involved,
- 5) broad guidelines for assignment of specific priorities to each conflicting use, and
- 6) a description of the organizational structure⁸⁹ selected to implement the management program.

The federal government can provide up to two-thirds of the costs of program development for up to three years,⁹⁰ but no state may receive in excess of 10% of the correspondent annual appropriation.⁹¹

Upon completion of program development, the state submits the program to the Secretary of Commerce for approval.⁹² Each coastal state is then eligible for further matching grants to assist in actual program operation. In order to receive these monies, the state must demonstrate that:

- 1) The state program was developed in accordance with applicable regulations and in full consultation with relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties,

- 2) The state has coordinated its program with existing local and regional plans applicable to the coastal zone and has made provision for continuing consultation with the agencies involved,
- 3) The state has held public hearings during program development,
- 4) The program has been reviewed and approved by the Governor,
- 5) The Governor has designated a single responsible agency to receive and administer grants (but not necessarily to manage the coastal zone),
- 6) The state has organized to implement the program,
- 7) The state has the necessary legal authority,
- 8) The management program provides for "adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature" (emphasis added), and
- 9) The program establishes procedures for preservation and restoration of specific areas on the basis of their "conservation, recreational, ecological, or esthetic values."⁹³

The federal government can provide up to two-thirds of projected state operational expenditures,⁹⁴ with no state allowed a grant exceeding 10% of the total available federal funds.⁹⁵

The boundaries of the "coastal zone" encompass the "coastal waters (including the lands therein and thereunder) and the adjacent shorelands."⁹⁶ The seaward limit is naturally the boundary of the state jurisdiction in the territorial sea, but the landward boundary has been more difficult to define. The basic administrative necessities to be considered in delineating this boundary may be derived from two important sets of objectives,

protection of the aquatic environment and regulation of shoreline development. Since a primary purpose of coastal zone management is to maintain the physical, chemical, and biological balances of the coastal waters, the estuarine systems, wetlands, and transitional areas of major tributaries feeding into coastal waters must be included within the zone. Many important marine species depend on the estuaries and wetlands for their sustenance. The coastal waters, estuaries, and major tributaries are physically and biologically inseparable. The legislation makes specific provision for the inclusion of such areas. In addition, the heavy demands for scarce shoreline property, particularly in areas of high population density, necessitate management and supervision of shoreline development. The prime task of a coastal zone management agency must inevitably be somewhat allocative in nature. The "coastal zone" is defined in the legislation to extend inland "to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters."⁹⁷ It is evident that major onshore support activities for artificial island construction and operation are within the province of coastal zone management programs, and the regulation of such activities would be largely a state responsibility. This was explicitly recognized in the Deepwater Port Act, which made a coastal zone management program and state approval necessary prerequisites to construction of deepdraft facilities offshore.⁹⁸

The constitutional prerogatives of the Federal government as reserved in the Submerged Lands Act⁹⁹ are unaffected by the Coastal Zone Management Act.¹⁰⁰ However, Federal deference to approved and operational state management programs is emphasized. Federal agencies are to conduct their activities and plan development in a manner which is "to the maximum extent practicable,

consistent with approved state management programs."¹⁰¹ Furthermore, each applicant for a required Federal license or permit in the coastal zone is required to certify compliance with the applicable state management program, though the Secretary of Commerce may permit the activity at his discretion, if he determines it to be consistent with the Act or in the interest of national security.¹⁰²

The Coastal Zone Management Act does not affect or modify Federal requirements and state programs established under the Clean Air Act and Water Pollution Control Act. The requirements of these statutes are to be incorporated in the management program instituted by the state. The application of these statutes to artificial island construction and operation is discussed in a later section.¹⁰³

The Secretary of Commerce has delegated his authority under the Coastal Zone Management Act to the National Oceanic and Atmospheric Administration. NOAA has promulgated regulations prescribing conditions for availability of development grants and approval of state coastal zone management programs.¹⁰⁴

Each state's response to the Coastal Zone Management Act differs, and lies beyond the scope of this discussion.¹⁰⁵ However, the basic administrative options and alternatives to be invoked in program formulation can be summarized. The proposed structure should make provision for coordination of agencies and interests with overlapping or complimentary responsibilities and jurisdictions. A mechanism must be developed to insure local and regional compliance with the management scheme without undue interference with local autonomy or usurpation of traditional and established land use controls. Determination of the nature of the management authority and certification procedure are thus

extremely important state decisions. The optimal structure in each state will depend on a number of political, social, environmental and economic factors.

What sort of institution should administer or guide the management effort? Three major alternatives appear reasonable:

- 1) the state department of conservation and/or environment,
- 2) an inter-agency council, housed within or related to the major state natural resource agency, with potential provision for public, federal, and special interest representation, or
- 3) a new state agency (this would certainly involve transfer of functions from existing agencies, a fundamental redistribution of power).

Before an informed decision on structure can be made, the state must consider the current allocation of power and responsibility in the coastal region and how each alternative would change it. The magnitude of the task, in terms of the size of the coastal zone and the complexity of competition between coastal land use demands, is an especially important factor. The emphasis of the program will depend heavily on the nature of its administrative institution. Since state objectives can be assumed to be dependent on a balance between potentially conflicting interests, such as ecological stability and economic vitality, the regulatory structure should provide for processes to attain that balance through corresponding diversity of criteria and values. In addition, the involvement of governmental, industrial, and public sector representatives is more likely to enjoy popular appeal. Thus, the second alternative appears most attractive and feasible, despite its potential for increased bureaucracy.

Local communities and agencies in the coastal region obviously must play a role in coastal zone management. Much of

the greatest support for and most vocal opposition to construction of artificial islands will be generated in the nearest local communities, as citizens try to assess the economic, environmental, and social effects on their lives. State government can elect to do coastal planning at the state level exclusively, or can try to preserve a measure of local autonomy without significant inhibition or contradiction of state objectives. Two alternative approaches to the latter option appear to be available, both specifically recognized in the Coastal Zone Management Act:¹⁰⁶

- 1) Cities and towns are given the opportunity to plan and administer the coastal land use regulation for the state, within state guidelines and subject to state approval. The state would undertake planning or administration only in the event of local default.
- 2) The state establishes another set of controls and approval procedures parallel to municipal ones and independent of local jurisdiction.

The second proposal would obviously require more staffing and greater funding. The attitudes of local officials are very important, in terms of both pragmatic politics and eventual cooperation. While the first approach imposes a greater short-term burden on the locality and restricts its alternatives, the second approach increases the likelihood that a local preference will be overturned ---e.g., that a development favored by local officials will be prohibited. Whatever approach a state elects to take in administering its coastal zone management program, prospective artificial island developers must plan to work within its constraints.

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CHAPTER VI

THE RIVERS AND HARBORS ACT OF 1899 AND THE CORPS OF ENGINEERS

The Corps of Engineers of the United States Army is charged with supervision and regulation of construction in navigable waters by the Rivers and Harbors Act of 1899.¹⁰⁷ Section 407 of the Rivers and Harbors Act, known as the Refuse Act, has been superseded by the delegation of comparable authority to the Administrator of the Environmental Protection Agency under the Federal Water Pollution Control Act.¹⁰⁸ The Corps also exercises limited jurisdiction under the Water Pollution Control Act and the Marine Protection, Research, and Sanctuaries Act, as will be considered in the next section. However, the most pertinent delegation of authority to the Corps with reference to the construction of offshore artificial island is Section 403 of the Act of 1899, which provides:

"The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, canal, like, harbor or refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to the beginning the same."

"Navigable waters" have been judicially defined to include any body of water which is presently being used or is suitable for use for transportation and commerce, has been used or was suitable for such use in the past, or could be made suitable for such use in the future by reasonable improvements.¹⁰⁹ Corps jurisdiction over such waters normally extends three miles seaward from the coastline;¹¹⁰ however, the jurisdiction of the Army to prevent "obstruction to navigation" was extended to "artificial islands and fixed structures on the Outer Continental Shelf" by the Outer Continental Shelf Lands Act.¹¹¹

Within the three-mile limit, Corps authority is derivative from the servitude of navigation, and any obstruction to navigation resulting from filled-in land is subject to Corps regulation, even if made under the authority of a state.¹¹² Whether Corps authority over structures within the three-mile limit of the territorial sea extends beyond assuring safety of navigation was not resolved until recently. United States ex. rel. Greathouse v. Dern¹¹³ had held that the Corps need not have navigational justification for denying a permit under Section 403, but the first test of whether the Corps could consider general environmental impact in evaluating a permit application came in Zabel v. Tabb.¹¹⁴

Shortly prior to Zabel, the House Committee on Government Operations had issued a report¹¹⁵ which concluded,

"The Corps of Engineers, which is charged by Congress with the duty to protect the nation's navigable waters, should, when considering whether to approve applications for landfills, dredging and other work in navigable waters, increase its consideration of the effects which the proposed work will have, not only on navigation, but also on conservation of natural resources, fish and wildlife, air and water quality, esthetics, scenic view, historic sites, ecology, and other public interest aspects of the waterway."

Congress had also passed the Fish and Wildlife Coordination Act¹¹⁶ which requires that,

"Whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife, resources of the particular State wherein the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development."¹¹⁷

The court in Zabel concluded that the Corps has jurisdiction to consider the environmental effects of construction in navigable waters under the commerce power, specifically reserved to the Federal Government in the three-mile territorial waters under the Submerged Lands Act.¹¹⁸ Noting the applicability of the Fish and Wildlife Coordination Act and the provisions of the newly passed National Environmental Policy Act,¹¹⁹ the court held that,

"In rejecting a permit on non-navigational grounds, the Secretary of the Army does not abdicate his sole ultimate responsibility and authority. Rather in weighing the application, the Secretary of the Army is acting under a Congressional mandate to collaborate and consider (environmental) factors."

Later, in Citizens for Clean Air v. Corps of Engineers,¹²⁰ a Corps permit which had been issued for the construction of a water intake and discharge for a power plant cooling system was held invalid because the Corps had not yet completed the required

impact statement; a further reinforcement for an environmental role for the Corps. Corps of Engineers Regulations now provide for consideration of wetlands, fish and wildlife, water quality, and historic, scenic, and recreational values in evaluation of permit applications under Section 403.¹²¹ The Corps has also promulgated regulations providing for preparation of environmental impact statements when necessary,¹²² which incorporate similar considerations.

Corps policy directs denial of permit applications for projects requiring state or local approval, such as island construction within the three-mile territorial waters, which have not received the necessary state or local authorization.¹²³ Projects must comply with applicable state coastal zone management programs prior to approval.¹²⁴ The Corps provides public notice of pending permit applications, and a public meeting if the response indicates one is appropriate.¹²⁵

The submission of an application to the Corps of Engineers for the construction of an artificial island within the three-mile territorial waters would obviously be subject to a thorough examination by the Corps as to environmental impacts. Whether similar criteria and standards would apply to an artificial island constructed on the outer continental shelf is not clear, as the authority of the Corps under the Outer Continental Shelf Lands Act appears to be limited to prevention of "obstruction to navigation."¹²⁶ In U.S. v. Ray,¹²⁷ the development of an artificial island on coral reefs on the outer continental shelf was held to require a Corps permit, even though the effect on navigability would have been negligible and the real issues were environmental and political in nature. Where artificial islands or fixed structures are to be erected on lands under mineral lease

from the Bureau of Land Management, the Bureau has responsibility for environmental impact analysis and Corps permit review is "limited to an evaluation of the impact of the proposed work on navigation and national security."¹²⁸ Yet, NEPA would seem to impose an environmental evaluation duty on the primary decision maker in evaluating the merits of offshore projects proposed for siting on the outer continental shelf.

Analysis of current authority suggests that whenever regulatory primacy over an artificial island to be located on the continental shelf is assigned to an agency other than the Corps, as under the Deepwater Port Act, that agency would be responsible for evaluating environmental impact, in accordance with NEPA, but that the Corps would be charged with evaluation of environmental factors in the absence of designation of a "lead agency."

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CHAPTER VII

OTHER REGULATORY AUTHORITY

A. Clean Air Act

The operation of facilities such as an oil refinery or fossil fuel power plant on an artificial island might lead to degradation of air in proximate onshore regions or have deleterious effects on marine wildlife. The application of the relevant Federal legislation, the Clean Air Act,¹²⁹ to offshore facilities is not entirely clear. However, prior to examination of jurisdictional issues and alternative institutional approaches, a brief review of the Clean Air Act's relevant provisions is in order.

The Clean Air Act was enacted to "protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population."¹³⁰ The Act states that "prevention and control of air pollution at its source is the primary responsibility of states and local governments,"¹³¹ but recognizes that, because air pollution problems often extend across state boundaries, negotiation of interstate agreements may be necessary to fulfill that responsibility.¹³² Pursuant to the objective of regional control, the Administrator of the Environmental Protection Agency is directed to designate areas as Air Quality Control Regions "which he deems necessary or appropriate for the attainment and maintenance of ambient air quality standards."¹³³

The Administrator of EPA has promulgated national ambient air quality standards, including primary standards which in his judgement are necessary to protect "the public health"; and secondary standards which are judged "requisite to protect the public welfare from any known or anticipated adverse effects."¹³⁴

Each state is now in the process of adopting and submitting to EPA, state implementation plans (SIP's) which provide for the "implementation, maintenance, and enforcement" of these standards in each air quality control region located within its jurisdiction.¹³⁵ The SIP's must include a procedure for review of the location of new sources (such as facilities on a newly constructed artificial island), and provide adequate authority to prevent the construction of a new source which will by virtue of its location, discharges, and local meteorological conditions prevent the attainment or maintenance within any air quality control region of the national ambient standards.¹³⁶ The Administrator may either approve the plans if satisfactory, or promulgate regulations setting forth the implementation plan for any state which fails to submit an acceptable plan in a timely fashion.¹³⁷

The Administrator is also empowered to set "standards of performance," reflecting "the degree of emission limitation achievable through the application of the best system of emission reduction which . . . has been adequately demonstrated," for various categories of new stationary sources.¹³⁸ Each state may then submit an implementation plan providing for enforcement of these standards for new sources located in that state.¹³⁹ The Administrator has the same power of approval and substitution for these implementation plans that he possesses with regard to ambient air implementation plans.¹⁴⁰ Comparable procedures apply to the promulgation and implementation of national emissions standards for hazardous air pollutants which are not covered by applicable ambient standards.¹⁴¹

The Administrator may make grants to "air pollution control agencies" in amounts of up to two-thirds the costs of planning and one-half the costs of operation of implementation plans for

national primary and secondary air quality standards.¹⁴² Three-quarters of the costs of planning and three-fifths of operational expenses are available to agencies developing ambient air standard implementation plans for regions including two or more municipalities.¹⁴³ State, local, and regional agencies are free to adopt more stringent standards than provided for in federal regulations.¹⁴⁴ The EPA retains the power to enforce applicable standards in the event of local default¹⁴⁵ and to inspect and monitor regulated facilities.¹⁴⁶

The application of this institutional framework for air quality control to a multi-facility artificial island is unclear.

Adverse impacts of unacceptable emissions from facilities on such an island would undoubtedly occur at nearby onshore locations under state and local jurisdiction; yet the basic jurisdictional context of artificial island construction on the outer continental shelf, beyond the three-mile territorial waters, is federal in character.

The Clean Air Act declares that the "prevention and control of air pollution at its source is the primary responsibility of states and local governments,"¹⁴⁷ apparently on the basis that states are empowered under the police power to safeguard public health and welfare. On the other hand, air pollution undeniably has an adverse impact on commerce, the constitutional regulation of which has been specifically reserved to the federal government even in the three-mile offshore area of ceded state jurisdiction.¹⁴⁸ The Deepwater Port Act provides that deep draft facilities will be considered to be "new sources" under the Clean Air Act,¹⁴⁹ but does not suggest who will be responsible for planning implementation of the relevant standards.

The Administrator of EPA has apparently been given wide discretion in the designation of air quality control regions.¹⁵⁰ Conceivably, he could extend an onshore region to encompass any potential polluter on the outer continental shelf. Each state has the responsibility to assure "air quality within the entire geographic area comprising such state,"¹⁵¹ and the Clean Air Act specifically recognizes the potential necessity for regional planning to fulfill that responsibility.¹⁵² Alternatively, the Administrator could choose to establish direct EPA authority for regulating offshore facility compliance with national standards. In any event, the Clean Air Act requires "Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government....having jurisdiction over any property or facility" to "comply with federal, state, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements."¹⁵³ The likelihood that EPA would extend state or local air pollution authority to supervise compliance with national standards to an offshore facility is probably a function of the proximity of the installation to areas of current state or local authority. If the facility is located on an artificial island constructed on submerged lands which are owned by a state under the Submerged Lands Act,¹⁵⁴ it would probably be interpreted to be within the air quality control region containing the adjacent coastal lands.

The application, by a suitable authority, of air quality standards to a new offshore facility would place certain constraints on siting. Generally, administrative decisions which are made pursuant to air quality control regulations regarding construction of stationary sources have the force of law unless there is an abuse of discretion in approving a stationary source

whose presence would prevent or interfere with the attainment of any applicable local or national air standard.¹⁵⁵ However, Sierra Club v. Ruckelshaus¹⁵⁶ held that the Clean Air Act was based on a "policy of non-degradation of existing clean air" and that development must thus be regulated to avoid significant deterioration of air quality. Thus, any artificial island containing polluting installations would not be allowed to locate in such a fashion that currently clean air would be significantly degraded. This constraint can only be evaluated in light of other siting considerations which might, for example, dictate that offshore artificial islands be located in reasonable proximity to polluted urban regions. Much controversy attends the current evolution of regulations designed to implement the "non-degradation" policy, and the matter remains unsettled.

B. Water Pollution Control Act and Refuse Act

The Federal Water Pollution Control Act Amendments of 1972¹⁵⁷ constitute a complex and comprehensive regulatory apparatus designed to regulate nearly every facet of water pollution. The Water Act's avowed purpose is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."¹⁵⁸ The Administrator of the Environmental Protection Agency is directed to "prepare or develop comprehensive programs for preventing, reducing, or eliminating the pollution of the navigable waters...."¹⁵⁹ A number of the specific provisions of the legislation are applicable to the construction and operation of artificial islands for energy facilities. The discharge of dredged or fill material which might be involved in construction of such an island is regulated by the Corps of Engineers, in consultation with the EPA; Corps authority further extends to any construction in navigable waters, as delegated by Section 403 of the Rivers and Harbors Act.¹⁶⁰

In addition, the Administrator of EPA has broad authority to regulate the discharge of pollutants from or incidental to completed operational facilities and onshore support installations. The utilization of these regulatory powers by the respective agencies is facilitated by a differentiated set of permit procedures and occurs within the context of general water quality standards and effluent limitations. Prior to the discussion of these specific provisions of the legislation, it is appropriate to briefly examine the legislation effectively superseded by the permit procedures of the Water Act, the Refuse Act of 1899.¹⁶¹

Section 407 of the Rivers and Harbors Act of 1899 is known as the Refuse Act. It provides, in part, that,

"It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water;.... the Secretary of the Army, whenever in the judgement of the Chief of Engineers anchorage or navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful."

An examination of the text reveals that the prohibition of discharges of "refuse matter of any kind or description" could include dredged or fill material as well as other pollutants. The legislation

is very general and undifferentiated. The Supreme Court held in U.S. v. Standard Oil¹⁶² that "refuse matter" in the statute should be given a broad and inclusive interpretation, as examination of prior statutes and legislative history showed the injury to navigable waters "sought to be remedied was caused in part by obstacles that impeded navigation and in part by pollution." And, in U.S. v. Pennsylvania Industrial Chemical,¹⁶³ the Supreme Court held that the failure of the Corps to promulgate a formal regulatory permit program as required by the statute did not bar prosecution for violation of Section 407.

The language of Section 407 does not include offshore artificial islands. However, the statute has been judicially interpreted to include such facilities by implication. In U.S. v. Humble Oil,¹⁶⁴ an oil company was charged with discharging oil from a production platform in violation of Section 407. The court observed,

"The words 'production platform' do not appear. This is hardly surprising since such contraptions were unknown in those days. However, the statute does condemn the discharge of refuse into navigable waters from all manner of vessels and shore facilities including commercial establishments. It would seem strange if it did not also reach discharges from man-made islands"

Though the Refuse Act of 1899 is still in force and has not been repealed, it has been modified and superseded by the institution of differentiated permit procedures by the Federal Water Pollution Control Act of 1972, which provides that "No permit for a discharge into the navigable waters shall be issued under Section 407 of this title after October 18, 1972."¹⁶⁵ The effect of the Refuse Act was limited to waters considered navigable within the statutory construction of the entire Rivers and Harbors Act,¹⁶⁶ but the definition of navigable waters under the Water Act

has been markedly expanded.

are defined simply

as "the waters of the United States, including the territorial seas."¹⁶⁷

This expansion of regulatory jurisdiction was explicitly referred to in the House-Senate Conference Committee's report, which says, "The conferees fully intend that the term 'navigable waters' be given the broadest possible constitutional interpretation unencumbered by agency determinations which have been made or may be made for administrative purposes."¹⁶⁸

The court in United States v. Ashland Oil and Transportation¹⁶⁹ held that the permit requirements of the Water Pollution Control Act of 1972 apply to all nonnavigable tributaries of navigable streams. In upholding the constitutionality of such broadened regulatory powers, the court remarked,

"It would, of course, make a mockery of (commerce) powers if (Congress') authority to control pollution was limited to the bed of the navigable stream itself. The tributaries which join to form the river could then be used as open sewers as far as federal regulation was concerned. The navigable part of the river could become a mere conduit for upstream waste."

The institution of new and more clearly and broadly defined permit granting authority was intended to be an instrument in imple-

mentation of the comprehensive water quality control programs mandated by Congress. Thus, before consideration of the specific legislative provisions for granting of permits, an examination of the other relevant elements of the regulatory framework is pertinent.

The Administrator of EPA is empowered to establish effluent limitations for point sources (other than publicly owned treatment works), which require the "application of the best available technology currently available as defined by the Administrator."¹⁷⁰ The factors which are to be considered in assessing the nature of the "best available technology" include "the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate."¹⁷¹ These effluent limitations are eventually supposed to provide for total elimination of the discharge of all pollutants whenever "technologically and economically achievable."¹⁷² Furthermore, the Administrator is empowered to set more stringent effluent limitations for a given facility whenever he determines that application of standard effluent guidelines would "interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water"¹⁷³

The only relevance here of these provisions of the statute regarding effluent limitations is to completed and operational facilities which might be located offshore. The most obvious

water quality hazard related to deepwater port operation is oil pollution. The provisions of the Water Act regarding prevention and containment of oil pollution will be discussed later.

EPA has established effluent guidelines for petroleum refining,¹⁷⁴ for example, which would also presumably be applicable, with modification as necessary, to an offshore refinery.

The most apparent potential water quality problems associated with operation of an offshore nuclear power plant are excessive thermal discharges and discharge of radioactive material. Regarding the setting of thermal standards, "heat" is defined as a "pollutant" by the Water Act.¹⁷⁵ EPA has promulgated regulations on thermal discharges and determination of applicable thermal effluent limitations.¹⁷⁶ Each state is required by the Act to identify those waters within its boundaries which require more stringent thermal effluent limitations than those provided under section 1311¹⁷⁷ and to estimate the total maximum daily thermal load for such waters which will allow the "propagation of a balanced, indigenous population of shellfish, fish, and wildlife."¹⁷⁸ The Administrator of EPA can relax thermal discharge standards whenever he determines it to be ecologically acceptable, but he must always require construction of cooling water intake structures that "reflect the best available technology for minimizing adverse environmental impact."¹⁷⁹

The control of discharge of radioactive materials in nuclear power plant effluent was vested in the Atomic Energy Commission by the Atomic Energy Act of 1954.¹⁸⁰ These duties have been reassigned pursuant to the Energy Reorganization Act of 1974,¹⁸¹ to the Nuclear Regulatory Commission. The Federal Water Pollution Control Act of 1972, however, defines "radioactive materials" as a "pollutant,"¹⁸² thereby subject to the provisions of the Act.

EPA originally interpreted "radioactive materials" to implicitly exclude "special nuclear" and other radioactive materials subject to AEC control.¹⁸³ However, in Colorado PIRG v. Train,¹⁸⁴ a federal court of appeals held that the Water Pollution Control Act of 1972 requires EPA to regulate discharge of all "radioactive materials", regardless of the duties vested in the AEC by the Atomic Energy Act. The court noted,

"The statute does not say 'some' radioactive materials, or radioactive materials 'except for' , just 'radioactive materials.' So, it would seem to us that if we give the words used thus in the statute their plain and obvious meaning, the EPA Administrator is charged with the duty of regulating the discharge of radioactive materials into navigable waters. No exceptions having been set forth in the statute as concerns radioactive materials, it would follow that the term 'radioactive materials' means all radioactive materials, and we so hold."

This transfer of regulatory functions for discharges from nuclear power plants will be considered, on appeal, by the U.S. Supreme Court.

In addition to the adoption by EPA of proposed effluent limitations, each state is required to submit water quality standards applicable to the interstate and intrastate waters in that state¹⁸⁵ and a list identifying waters within its boundaries requiring more stringent effluent limitations to maintain the applicable standards.¹⁸⁶ The Administrator of EPA must approve the standards submitted by each state and is empowered to promulgate standards himself in the event of state default.¹⁸⁷ Each state must also submit a "proposed continuing planning process" which is also subject to EPA approval.¹⁸⁸ Any such standards are to be automatically incorporated into a state's coastal zone management plan.¹⁸⁹

Within this complicated framework of effluent limitations, water quality standards, and regulations, the basic regulatory mechanism is the permit. The monolithic approach of the Refuse Act has been replaced in the Water Pollution Control Act of 1972 by the National Pollutant Discharge Elimination System, which provides that the Administrator must grant a permit prior to the discharge of any pollutant,¹⁹⁰ with the exception of the discharge of dredged or fill material, which requires a permit from the Corps of Engineers and is subject to EPA review.¹⁹¹

Each state which desires to administer its own permit program for navigable waters within its jurisdiction, within the National Pollutant Discharge Elimination System, may submit a description of its proposed program to the Administrator. However, Corps of Engineers permits for discharge of dredged or fill material are not subject to state administration. Each state program must provide adequate authority to issue permits which insure compliance with the relevant provisions of the Water Act and which may be terminated for good cause.¹⁹² In any event, "any applicant for a federal license or permit to conduct an activity including, but not limited to, the construction or operation of a facility, which may result in the discharge of a pollutant into the navigable waters" is required to obtain state certification that the activity will comply with the applicable provisions of the Act. In the event that the state in question does not possess the necessary authority, the Administrator of EPA must certify compliance.¹⁹³

The application of discharge permit authority to artificial islands would take two forms. A Corps of Engineers permit would be necessary to discharge dredged or fill material in construction of the island, and an EPA or state permit would be required to insure operational compliance of facilities on the island with

applicable effluent limitations and water quality standards.

The construction of an artificial island using dredged or fill material would require two permits from the Corps of Engineers, one under Section 403 of the Rivers and Harbors Act¹⁹⁴ and one under Section 1344 of the Water Pollution Control Act. The applicable Corps regulations still refer to the latter permit as granted under the Refuse Act,¹⁹⁵ but the operative authority is contained in the Water Act. A permit for discharge of dredged or fill material is required even for projects which have been licensed by another agency and are primarily within another agency's jurisdiction. In Scenic Hudson Preservation Conference v. Callaway,¹⁹⁶ a permit under Section 1344 of the Water Act was held to be required to discharge dredged material into the Hudson River, even though the discharge was part of a hydroelectric power project already licensed by the Federal Power Commission. Thus, for example, a discharge permit would be required for construction of an artificial island for a deepwater port, if it involved discharge of dredged or fill material, even though the facility had already received a license from the Secretary of Transportation under the Deepwater Port Act.¹⁹⁷ Such a facility would need a permit under Section 403 of the Rivers and Harbors Act in any case.

The expansion of the definition of navigable waters in the Water Act¹⁹⁸ affects the extent of Corps jurisdiction in regard to discharge permits. While Corps authority in the territorial sea under the Refuse Act extended only to the mean high water mark, Corps' jurisdiction now extends further inland. In Leslie Salt v. Froehlke,¹⁹⁹ a claim of Corps' jurisdiction under Section 1344 to the mean higher high water mark was upheld on the basis of the legislative intent to expand the definition of navigable waters as far as constitutionally permissible.

Three months later, in Natural Resources Defense Council v. Callaway,²⁰⁰ the Corps was ordered to expand its definition of navigable waters under Section 1344 of the Water Act to include "the waters of the United States." The significance of this expanded jurisdiction in the coastal region is that many coastal wetlands which were formerly excluded from Corps jurisdiction are now included under Section 1344. These lands are potentially important vis-a-vis artificial island construction because of the necessity for onshore support facilities. As an example, in Rykar v. Gill,²⁰¹ a developer sought to dredge and fill coastal wetlands in order to construct access for a deep harbor facility. Though many states already regulate dredging and other development in tidal wetlands, the new limits of Corps jurisdiction encompassing these lands suggest that any dredge and fill operation in the coastal region will now require preparation of an environmental impact statement prior to approval.

Permits for discharges from operational facilities on an artificial island located in the offshore region must be approved by the nearby coastal state, if the island is located within the territorial sea and the state has developed a program for participation in the National Pollutant Discharge Elimination System. If the island is located on the outer continental shelf beyond the three-mile limit or the coastal state has no permit program, permits for discharges must be obtained directly from the Environmental Protection Agency. In any event, the permit application must be evaluated on the basis of "guidelines for determining the degradation of the waters of the territorial seas, the contiguous zone, and the oceans."²⁰² These guidelines are promulgated by the Administrator of EPA and must include:

"(A) the effect of disposal of pollutants on human health or welfare, including but not limited to plankton, fish, shellfish, wildlife, shorelines, and beaches;

"(B) the effect of disposal of pollutants on marine life including the transfer, concentration, and dispersal of pollutants or their byproducts through biological, physical, and chemical processes; changes in marine ecosystem diversity, productivity, and stability; and species and community population changes;

"(C) the effect of disposal, of pollutants on esthetic, recreation, and economic values;

"(D) the persistence and permanence of the effects of disposal of pollutants;

"(E) the effect of the disposal at varying rates, of particular volumes and concentrations of pollutants;

"(F) other possible locations and methods of disposal or recycling of pollutants including land-based alternatives; and

"(G) the effect on alternate uses of the oceans, such as mineral exploitation and scientific study."²⁰³

The Water Pollution Control Act also contains specific provisions with regard to the prevention and containment of oil pollution. The regulatory responsibilities are assigned to the President; for designation to appropriate executive agencies, with the objective of assuring executive coordination of response in the event of an emergency caused by a serious oil spill. The responsibilities thus created were assigned by President Nixon to the various agencies in Executive Order 11735,²⁰⁴ the most relevant passages of which provide:

"The President shall by regulation, to be issued as soon as possible after the date of enactment of this paragraph, determine for the purposes of this section, those quantities of oil and any hazardous substance the discharge of which, at such times, locations, circumstances, and conditions, will be harmful to the public health or welfare of the United States, including, but not limited to, fish shellfish, wildlife, and public and private property, shorelines, and beaches except that in the case of the discharge of oil into or upon the waters of the contiguous zone, only those discharges which threaten the fishery resources of the contiguous zone or threaten to pollute or contribute to the pollution of the territory or the territorial sea of the United States may be determined to be harmful."

33 U.S.C. 1321(b) (4)²⁰⁵

"Within sixty days after the effective date of this section, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances....."

33 U.S.C. 1321(c) (2)²⁰⁶

"In addition to any other action taken by a state or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil or hazardous substances into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require."

33 U.S.C. 1321(e)

"Consistent with the National Contingency Plan required by subsection (c) (2) of this section, as soon as practicable after the effective date of this section, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws....

(C) establishing procedures, methods and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges....."

33 U.S.C. 1321(j) (1) (c)

The responsibilities under subsections (e) and (j) (1) (c) were assigned by the President to EPA for "non-transportation-related onshore and offshore facilities"²⁰⁷ and to the Coast Guard (Secretary of Transportation) for "transportation-related onshore and offshore facilities."²⁰⁸ A subsequent memo of understanding²⁰⁹ clarified the meaning of this division of authority. With reference to an artificial island and the associated facilities which have been considered for possible siting on such an island and which would be a natural complement to its operation, the division of authority is as follows:

Environmental Protection Agency

- Storage facilities
- Oil refining facilities
- Waste treatment facilities
- Onshore transfer facilities
- Pipelines used within a terminal or storage facility

Coast Guard

- Deepwater terminal facilities
- Vessels
- Interstate and intrastate onshore and offshore pipelines used in commerce

The provisions of the Water Pollution Control Act are quite complex as applied to artificial islands. Authority is shared by the Environmental Protection Agency, the Corps of Engineers, the Coast Guard, individual states, and the Council of Environmental Quality. The provisions applicable to such an island include

general effluent limitations, special effluent limitations, water quality standards, dredged material and fill discharge permits, pollutant discharge permits, state certification of federal licensing, and prevention and control procedures for oil pollution. The total impact of such legislation is ideally an effective and pervasive regulatory scheme. Whether this objective can be achieved will be determined as proposals for major offshore facilities are implemented.

C. Marine Protection, Research, and Sanctuaries Act (Ocean Dumping Act)

The Marine Protection, Research, and Sanctuaries Act of 1972²¹⁰ was passed in furtherance of specific international commitments made by the United States in ratification of the international "Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter." While the Water Act establishes a Federal permit system regulating the discharge of pollutants into ocean waters,²¹¹ the scope of the activities regulated by the Water Act is limited to

".....(A) any addition of any pollutant to navigable waters from any point sources, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft."²¹²

The Ocean Dumping Act supplements this authority over stationary sources in offshore waters beyond territorial limits by prohibiting "transportation of material" for disposal in ocean waters without a permit. The current jurisdictional application of sovereign authority under the Dumping Act is assured by regulating only transportation of material from the United States or by United States vessels and aircraft or United States agencies and instrumentalities.²¹³

The potential application of the Ocean Dumping Act to construction and operation of offshore artificial islands is quite limited. The discharge of pollutants in effluent by facilities located on such an island is regulated under the Water Act and the Atomic Energy Act (in the case of an offshore nuclear power plant), and the definition of "dumping" included in the Ocean Dumping Act expressly excludes such discharges.²¹⁴ Dumping also

"does not mean the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction of such placement is otherwise regulated by Federal and State law or occurs pursuant to an authorized Federal or State program."²¹⁵

The only apparent relevance of this Act to artificial islands would be the regulation of disposal of excess dredged material which might accumulate as a result of construction of a deep draft channel to provide access to an island with deepwater port facilities. The permit authority regulating transportation of such material is assigned in the Act to the Secretary of the Army (Corps of Engineers), who must ascertain prior to granting a permit that the dumping "will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities."²¹⁶ This authority is complementary to that granted to the Corps in the Water Act, except that the Corps' jurisdiction to regulate transportation of dredged material under the Ocean Dumping Act is much clearer than its jurisdiction to regulate discharge of such material into the ocean beyond the territorial sea. However, when construction of an artificial island by discharge of dredged material is involved, the authority of the Corps under the Water Act and Rivers and Harbors Act is well established and the Ocean Dumping Act does not apply.

D. Regional Authority and the Water Resources Planning Act

The siting of an artificial island will inevitably generate substantial onshore impacts. Construction of support facilities for such an island might have adverse impacts on coastal wetlands and estuarine and intertidal regions, and will surely affect the pace and the economics of shoreline development. Consequently, the compatibility of artificial island proposals with environmental and economic planning in the coastal zone must be stressed.²¹⁷ The land-based effects of construction of such islands will not, however, end in the coastal region, and inland impacts on water and land use planning may be expected. Thus, planning, evaluating and implementing artificial island development must include efforts to coordinate this development with regional water and land use objectives.

State coastal zone management programs are to be formulated in such a manner that they are responsive to regional values.²¹⁸ State regulation of water pollution must include a recognition of the interstate character of many bodies of water.²¹⁹ Air pollution control also often requires the institution of regional regulatory mechanisms.²²⁰ In addition to these regional factors, artificial island developers should be sensitive to the special jurisdiction and planning functions of regional river basin commissions. These commissions have been established pursuant to the provisions of the Water Resources Planning Act,²²¹ which provides that each commission shall prepare "a comprehensive, coordinated, joint plan for federal, state, interstate, local and nongovernmental development of water and related resources, "including "an evaluation of all reasonable alternative means of achieving optimum development of water and related land resources of the basin or basins."²²² The membership of these

commissions includes representatives of each federal agency, each state, and each interstate agency with substantial interest in or jurisdiction over development in the basin.²²³ Thus, those planning artificial island development might find liaison with the appropriate river basin commission to be useful in evaluating regional impacts and in developing a regional framework for public participation.

E. Nuclear Energy, the Atomic Energy and Energy Reorganization Acts

The construction and operation of an offshore nuclear power plant would be subject to much of the body of regulations applied to an onshore facility, as well as to additional regulations (now under development by the Nuclear Regulatory Commission) because of the risks and other features of the offshore environment.

If the facility is to be located on an artificial island in the territorial sea site selection would be guided by NRC regulations and guidances but ultimately be determined by the coastal state with ownership and jurisdiction over the submerged lands sought to be utilized. However, the regulation of design, construction, and performance²²⁴ would be primarily undertaken by the NRC, based on authority provided by the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974.²²⁵ Courts have further determined that at least certain aspects of nuclear power regulation---e.g., discharged radioactive effluents---are subject to federal preemption. In Northern States Power Co. v. State of Minnesota, the court found such preemption to be justified in "reliance upon the constitutionally granted powers over the common defense and security, interstate and foreign commerce....". The Submerged Lands Act provides, concurrently, that the Federal government retains "powers of regulation" for "commerce" and

"national defense" in the territorial sea.²²⁷ If a nuclear facility is to be located on the outer continental shelf,²²⁸ beyond the three-mile region of state jurisdiction, federal regulation would be even more extensive, in that it would include federal authority for site selection, as well as authority for regulation of construction and operation.

A review of the factors considered and the procedures followed in the licensing of nuclear power plants is beyond the scope of this study. However, it is pertinent to point out that any proposed cluster-siting of other "hazardous" facilities, such as an oil refinery or gas terminal in close proximity on the same artificial island, or on a nearby island, (or proximity to military and other "hazardous" activities) would inevitably generate serious reservations as to operational safety and the adequacy of the "exclusion area," and would exacerbate the difficulties to be encountered by an offshore nuclear proposal.²²⁹ Since the regulatory and licensing functions formerly vested in the Atomic Energy Commission have recently been transferred to the newly created Nuclear Regulatory Commission²³⁰ by the Energy Reorganization Act of 1974,²³¹ and since one of the objectives of this redistribution was to eliminate the contradiction inherent in charging the same agency simultaneously with promotion and restraint of a powerful technology, the NRC can be expected to move cautiously in assessing the benefits and risks of offshore development and in licensing developments.

F. Federal Power Act and Licensing of Transmission Lines

An offshore nuclear or fossil fuel power plant would require submerged transmission lines. Section 797(e) of the Federal Power Act²³² vests in the Federal Power Commission the power to

issue licenses "for the purpose of constructing, operating, and maintaining... power houses, transmission lines, or other projects necessary or convenient...for development, transmission, and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several states..."(emphasis added).

The construction of offshore transmission lines would require licenses by the FPC, and the Commission has established regulations for permit applications involving only transmission lines.²³³ The allocation of regulatory authority between NRC and FPC depends on determination of the point at which transmission lines are part of a general network for distribution of electrical power as distinct from being regarded as direct appurtenances of the nuclear facility.

The laying of offshore transmission lines would pose certain hazards to navigation and anchoring. Section 797(e) of the Federal Power Act also provides,

"That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting the navigation have been approved by the Chief of Engineers and the Secretary of the Army."

Thus, administrative approval of the Corps of Engineers is necessary prior to FPC sanctioning of offshore transmission lines. Presumably, the Corps could prescribe certain safeguards such as the extent of subsurface burial in the seabed. The utility may also be required to pay a right-of-way rental fee to the Bureau of Land Management similar to that stipulated by the Outer Continental Shelf Lands Act and Deepwater Port Act for offshore pipeline

right-of-ways,²³⁴ and further required to lease or acquire submerged lands from the coastal state for the extension of transmission to onshore points.

G. The Ports Safety and High Seas Intervention Acts

The construction and operation of an artificial island complex would entail hazards to navigation in proportion to its size and the density of vessel traffic in the offshore region selected for siting. While siting near metropolitan centers and existing port facilities might be desirable for some reasons, the environmental risks of location in closely adjacent offshore areas would increase as navigational safety risks increase. The dangers to the marine environment incident to navigational difficulties become more ominous if the proposed island would include deepwater port facilities, or is to be located so that tankers carrying oil or other hazardous commodities in bulk frequent the island's vicinity.

The marking of offshore production and exploration facilities to reduce hazards to navigation is assigned to the Coast Guard by the Outer Continental Shelf Lands Act.²³⁵ The Coast Guard is also empowered to insure proper marking, provide aids to navigation, and establish safety zones around deepwater port facilities by the Deepwater Port Act.²³⁶ The powers to control and direct patterns of vessel traffic, prescribe standards of vessel design, and take appropriate steps in the event of an emergency are necessary complements to these functions. Without such regulatory jurisdiction, prevention of unacceptable risks to the marine and coastal environment is impossible. In recognition of these needs, Congress passed the Ports and Waterways Safety Act of 1972²³⁷ and the Intervention on the High Seas Act.²³⁸

The Ports Safety Act is divided into two major sections. The first section empowers the Secretary of the department in which the Coast Guard is operating to promulgate regulations controlling vessel movement and other activities involving the handling of dangerous cargo.²³⁹ The Secretary is required to consider the scope and degree of the associated hazards, vessel traffic characteristics, port and waterway configurations, environmental factors, economic impact, existing vessel traffic controls, and local practices and customs.²⁴⁰ The second section of the Ports Safety Act amends the Tank Vessel Act of 1936 to require the Secretary to establish, for vessels carrying oil, inflammable liquid, or other hazardous substances in bulk, "comprehensive minimum standards of design, construction, alteration, repair, maintenance, and operation to prevent or mitigate the hazards to life, property, and the marine environment."²⁴¹

The High Seas Intervention Act provides,

"Whenever a ship collision, stranding, or other incident of navigation or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to the ship or her cargo creates, as determined by the Secretary, a grave and imminent danger to the coastline or related interests of the United States from pollution or threat of pollution of the sea by oil which may reasonably be expected to result in major harmful consequences, the Secretary may, except as provided for in section 1479 of this title, without liability for any damage to the owners or operators of this ship, to her cargo or crew, or to underwriters or other parties interested therein, take measures on the high seas, in accordance with the provisions of the convention and this chapter, to prevent, mitigate, or eliminate that danger."²⁴²

These measures include coordination of elimination or removal of the threatened discharge, salvage operations, and even destruction of the ship or its cargo, as necessary.²⁴³ If possible, the

Secretary is required to consult with other countries affected by the incident, including the flag country of any vessel involved, and to notify the Administrator of EPA and any other persons with interests which will be affected by the proposed measures.²⁴⁴

To sum up this discussion of significant federal and other regulatory authority relevant to the construction of an artificial island, and the siting, construction and operation of facilities thereon ---such as a nuclear power plant, oil refinery and deep-water port, together with their appurtenant facilities and needs--- the following table is presented. The table indicates the institution or agency, its primary functions, and relevant sources of authority.

CHAPTER VIII

GOVERNMENTAL AGENCIES WITH SUBSTANTIAL JURISDICTION RELATING TO OFFSHORE ARTIFICIAL ISLANDS

<u>Name of Agency</u>	<u>Function Reported</u>	<u>Enabling Legislation</u>
<u>Department of Transportation</u>		
Coast Guard	Marking of artificial islands to promote safe navigation	Outer Continental Shelf Lands Act
	Licensing and regulation of operation of deepwater port	Deepwater Port Act
	Prevention, containment, and clean-up of transportation-related oil spills	Deepwater Port Act
	Preparation of NEPA statement for deepwater port	Federal Water Pollution Control Act
	Regulation of vessel traffic and tanker design	Deepwater Port Act
	Emergency measures to abate threat of oil spill	Port and Waterways Safety Act
Office of Pipeline Safety	Regulation of pipeline construction and operation	Intervention on the High Seas Act
		Deepwater Port Act
<u>Environmental Protection Agency</u>	Establishment of Air Quality Control Regions	
	Setting of ambient air standards	Clean Air Act
	Setting of air quality standards of performance	Clean Air Act
	Approval of state implementation plans (where applicable)	Clean Air Act
	Impact Statement review	Clean Air Act
	Drafting of comprehensive water pollution control programs	Clean Air Act
	Setting of effluent limitations	Federal Water Pollution Control Act
		Federal Water Pollution Control Act

Environmental Protection Agency

(continued)

Setting of water quality standards
of performance
Granting of permits under National
Pollutant Discharge Elimination System
Prevention, containment, and clean-up of
non-transportation related oil spills

Federal Water Pollution
Control Act
Federal Water Pollution
Control Act
Federal Water Pollution
Control Act

Department of Commerce

National Oceanic and Atmos-
pheric Administration

Approval and funding of state coastal
zone management plans

Coastal Zone Management
Act

Department of Interior

Bureau of Land Management

Leasing of lands on outer continental
shelf
Regulation of pipeline construction
and operation

Outer Continental Shelf
Lands Act
Outer Continental Shelf
Lands Act

Fish and Wildlife Service

Consultation prior to granting of Corps
permit to dredge and fill

Deepwater Port Act
Fish and Wildlife Coordina-
tion Act

Nuclear Regulatory Commission

Licensing and regulation of offshore
nuclear power plant

Atomic Energy Act
Energy Reorganization Act

Federal Power Commission

Permit authority for offshore trans-
mission lines

Federal Power Act

Federal Trade Commission

Preview of deepwater port facility for
possible anticompetitive effect

Deepwater Port Act

Department of State

Negotiation of international conventions
and agreements

Numerous pieces of legislation

VIII (con't.)

<u>Regional River Basin Commissions</u>	Comprehensive water and land use planning specific basin regions	Water Resources Planning Act
<u>State Governments</u>	General jurisdiction and ownership for submerged lands in territorial sea	Submerged Lands Act
	Management of environmental quality and economic development in the coastal zone	Coastal Zone Management Act
	Air quality control implementation plans (when applicable)	Clean Air Act
	Water quality control implementation plans (when applicable)	Federal Water Pollution Control Act
	Application of more stringent environmental standards (when allowed)	Clean Air Act
		Federal Water Pollution Control Act
<u>Local Zoning Boards and Port Authorities</u>	Shoreline development planning (coordinated with coastal zone management in states which have developed programs)	Common Law Police Power and State Legislation
		Coastal Zone Management Act (where applicable)
<u>All Agencies with Relevant Jurisdiction or Knowledge</u>	Participation in environmental impact statement preparation	National Environmental Policy Act

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CHAPTER 1X
INTERNATIONAL LAW

As the Outer Continental Shelf Lands Act was drafted at a time when the only desired uses of the seabed of the outer continental shelf were exploration and extraction of mineral resources, the applicable international conventions which emerged from the 1958 Geneva Conference contemplated only such uses. Though several elements of current international law provide hypothetical legal justifications for construction of other types of facilities and islands beyond territorial waters, the negotiating text which has emerged from the Third Conference on the Law of the Sea explicitly recognizes the validity of uses which are unrelated to resource extraction. Before considering the implications of the most recent interim agreement, it is appropriate to briefly examine some of the elements of the currently operable conventions and customary law.

The Geneva Convention on the Territorial Sea and Contiguous Zone²⁴⁵ provides in Article 1 that,

"The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea."

The absolute jurisdiction of the coastal state in the territorial sea is subject to limitation only by the rights of innocent passage and entry in distress. However, the actual width of the territorial sea is not internationally agreed upon at the present time. More states now claim a twelve-mile territorial sea than claim three miles, and a consensus of a twelve-mile limitation on sovereignty appears to have developed. The most significant element of the current convention, which does not fix the maximum width of the territorial sea, for artificial island developers is found in Article 9, which states,

"Roadsteads which are normally used for the loading, unloading, and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea."

But what is a roadstead? Webster's New World Dictionary defines "roadstead" as "a protected place near shore." This is not particularly helpful, as it would not have been necessary to explicitly provide for inclusion of such areas in the territorial sea were every roadstead very near shore. It is therefore at least arguable that Article 9 implicitly includes deepwater ports and automatically extends the coastal state's sovereign jurisdiction to such facilities. Artificial islands constructed offshore for reasons less interdependent with navigation would be far more difficult to define as roadsteads.

In the region beyond the territorial sea, the scope of coastal state jurisdiction is even less clear. The Geneva Convention on the Continental Shelf²⁴⁶ is almost totally concerned with accommodation of facilities for resource exploration and exploitation and does not encompass or define as permissible any other type of structure or artificial island. Article 5 authorizes the coastal state "to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources," as long as such installations do not "result in unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication." Article 4 provides that the coastal state may not impede the laying of submarine cables or pipelines. The preservation of these rights in the region of the continental shelf derives from the principle that, while the resources of the continental shelf are subject to

coastal state jurisdiction, the superjacent waters retain their character as high seas. The rights of navigation, fishing, laying of submarine cables and pipelines, and overflight are also explicitly reaffirmed in the Geneva Convention on the High Seas.²⁴⁷

The exact limits of the continental shelf have not been delineated in the Convention on the Continental Shelf. The jurisdiction of the coastal state is defined to encompass the seabed and subsoil "to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas ...". This has been interpreted by the Department of Interior to imply that United States' rights extend as far as our technological capabilities allow, up to the edge of the continental margin, where the seabed no longer regularly descends to greater depth.²⁴⁸ The construction of artificial islands is feasible only in relatively shallow depths up to 200 meters. Consequently, any currently conceivable artificial island would necessarily be sited on the continental shelf, as it is defined in the convention.

The coastal states were held to possess an "inherent right" to the exercise of certain sovereign rights on the continental shelf in the North Seas Continental Shelf Cases.²⁴⁹ The International Court of Justice declared,

"What confers an ipso jure title which international law attributes to the coastal state in respect of its continental shelf, is the fact that the submarine area concerned may be deemed to be actually part of the territory over which the coastal state already has domain--in the sense that, although covered with water, they are a prolongation or continuation of that territory, or extension of it under the sea."

This argument of geographically derivative jurisdiction would seem to imply the validity of any use of the continental shelf by the

coastal state, unless it unreasonably impairs the freedom of the high seas or is otherwise internationally offensive. Indeed, it might be argued that the right to construct a deepwater port is actually a necessary corollary of the freedom of navigation, without which the freedom to move cargoes in large quantities is fatally impaired.

The original assertion of resource recovery rights for the continental shelf in the Truman Proclamation was a unilateral one, unauthorized by any international agreement. This United States policy of unilaterally claiming offshore jurisdiction under compelling circumstances was reaffirmed in the passage of the Deepwater Port Act,²⁵⁰ which established jurisdiction which is as yet not officially internationally recognized. The passage of the Intervention of the High Seas Act²⁵¹ constituted an even more dramatic initiative, in that the United States claimed jurisdiction beyond the territorial sea to seize and destroy foreign vessels, if necessary to protect the coastal environment from oil pollution. The feature common to each of these assumptions of jurisdictional rights and responsibilities was the clear and present need for action. In the Anglo-Norwegian Fisheries Case,²⁵² the International Court of Justice suggested that national unilateral offshore actions should be evaluated by analyzing the land based impact of the actions and the economic conditions in the coastal region, in addition to being tested against accepted international law.

Construction of artificial islands past the three-mile limit would currently require unilateral action in the expansion of offshore jurisdiction beyond that which is internationally recognized, but this situation will probably not persist much longer. The Informal Single Negotiating Text produced by the United Nations Third Conference on the Law of the Sea²⁵³ specifically addresses the question of artificial islands. Though this document is only a working draft and represents an interim step in the negotiating process, it

is instructive to examine its provisions. Even if the process of revision and amendment results in alteration of the substantive impact of the sections on artificial islands there is little doubt that specific policy in this area will eventually emerge.

The Second Committee of the Conference was charged with the task of writing a convention on the limits and the nature of coastal state jurisdiction. The first part of the draft which emerged from this committee deals with the territorial sea. Article 2 provides that, "Every state shall have the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles ...". The potential impact of this article alone on artificial island development of the kind considered in this paper is very profound. The sovereignty of a coastal state to build installations in its territorial sea has never been changed. The requirements of technical feasibility place rigid constraints on the depths in which an artificial island can be constructed, and the economic viability of such a project might often depend on reasonable proximity to shore. Thus there is a strong likelihood that most such islands would be sited and constructed within the new territorial boundaries. Innocent passage through the territorial sea is once again assured, though Article 19 gives the coastal state the right to establish sealanes and prescribe traffic patterns in areas of dense vessel traffic.

Part III of the Second Committee's negotiating text codifies a jurisdictional concept which has gradually emerged in recent years, that of the "exclusive economic zone."²⁵⁴ In the economic zone, which may extend up to 200 miles from the coastline, the coastal state has broad and exclusive jurisdiction to exploit the resources of the seabed and superjacent waters. Furthermore, the coastal state possesses "exclusive rights and jurisdiction with regard to the establishment and use of artificial islands, installation, and structures." Of course, this is not a surprising result, since the

only practical political alternative to vesting this exclusive jurisdiction in the nearest coastal country would be an absolute prohibition.

Article 48 of the negotiating draft of the Second Committee outlines the rights of the coastal state to construct, authorize, and regulate offshore installations. It provides that the coastal state has "exclusive jurisdiction over such artificial islands, installations and structures including jurisdiction with regard to customs, fiscal, health, safety, and immigration regulations." Due notice must be given of the construction of artificial islands, and safety zones may be established around them which must be respected by ships of all nationalities. Artificial islands or safety zones "may not be established where interference may be caused to the use of recognized sealanes essential to international navigation." Artificial islands will possess no territorial sea of their own, and their presence does not affect or extend the offshore jurisdiction of the coastal state in the territorial sea or on the continental shelf.

Article 66 states that, "The provisions of Article 48 apply mutatis mutandis to artificial islands, installations and structures on the continental shelf." The continental shelf is defined to extend 200 miles from the coast or to the edge of the continental margin. The relevant jurisdiction of the coastal state therefore extends a considerable distance offshore beyond the current technical capabilities of any country to erect an artificial island on the seabed.

The coastal state has jurisdiction in the "economic zone" with regard to "the preservation of the marine environment, including pollution control and abatement." Moreover, Article 68 states,

"The coastal state shall, with respect to the artificial islands, installations and structures

and seabed activities subject to its jurisdiction, take appropriate measures for the protection of the marine environment from pollution, and ensure compliance with appropriate minimum international requirements provided for in part ... (preservation of the marine environment) and with other applicable international standards."

The Third Committee of the conference was assigned the task of preparing a comprehensive negotiating text regarding "Protection and Preservation of the Marine Environment."

Article 4 of the Third Committee text provides, in part,

"1. States shall take all necessary measures consistent with this Convention to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, individually or jointly, as appropriate, and they shall endeavor to harmonize their policies in this connection.

2. States shall take all necessary measures to ensure that marine pollution does not spread outside their national jurisdiction and that activities under their jurisdiction or control are so conducted that they do not cause damage by pollution to other states and their environment, nor cause pollution beyond the areas where states exercise sovereign rights in accordance with this convention ..."

Chapter Two of the Third Committee draft provides for global and regional cooperation in formulation of "international rules, standards and recommended practices and procedures consistent with this convention ..." Consultation is required between affected states in cases in which "the marine environment is in imminent danger of being damaged or has been damaged by pollution ..." States are directed to "jointly promote and develop contingency plans for responding to pollution incidents in the marine environment."

Chapter Five requires an environmental assessment of planned marine activities. Chapter Six directs states to establish national laws and regulations designed to prevent, reduce, and control pollution from land-based sources, offshore installations, ocean dumping, and vessels. Chapter Seven provides that each coastal state shall have the right to enforce these laws and regulations

- (a) within its territorial waters,
- (b) with regard to vessels and aircraft registered in its territory or flying its flag,
- (c) with regard to vessels and aircraft engaged in dumping within its economic zone or continental shelf, and
- (d) with regard to vessels and aircraft loading at its facilities and offshore terminals.

The international law which appears to be evolving at the Third Conference on the Law of the Sea makes provision for coastal state planning, discretion, and control relating to construction of offshore artificial islands. The jurisdictional boundaries offshore are certainly more than adequate for the sort of artificial islands projects considered by this study. However, the wording of the negotiating text reflects the conviction that such projects must be subject to close environmental scrutiny and responsible regulation by the coastal state.

CHAPTER X

CONCLUSION

The objective of this study was to examine the jurisdictional issues and regulatory responses applicable to the proposed construction of artificial, land-fill islands for energy facilities. While the current provisions of the United States legislation and international agreements are not sufficiently broad and imaginative to officially sanction and effectively regulate all artificial islands, the clear direction of American and international policy is toward cognizance of the growing technical feasibility and potential societal benefits of such development. However, before we as a society make a substantial commitment to the artificial island concept, some hard questions must be asked. What is it about our current developmental and economic policies which precludes siting of certain energy facilities at onshore locations? Is our technical capability to construct these offshore installations accompanied by a correspondent understanding of their impact on the fragile and already stressed coastal environment? Will we allow excessive degradation in the biologically crucial coastal region, based upon the theory of accommodation of conflicting uses, in the same manner that "multiple use" land planning has been sometimes used to despoil our wilderness regions? Most importantly, is offshore development of this type only a part of a set of temporary solutions which will delay consideration of basic ecological and global issues which require and deserve greater immediate attention? The challenge of offshore development is to act decisively to meet society's needs while remaining responsible custodians of our vast yet delicate oceans for use and enjoyment by generations of future world citizens.

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- 175. 33 U.S.C. 1362(6).
- 176. EPA Regulations on Thermal Discharges, 40 CFR 122, 39 FR 36176, Oct. 8, 1974.
- 177. 33 U.S.C. 1313(d) (1) (B).
- 178. 33 U.S.C. 1313(d) (1) (D).
- 179. 33 U.S.C. 1326.
- 180. 42 U.S.C. 2011 et seq., enacted Aug. 30, 1954.
- 181. See Part E of this Chapter of the paper.
- 182. 33 U.S.C. 1362(6).

183. 40 C.F.R. 125.1(x), as effective July 1, 1973.
184. 507 F.2d 743 (10th Cir., 1974), currently on appeal.
185. 33 U.S.C. 1313(a).
186. 33 U.S.C. 1313(d).
187. 33 U.S.C. 1313(b); see also EPA Regulations on Water Quality Standards Approved by the Federal Government, 40 CFR 120.
188. 33 U.S.C. 1313(e); see also EPA Policies and Procedures for State Continuing Planning Process, 40 CFR 130, 39 FR 19634, effective July 3, 1974.
189. 16 U.S.C. 1456(b).
190. 33 U.S.C. 1342(a); see also EPA Regulations on Policies and Programs for the National Pollutant Discharge Elimination System, 40 CFR 125.
191. 33 U.S.C. 1344.
192. 33 U.S.C. 1342(b); see also EPA Regulations on State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System, 40 CFR 124.
193. 33 U.S.C. 1341(a); see also EPA Regulations on State Certification of Activities Requiring a Federal License or Permit, 40 CFR 115, 36 FR 22387, Nov. 25, 1971.
194. See Chapter VI of this paper.
195. Corps of Engineers Regulations on Permits for Discharges or Deposits into Navigable Waters, 33 CFR 209.131.
196. 370 F. Supp. 162 (D.C.N.Y., 1973), affirmed 499 F.2d 127 (2d Cr., 1974).
197. Supra, note 32.
198. Supra, notes 167, 168, 169.
199. 7 ERC 1311 (N.D. Cal., 1974).

- 200. 7 ERC 1784 (Dist. Col. D.C., 1975).
- 201. 6 ERC 1333 (Conn. Sup. Ct., 1973).
- 202. EPA Criteria for Evaluation of Permit Applications for Ocean Dumping, 40 CFR 227 (also used in reference to Marine Protection, Research, and Sanctuaries Act, see next part of this section.)
- 203. 33 U.S.C. 1343(c)(1).
- 204. Supra, note 52.
- 205. Assigned to EPA, see EPA Regulations on Discharge of Oil, 40 CFR 110, 36 FR 22487, Nov. 25, 1971.
- 206. Assigned to the Council on Environmental Quality, see Council on Environmental Quality National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 1510, 40 FR 6282, Feb. 10, 1975.
- 207. See EPA Regulations on Oil Pollution Prevention, 40 CFR 112, 38 FR 34164, Dec. 11, 1973, amended 39 FR 31602, Aug. 29, 1974.
- 208. See Coast Guard Regulations on Oil Spills, 33 CFR 153, supra, note 53.
- 209. Supra, note 54; a copy of this memo is included in Appendix A to this paper.
- 210. 33 U.S.C. 1401, et seq., enacted Oct. 23, 1972 (also known as the Ocean Dumping Act.)
- 211. Supra, notes 202 and 203.
- 212. 33 U.S.C. 1362(12).
- 213. 33 U.S.C. 1412, see EPA Regulations on Transportation for Dumping and Dumping of Material into Ocean Waters, 40 CFR 220, 38 FR 28610, Oct. 15, 1973.
- 214. 33 U.S.C. 1402(f).
- 215. Ibid.
- 216. 33 U.S.C. 1413.

- 217. See Chapter V of this paper.
- 218. Supra, note 93.
- 219. Supra, note 185.
- 220. Supra, note 132.
- 221. 42 U.S.C. 1962 et seq., enacted July 22, 1965.
- 222. 42 U.S.C. 1962b(b) (2).
- 223. 42 U.S.C. 1962b-1.
- 224. 42 U.S.C. 2021(c) (1).
- 225. 42 U.S.C. 2011 et seq., enacted Aug. 30, 1954; 42 U.S.C. 5801 et seq., enacted Oct. 11, 1974; respectively.
- 226. 447 F2d 1143 (8th Cir., 1971).
- 227. 43 U.S.C. 1314(a).
- 228. Supra, note 21.
- 229. Supra, note 24.
- 230. 42 U.S.C. 5841(b).
- 231. 42 U.S.C. 5801 et seq., enacted Oct. 11, 1974.
- 232. 16 U.S.C. 791(a) et seq., enacted June 10, 1920.
- 233. Federal Power Commission Regulations Under the Federal Power Act on Application for License for Transmission Line Only, 18 CFR 4.70.
- 234. Supra, notes 59, 60, and 61.
- 235. Supra, notes 16 and 51.
- 236. Supra, notes 48, 49, and 50.
- 237. 33 U.S.C. 1221-1227, 46 U.S.C. 391a, enacted July 10, 1972; see also Davis, M., "The Ports and Waterways Safety Act of 1972: An Expansion of the Federal Approach to Oil Pollution," 6 J. Mar. L. Com. 249 (1975).

238. 33 U.S.C. 1471 et seq., enacted Feb. 5, 1974; see also Trabandt, C., "Intervention on the High Seas Act," 7 L. Pol. Int. Bus. 303, (1975).
239. 33 U.S.C. 1221.
240. 33 U.S.C. 1222(e).
241. 46 U.S.C. 391a.
242. 33 U.S.C. 1472.
243. 33 U.S.C. 1474.
244. 33 U.S.C. 1475.
245. 516 U.N.T.S. 205, T.I.A.S. 5639, 15 U.S.T. 1606 (1958).
246. 499 U.N.T.S. 31, T.I.A.S. 5578, 15 U.S.T. 471 (1958).
247. 450 U.N.T.S. 82, T.I.A.S. 5200, 13 U.S.T. 2312 (1962).
248. See Memorandum Opinion from Associate Solicitor, Department of Interior, to Director, Bureau of Land Management, May 5, 1961.
249. (1969) I.C.J. 3.
250. See Chapter III of this paper.
251. See Chapter VII, Part G of this paper.
252. (1951) I.C.J. 116.
253. 14 International Legal Materials 682 (1975); see also Stevenson, J. and Oxman, B., "The Third United Nations Conference on the Law of the Sea," 69 A.J.I.L. 1 (1975); a copy of selected portions of the Negotiating Text is included in Appendix B.
254. See Alexander, L. and Hodgson, R., "The Impact of the 200-Mile Economic Zone on the Law of the Sea," 12 San Diego L.R. 569 (1975).

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APPENDICES

Deepwater Port Act

Deepwater Port Act: Proposed Regulations

Memorandum of Understanding: DOT - EPA

Selections from Negotiating Text of International Law of
Sea Conference

DEEPWATER PORT ACT OF 1974

(Public Law 93-627; 93rd Congress, H.R. 10701; Approved January 3, 1975)

AN ACT

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

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

DECLARATION OF POLICY

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

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

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

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

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

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

DEFINITIONS

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

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

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

(3) "antitrust laws" includes the Act of July 2, 1890, as amended, the Act of October 15, 1914, as amended, the

Federal Trade Commission Act (15 U.S.C. 41) et seq., and sections 73 and 74 of August 27, 1894, as amended;

(4) "application" means any application submitted under this Act (A) for a license for the ownership, construction, and operation of a deepwater port; (B) for transfer of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license;

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

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

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

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

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

(10) "deepwater port" means any fixed or floating manmade structures other than a vessel, or any group of such structures, located beyond the territorial sea and off the coast of the United States and which are used or in-

tended for use as a port or terminal for the loading or unloading and further handling of oil for transportation to any State, except as otherwise provided in section 23. The term includes all associated components and equipment, including pipelines, pumping stations, service platforms, mooring buoys, and similar appurtenances to the extent they are located seaward of the high water mark. A deepwater port shall be considered a "new source" for purposes of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;

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

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

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

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

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

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

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

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

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

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

SEC. 4. (a) No person may engage in the ownership, construction, or operation of a deepwater port except in accordance with a license issued pursuant to this Act. No person may transport or otherwise transfer any oil between a deepwater port and the United States unless such port has been so licensed and the license is in force. A deepwater port, licensed pursuant to the provisions of this Act, may not be utilized—

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

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

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

(b) The Secretary is authorized, upon application and in accordance with the provisions of this Act, to issue, transfer, amend, or renew a license for the ownership, construction, and operation of a deepwater port.

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

(1) he determines that the applicant is financially responsible and will meet the requirements of section 18(l) of this Act;

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

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

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

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

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

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

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

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

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

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

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

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

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

the Secretary shall not issue a license under this Act until he has examined and compared the economic, social, and environmental effects of the construction and operation of the deepwater port with the economic, social and environmental effects of the construction, expansion, deepening, and operation of such State port, and has determined which project best serves the national interest or that both developments are warranted. The Secretary's determination shall be discretionary and non-reviewable.

(e) (1) In issuing a license for the ownership, construction, and operation of a deepwater port, the Secretary shall prescribe any conditions which he deems necessary to carry out the provisions of this Act, or which are otherwise required by any Federal department or agency pursuant to the terms of this Act.

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

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

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

(g) Any citizen of the United States who otherwise qualifies under the terms of this Act shall be eligible to be

issued a license for the ownership, construction, and operation of a deepwater port.

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

PROCEDURE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The Secretary shall accompany such publication with a call for submission of any other applications for

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

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

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

(f) For all timely applications covering a single application area, the Secretary, in cooperation with other involved Federal agencies and departments, shall, pursuant to section 102(2) (C) of the National Environmental Policy Act, prepare a single, detailed environmental impact statement, which shall fulfill the requirement of all Federal agencies in carrying out their responsibilities pursuant to this Act to prepare an environmental impact statement. In preparing such statement the Secretary

shall consider the criteria established under section 6 of this Act.

(g) A license may be issued, transferred, or renewed only after public notice and public hearings in accordance with this subsection. At least one such public hearing shall be held in each adjacent coastal State. Any interested person may present relevant material at any hearing. After hearings in each adjacent coastal State are concluded, if the Secretary determines that there exists one or more specific and material factual issues which may be resolved by a formal evidentiary hearing, at least one adjudicatory hearing shall be held in accordance with the provisions of section 554 of title 5, United States Code in the District of Columbia. The record developed in any such adjudicatory hearing shall be basis for the Secretary's decision to approve or deny a license. Hearings held pursuant to this subsection shall be consolidated insofar as practicable with hearings held by other agencies. All public hearings on all applications for any designated application area shall be consolidated and shall be concluded not later than 240 days after notice of the initial application has been published pursuant to section 5(c) of this Act.

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

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

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

(i) (1) The Secretary shall approve or deny any application for a designated application area submitted pursuant

to this Act not later than 90 days after the last public hearing on a proposed license for that area.

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

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

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

(C) to any other person.

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

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

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

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

ENVIRONMENTAL REVIEW CRITERIA

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

(1) the effect on the marine environment;

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

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

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

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

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

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

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

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

ANTITRUST REVIEW

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

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

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

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

COMMON CARRIER STATUS

Sec. 8. (a) For the purpose of chapter 39 of title 18, United States Code (18 U.S.C. 831 — 837), and part 1 of the Interstate Commerce Act (49 U.S.C. 1-27), a deepwater port and storage facilities serviced directly by such deepwater port shall be subject to regulation as a common carrier in accordance with the Interstate Commerce Act, as amended.

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

ADJACENT COASTAL STATES

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

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

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

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

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

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

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

MARINE ENVIRONMENTAL PROTECTION AND NAVIGATIONAL SAFETY

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

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

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

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

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

INTERNATIONAL AGREEMENTS

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

protection of such facilities as well as the promotion of navigational safety in the vicinity thereof.

SUSPENSION OR TERMINATION OF LICENSES

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

(1) suspend the license; or

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

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

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

RECORDKEEPING AND INSPECTION

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

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

PUBLIC ACCESS TO INFORMATION

Sec. 14. (a) Copies of any communication, document, report, or information transmitted between any official of the Federal Government and any person concerning a deepwater port (other than contracts referred to in section 5(c)(2)(B) of this Act) shall be made available to the public for inspection, and shall be available for the purpose of reproduction at a reasonable cost, to the public

upon identifiable request, unless such information may not be publicly released under the terms of subsection (b) of this section. Except as provided in subsection (b) of this section, nothing contained in this section shall be construed to require the release of any information of the kind described in subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

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

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

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

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

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

REMEDIES

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

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

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

(3) Upon a request by the Secretary, the Attorney General shall commence a civil action for appropriate relief, including a 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 non-commercial activities, used in a violation of this Act or of any rule or regulation issued pursuant to this Act, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation, a consenting party or privy to such violation.

CITIZEN CIVIL ACTION

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

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

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

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

(b) No civil action may be commenced—

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

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

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

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

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

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

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

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

JUDICIAL REVIEW

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

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

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

LIABILITY

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

(2) The owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged in violation of this subsection shall be assessed a civil penalty of not more than \$10,000 for each violation. No penalty shall be assessed unless the owner or operator or the licensee has been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. The Secretary of the Treasury shall withhold, at the request of the Secretary, the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary.

(b) Any individual in charge of a vessel or a deepwater port shall notify the Secretary as soon as he has knowledge of a discharge of oil. Any such individual who fails to notify the Secretary immediately of such discharge shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than 1 year, or both. Notification received pursuant to this subsection, or information obtained by the use of such notification, shall not be used against any such individual in any criminal case, except a prosecution for perjury or for giving a false statement.

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

peditionously by the licensee of the deepwater port or the owner or operator of the vessel from which the discharge occurs.

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

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

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

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

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

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

(3) Each licensee shall collect from the owner of any oil loaded or unloaded at the deepwater port operated by such licensee, at the time of loading or unloading, a fee of 2 cents per barrel, except that (A) bunker or fuel oil for the use of any vessel, and (B) oil which was transported through the trans-Alaska pipeline, shall not be subject to such collection. Such collections shall be delivered to the Fund at such times and in such manner as shall be prescribed by the Secretary. Such collections shall cease after the amount of money in the Fund has reached

\$100,000,000, unless there are adjudicated claims against the Fund yet to be satisfied. Collection shall be resumed when the Fund is reduced below \$100,000,000. Whenever the money in the Fund is less than the claims for cleanup costs and damages for which it is liable under this section, the Fund shall borrow the balance required to pay such claims from the United States Treasury at an interest rate determined by the Secretary of the Treasury. Costs of administration shall be paid from the Fund only after appropriation in an appropriation bill. All sums not needed for administration and the satisfaction of claims shall be prudently invested in income-producing securities issued by the United States and approved by the Secretary of the Treasury. Income from such securities shall be applied to the principal of the Fund.

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

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

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

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

(4) The liabilities established in this section shall in no way affect or limit any rights which the licensee, the owner, or operator of a vessel, or the Fund may have against any third party whose act may in any way have caused or contributed to a discharge of oil.

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

(i)(1) The Attorney General may act on behalf of any group of damaged citizens he determines would be more adequately represented as a class in recovery of claims

under this section. Sums recovered shall be distributed to the members of such group. If, within 90 days after a discharge of oil in violation of this section has occurred, the Attorney General fails to act in accordance with this paragraph, to sue on behalf of a group of persons who may be entitled to compensation pursuant to this section for damages caused by such discharge, any member of such group may maintain a class action to recover such damages on behalf of such group. Failure of the Attorney General to act in accordance with this subsection shall have no bearing on any class action maintained in accordance with this paragraph.

(2) In any case where the number of members in the class exceeds 1,000, publishing notice of the action in the Federal Register and in local newspapers serving the areas in which the damaged parties reside shall be deemed to fulfill the requirement for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedure.

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

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

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

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

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

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

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

(m) As used in this section the term—

(1) "cleanup costs" means all actual costs, including but not limited to costs of the Federal Government, of any State or local government, of other nations or of their contractors or subcontractors incurred in the (A) removing or attempting to remove, or (B) taking other measures to reduce or mitigate damages from, any oil

discharged into the marine environment in violation of subsection (a)(1) of this section:

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

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

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

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

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

RELATIONSHIP TO OTHER LAWS

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

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

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

boundaries, if extended beyond 3 miles, would encompass the site of the deepwater port.

(c) Except in a situation involving force majeure, a licensee of a deepwater port shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, or otherwise utilize a deepwater port licensed under this Act unless (1) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessel and its personnel, in accordance with the provisions of this Act, while the vessel is located within the safety zone, and (2) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

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

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

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

ANNUAL REPORT BY SECRETARY TO CONGRESS

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

PIPELINE SAFETY AND OPERATION

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

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

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

NEGOTIATIONS WITH CANADA AND MEXICO

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

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

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

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

PUBLIC LAW

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

GENERAL PROCEDURES

Sec. 24. The Secretary or his delegate shall have the authority to issue and enforce orders during proceedings brought under this Act. Such authority shall include the authority to issue 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.

AUTHORIZATION AND APPROPRIATIONS

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

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR 148, 149, 150]

[CGD 75-002]

DEEPWATER PORTS

Notice of Proposed Rule Making

This notice proposes rules for the licensing, design, construction, equipment, and operation of deepwater ports beyond the territorial sea of the United States under the provisions of the Deepwater Port Act of 1974 (the Act). The purposes of the Act are 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.

Written comments. Interested persons are invited to participate in this rule making by submitting written data, views, or arguments to the Executive Secretary, Marine Safety Council (G-CMC/82), Room 8234, U.S. Coast Guard, U.S. Department of Transportation, 400 Seventh St., SW., Washington, D.C. 20590. Written comments should include the docket number of this notice, the name and address of the person submitting the comments, and the specific section of the proposal to which each comment is addressed. A separate page for each section commented upon and two or more copies are encouraged. Suggested new or different regulations will be welcome.

Copies of all written comments will be available for examination in Room 8234, Department of Transportation, Nassif Building, 400 Seventh St., SW., Washington, D.C.

Public hearing. A public hearing on this proposal will be held on June 6, 1975, 9:30 a.m., in Room 2232 at the Department of Transportation, Nassif Building, 400 Seventh St., SW., Washington, D.C. to receive written or oral comments from interested persons. The hearing will be conducted by a representative of the Department of Transportation who may apportion the time for presentation. Each person desiring to speak at this hearing is requested to notify the Executive Secretary, Marine Safety Council, of the time needed for his presentation and is encouraged to submit a written copy or summary after the hearing of his oral presentation.

Closing date for comments. All relevant communications received on or before June 23, 1975 will be fully considered before final action is taken on this proposal. This proposal may be changed in light of the comments received; however, acknowledgement of individual comments will not be made.

Availability of comments. Copies of comments received and a tape recording of the public hearing will be available for examination in Room 8234. Copies of comments will be furnished interested persons upon request to the Commandant (G-CMC/82) and payment of the fees prescribed in 49 CFR 7.95.

Draft guidelines. A notice was published in the FEDERAL REGISTER on January 15, 1975 (40 FR 2740) to the effect that drafts of the "Guide to Preparation of Environmental Analyses For Deepwater Ports", "Recommended Procedure for Developing Deepwater Ports Design Criteria", the "Guidelines for Preparation of a Deepwater Port Operations Manual", and "Glossary For Deepwater Ports Environmental Analyses, Design, and Operations Manual Guides" are available for public inspection and comment at Commandant (G-WDWP/61), U.S. Coast Guard, Room 6125, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

Draft environmental impact statement. A draft environmental impact statement has been prepared for the rules in this notice that are proposed under section 10(a) of the Act. This draft statement was forwarded to the Council on Environmental Quality on January 3, 1975 (40 FR 2463). Copies of the draft will be available to the public prior to the public hearing on this notice. Individuals may obtain a copy of that draft from the Commandant (G-WDWP/61), U.S. Coast Guard, Washington, D.C. 20590.

Consultation with other federal agencies. In accordance with the Act, the Department of Transportation is consulting with other Federal departments and agencies concerning the promulgation of these regulations.

Background of the proposal. The U.S. does not now have ports deep enough to accommodate the supertankers that are carrying the bulk of the world's oil. Our 35 to 50 foot deep harbors and channels, suitable for post World-War II cargo ships of 40,000 to 70,000 dead weight tons, are largely inaccessible to today's 200,000 to 400,000 dead weight ton VLCC's (Very Large Crude Carriers) which require water depths of 90 feet or more. Our deepest ports, which are located on the West Coast, are now capable of berthing only 100,000 dead weight ton ships.

This inability to handle VLCC's currently precludes our use of approximately 60 percent of the world's tanker fleet capacity. As a result, supertankers must transfer U.S. bound petroleum into smaller ships for delivery into our harbors or the oil must be transhipped from foreign ports in conventional size tankers. Currently, the U.S. is the only major oil importing nation which cannot accommodate supertankers. Both France and the Netherlands have undertaken dredging and enlargement programs which give them approximately a 10 year advantage over us in the handling of these giant ships. Supertanker ports have also been built in Japan, Ireland, and Italy, among other countries.

This situation may now change, however, as on January 3, 1975, the President signed into law the Deepwater Port Act of 1974, an act which will allow the building of the first port facilities in the United States capable of handling VLCC's.

A "deepwater port" is an oil transfer facility located offshore and beyond the territorial waters of the United States. It is situated in water of sufficient depth to accommodate most of the world's fleet of supertankers.

One type of facility under consideration by potential licensees is the single point mooring buoy system. This system consists of platforms that house pumping stations, control rooms, and crew accommodations. Surrounding the platforms would be Single Port Mooring buoys (SPM's). Underwater pipelines would connect the buoys to the pumping platforms which in turn would be linked to onshore tank farms by one or more steel pipes buried in the seabed.

In the operation of such a facility, a VLCC would moor to one of the buoys, hook up to a floating oil transfer hose, and then either pump its cargo of oil through an underwater pipeline and pumping platform to an onshore facility or receive oil pumped through the oil transfer system from the shore facility. The cargo hoses are attached to the buoys by swivel connections which allow the tanker to "weather-vane" 360 degrees to face into the wind, waves, and current while continuing to offload.

To assure that the construction and operation of these deepwater ports will be in the national interest, regulations are proposed for both the construction and operational phases. These proposed regulations provide for the protection of the marine and coastal environment by attempting to prevent or minimize any adverse impact which may occur as a consequence of the development of these ports. These regulations also seek to provide sufficient information for the Secretary of Transportation to make the determinations required by the Act as a precondition to the issuance of a deepwater port license. Some of the major areas covered by the regulations include: personal and financial data required of a prospective deepwater port operator; environmental data to be provided with application for a license to operate a deepwater port; construction standards to be met; operational constraints to be followed; and proposed oil spill prevention measures and operator clean-up capabilities.

Additional regulations will be promulgated in the future concerning, among other things, additional procedures in Part 145 for the amendment, renewal and transfer of licenses, regulations pertaining to site evaluation and preconstruction activities, operating procedures and special equipment and manning requirements for tankers using the port, and the establishment of the liability fund required by section 18 of the Act. Future regulations will be added to Subpart C of Part 150 to prescribe limitations on activities in the safety zone at each deepwater port. The size, shape, and activities to be authorized for each safety zone will be determined on a case-by-case basis pursuant to the provisions of section 10(d) of the Act.

The proposed regulations are generally self-explanatory. However, a few

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items have been singled out that were thought to deserve some remarks.

Applications. Section 148.109 prescribes the information required to be submitted in an application for a deepwater port license and, for all other Federal authorizations required to construct and operate a deepwater port and associated onshore storage facilities and pipelines connecting the facilities to the port, existing distribution pipelines, and refineries. The application information pertaining to Federal authorizations other than the deepwater port license is required in order to comply with section 5(e)(2) of the Act which provides in part that "[a]n application filed with the Secretary shall constitute an application for all Federal authorizations required for ownership, construction, and operation of a deepwater port. . . . The information pertaining to other Federal authorizations will be sent to the appropriate Federal departments or agencies for processing, adjudication, and issuance of licenses within the time frames established in section 5 of the Act.

Section 148.109(h) requires an applicant to identify any areas of the seabed that have been leased for mineral exploration under the Submerged Lands Act and the Outer Continental Shelf Lands Act and that, if developed, would interfere with any proposed deepwater port. If a potential conflict exists, the applicant must conclude an agreement with the lessor in which the lessor agrees, if the applicant is granted a license, not to exercise his rights under the lease in any way which will interfere with the port.

Section 148.109(k) requires submission of certain soil data relating to the ocean bottom and sub-bottom throughout the marine site and along the pipeline path to shore. This information is needed to determine whether the soil of the bottom and sub-bottom can hold the anticipated design load of any structure and to determine whether forces associated with storm conditions would have any effect on the seabed. This analysis is necessary in view of the fact that there are cases where offshore platforms have failed due to a large scale shift of the seabed resulting from a storm.

Section 148.109(l)(1) requires the submission of data concerning the maximum size of the tankers to be accommodated at each deepwater port. It is anticipated that, as a result of varying depths within the safety zone of the port, the tanker size to be accommodated at each SPM will vary. Subparagraph (2) requires an explanation of the method used to determine the size of the tankers that can be accommodated. Section 150.339(f) in Part 150 establishes a minimum net underkeel clearance of 5 feet. Considering the water depth of any particular location, it is necessary to calculate the minimum gross underkeel clearance which must be allowed for that location so that the net underkeel clearance will never be less than 5 feet. Subparagraph (3) requires a discussion of wind, wave, and current conditions that will necessi-

tate cessation of certain port operations. This will depend in large part on the maximum wind, wave, and current conditions for which each component of the port is designed.

Sections 148.109(m)-(p) require the submission of technical data concerning various components of the proposed deepwater port and related shoreside development. The Coast Guard does not plan to issue extensive regulations prescribing methods used to design the deepwater port components. However, these regulations do require the applicant to submit information concerning design criteria, standards, codes, and engineering practices to be used in designing each component of the port. With regard to design criteria, they are to be developed based on the 100 year storm, in accordance with Part 149. Only preliminary design drawings of the components are required as part of the application. If a license is issued, the applicant will be required to submit complete, detailed design drawings before commencing construction.

Section 148.109(s) requires the submission of a draft Operations Manual for the proposed deepwater port. Guidance for preparing the draft manual is found in the "Guidelines for Preparation of a Deepwater Port Operations Manual." It is anticipated that the Coast Guard will work with the licensee of a deepwater port in finalizing the draft to meet the requirements of the deepwater port regulations, the "Guidelines for Preparation of a Deepwater Port Operations Manual" (see § 150.105 of Part 150), and any license conditions issued under 4(e) of the Act.

Section 148.109(t) in part establishes a requirement for an applicant to submit, with his application, an environmental analysis for the proposed deepwater port. The purpose of this analysis is to provide that data necessary for the Coast Guard to prepare the environmental impact statement required by section 5(f) of the Act for the proposed deepwater port. Since the Act provides that only one impact statement be prepared for each license granted, and in view of the time constraints established by the Act, it is imperative that an applicant submit comprehensive, complete, and organized data in his analysis. To this end, the Coast Guard has prepared the Guidelines for the Preparation of Environmental Analyses for Deepwater Ports that are available upon request. Section 149.109 (t) further requires that an environmental analysis submitted in an application be prepared in accordance with the guidelines.

Sections 148.109(v)-(x) list requirements for submitting information concerning the proposed operation of telecommunications equipment and the discharge of pollutants and other materials at the port and adjacent onshore facilities. Section 148.109(y) lists requirements for submitting information to be used in the antitrust review of an application. These sections have been requested by the Federal Communications Commission, Environmental Protection Agency,

Department of Army (Corps of Engineers), and Federal Trade Commission for inclusion in this notice of proposed rule making. Procedures for adjudicating and processing this information for completeness within the time frames established in section 5 of the Act are being developed and coordinated with these agencies. The procedures will include provisions that these agencies issue the permits required to operate telecommunications equipment and to discharge pollutants and other materials, and provisions that the permits are normally issued concurrently with the deepwater port license. Rules explaining these procedures, and rules referencing the existing adjudication procedures in the Code of Federal Regulations for these agencies, will be incorporated in Subpart C of Part 148.

Application proceeding. Because section 5 of the Act requires all hearings in a proceeding to be completed within 240 days after the first application is filed and requires a final decision to be made within 90 days after the last hearing, the time limits prescribed for formal hearings in Subpart C of Part 148 are short. However, the administrative law judge in a formal hearing has the authority under § 148.257(j) to extend a time limit if the extension is consistent with the time limits prescribed in section 5(g) of the Act.

Section 148.217(a)(3) provides that a State's request for designation as an adjacent coastal state under section 9(a)(2) of the Act must state why the designation should be made and may provide any documentation in support of the statement including documentation concerning risk of damage to the coastal environment of the State (see section 3(b) of the Act) that could occur as a result of an oil spill at the proposed port. Thus, all available documentation concerning the risk of damage to the coastal environment of the State that could result from an oil spill at the port should be submitted with the request to assist the Secretary in acting on the request.

Site Evaluation. Section 148.503 is an interim regulation that will be replaced in the future by more comprehensive regulations pertaining to activities involved in deepwater port site evaluation and preconstruction testing. Section 148.503 requires that persons who intend to conduct site evaluations or preconstruction testing must give advance notice to the Coast Guard of the nature of those activities. The information submitted in the notice will be reviewed in coordination with the National Oceanic and Atmospheric Administration and the Department of Interior; and if the review shows that activities should be regulated under section 5(b) of the Act, regulations for the activity will be issued in a separate rule making proceeding.

Design and Equipment. Part 149 prescribes design standards, construction requirements, and requirements for pollution prevention equipment, safety equipment, and aids to navigation. The requirements for safety equipment include rules for curbs, gutters, drains, and

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reservoirs, emergency power equipment, means of escape, personnel landings, fixed fire main systems for water and other fire extinguishing systems, fire detection and alarm systems, and lifesaving equipment. Sections 149.105 and 150.103 require the licensee to ensure that the port meets the design, construction, and equipment requirements in Part 149.

The equipment requirements in Part 149 are based in part on existing analogous Coast Guard regulations, American Bureau of Shipping (ABS) standards, the National Fire Protection Association's (NFPA) "National Fire Code", the American Petroleum Institute (API) "Recommended Practice for Planning, Designing, and Constructing Fixed Offshore Platforms", the American Society of Mechanical Engineers (ASME) "Boiler and Pressure Vessel Code", and American National Standards Institute (ANSI) standards. The ABS is a ship classification society which establishes standards for the design, construction, and survey of ships and other marine structures. ABS classification certifies compliance with these standards which are intended to ensure structural and mechanical fitness for service. NFPA is an international, non-profit, technical, and educational organization organized to promote the science and improve the methods of fire protection and prevention. ANSI standards reflect a national consensus of manufacturers, consumers, scientific, technical, and professional organizations, and government agencies.

Section 149.205(a) requires that design criteria for each deepwater port be based upon a 100 year storm method described in "Recommended Procedures for Developing Deepwater Ports Design Criteria" which is available from the Commandant. The 100 year storm method is used because of experience with its use by engineers in the design of offshore structures in the Gulf of Mexico.

Sections 149.205 (b-d) require that to the extent practicable and consistent with the deepwater port regulations the design of a deepwater port must comply with the API "Recommended Practice for Planning, Designing, and Constructing Fixed Offshore Platforms" (API RP 2A), the ANSI "Practice for Electrical Installations on Shipboard" (ANSI C 110.1-1972), and Sections I, IV, and VIII of "ASME Boiler and Pressure Vessel Code". API RP 2A contains principles and accepted practices of engineering design that have evolved during the development and building of offshore oil platforms. The requirement to use ANSI C 110.1-1972 in designing a platform is proposed because of the application of this recommended practice to marine installations. Compliance with ANSI C 110.1-1972 in designing a platform should effectively eliminate electrical sources of ignition and personal shock on the platform. Compliance with Sections I, IV, and VIII of the ASME Code in designing a platform should minimize as much as possible the potential for a malfunction of a pressurized system or a rupture of the system on the platform,

each of which poses a substantial hazard to personnel.

Section 149.206 requires that, to contain a fire on a platform and to facilitate escape if a fire occurs, walls separating personnel accommodation spaces and service spaces from other spaces on the platform and walls enclosing means of escape and vertical shafts must be constructed of steel and incombustible materials required by 46 CFR 92.07 for bulkheads on cargo vessels.

Section 149.305 requires a remote control shut-off valve method to isolate segments of the oil transfer system in an emergency or for repair.

Section 149.307 requires a blank flange and a butterfly valve on each floating hose string to prevent a discharge from the vessel end of the hose when it is not connected to the vessel manifold.

Section 149.311 requires a malfunction detection system to ensure rapid detection and response to a malfunction or leak in the oil transfer system.

Section 149.317 requires two-way voice communications among certain key personnel for use during oil transfer operation. This rule is designed to permit rapid, coordinated shutdown of the oil transfer operation. It should prevent overflow of tanks at the onshore facility and should provide for immediate reaction to any break in the oil transfer system (OTS) thus minimizing the quantity of oil spilled.

Section 149.411 requires emergency power to operate critical electrical systems to minimize risks to the deepwater port and vessel if there is a power failure.

Sections 149.451-513 contain requirements for firefighting, detection, and alarm equipment for use in containing and extinguishing fires that may occur on a platform.

Section 149.455 requires each fire pump to be in a separate space so that all cannot be destroyed by a fire in one space.

Sections 149.521-525 contain requirements for lifeboats, inflatable liferafts, and launching equipment on a platform for use in an emergency such as fire or collision by a vessel that requires abandonment of the platform. The launching equipment required will allow personnel to depart from the platform without first entering the water. An excess number of lifeboats and inflatable liferafts is required in § 149.521 to provide for the contingency that some lifeboats or liferafts may be damaged or become inaccessible during an emergency that requires abandonment of the platform.

Section 149.524 requires that winches, davits, and mechanical disengaging apparatus for inflatable liferafts be approved by the Coast Guard. Proposed specifications and approval procedures for this equipment are currently being prepared by the Coast Guard and will be issued as a notice of proposed rulemaking in the near future. Section 149.524 will be amended to incorporate these specifications and approval procedures when they are promulgated.

Operations Manual: changes. Section 150.111 requires advance submission to

the Captain of the Port of each change to the Operations Manual of a port. Advance submission is required for the Captain of the Port to review the change for compliance with § 150.105.

Personnel. Minimum qualifications for a terminal supervisor, cargo transfer supervisor, cargo transfer observer, vessel traffic supervisor, mooring master, and assistant mooring master are prescribed to ensure safe operation, and pollution prevention and clean up. The requirements for a mooring master's endorsement in § 150.211(a) will be proposed in a future notice of proposed rulemaking.

Vessel navigation. Because of the size and maneuverability of the supertankers for which these ports are designed, a fundamental element of the proposed regulations is a traffic separation scheme to maintain a safe distance between tankers entering and departing the port. The Coast Guard has determined that a 2 mile visibility is the minimum to ensure the safe approach of a supertanker. The licensee must develop maximum sea conditions criteria and include them in the Operations Manual. A tanker may anchor in the anchorage area until it can moor if conditions prevent mooring to an SPM.

Section 150.339(f) requires a minimum net underkeel clearance of five feet to ensure that a vessel cannot strike bottom. This clearance allows for variance in predicted values of tide, water depth caused by changing bottom conditions, and vessel configuration.

Oil transfer operations. The decision to require an on-scene capability to handle a 10,000 gallon discharge was based upon the difficulty in rapidly transporting bulky equipment to the port in an emergency, as tempered by certain historical studies of discharges occurring at off-loading SPMs which tend to show that the vast majority of probable discharges would be less than 10,000 gallons.

Section 150.405 imposes minimum standards for test and inspection of oil transfer equipment. In addition to the American Bureau of Shipping test and inspection requirements for the single point mooring buoy oil transfer system (SPM-OTS), this rule imposes a requirement to perform certain tests and inspections of the total OTS at the port. Rules for the design, construction, inspection, testing, operation, and maintenance of submarine pipelines at a deepwater port will be promulgated by the Office of Pipeline Safety, U.S. Department of Transportation.

The test and inspection requirements in §§ 150.407 and 150.409 are based upon Coast Guard experience with and knowledge of the general design and construction features of discharge containment equipment and removal material and equipment. Certain components, such as the fabric and fabric coatings, have been found to deteriorate rapidly, particularly when exposed to sun and salt air. These are considered broad, minimum guidelines; more specific standards cannot be specified until the actual equipment outfit at the port is known.

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The purpose of in § 150.419 is to prevent the possibility of the deepwater securing OTS valves while the vessel is still pumping oil, leading to a hazard of a rupture in the OTS.

Section 150.421 is designed to prevent discharge of oil if the SPM is damaged by storm conditions and to minimize the risk of discharge of oil if the SPM or its floating hose string is damaged by any cause (vessel ramming, hose fatigue, etc.).

Section 150.423(b) ensures that those persons handling the actual hose connections are familiar with oil transfer equipment, firefighting procedures, and applicable pollution laws and regulations.

Aids to navigation. Lighted buoys with radar reflectors, in accordance with the lateral system of buoyage prescribed in 33 CFR 62.25 for use with charts in United States waters, are required in §§ 149.771-149.773 to mark the lateral boundaries of traffic lanes at the port.

The number of obstruction lights required on a platform and their arrangement is consistent with the requirements of existing regulations. The obstruction lighting scheme required on floating hose strings attached to an SPM closely parallels the obstruction lighting required on floating pipelines under 33 CFR Part 80.

The intensity requirements for lights in Subpart E of Part 149 will provide for the following visual ranges of the lights:

Required intensities (candela):	Visual Range (nautical miles)
15,000-----	15
75-----	5
15-----	3
1-----	1

Standards defining acceptable colors of light signals, in terms of chromaticity limits, in § 149.727 are within the limits of the International Commission on Illumination (CIE) recommendations for the specification of colors of light signals in a four color signal (red, yellow, white and green) system published in CIE Publication No. 2 (E-1.3.3), 1971, 2nd Edition.

To assist the mariner in making positive identification of the deepwater port, two special warning devices are required. Section 149.795 requires a radar beacon (RACON) accepted by the FCC for the frequency range 9300-9500 MHz (X-Band). Section 149.797 requires a rotating lighted beacon.

Reports. Copies of reports to American Bureau of Shipping for maintenance of ABS classification are required in § 150.703 to ensure compliance with design and construction requirements specified in Part 149. Section 150.705 requires that discrepancies to navigational aids be reported so that the Coast Guard may issue appropriate Notices to Mariners. Section 150.707 requires that a report of oil throughput be submitted for the purpose of calculating inputs to the Deepwater Port Liability Fund as covered in § 18(f) of the Act.

Section 150.713 requires that the licensee submit to the Captain of the Port a report of sabotage or subversive activity at the port. This report, made by the fastest means possible, should permit the COTP to react quickly to prevent or minimize any threat to life or property, or potential pollution at the port. The required written confirmation will enable the COTP, or other appropriate authority, to investigate the circumstances surrounding the incident, apprehend the perpetrators, and prevent recurrences.

Records. Section 150.751 is a general requirement that all reports, records, test and inspection results, and operating data required by these rules be maintained by the licensee, in a manner suitable for inspection by the Coast Guard, at the port or adjacent onshore facility, for three years unless otherwise specified. "A manner suitable for inspection by the Coast Guard" means any form easily read by an inspector such as duplicate paper copies, or microfilm or microfiche with appropriate optical reader. It rules out media not easily read, such as punched cards, magnetic tape, and microfilm or microfiche without access to an optical reader. Three years is considered a reasonable recordkeeping requirement, and is based upon similar standards in effect for routine government recordkeeping.

Section 150.753 requires that the licensee retain documentation of the designation and qualifications of key operations personnel for the duration of each individual's employment in that capacity at the port. It is necessary to retain documentation for those key individuals for as long as they continue to be employed in the specified capacities, even if beyond the routine three-year requirement.

Section 150.755 requires that the licensee maintain a port inspection record containing operating, test, and inspection data on machinery and equipment for three years, and records of emergency drills for one year. The descriptive data on operating machinery and emergency equipment is required to familiarize official inspectors with the nature and location of all such devices. The record of emergency drills provides the inspector with the only documentation that the drills required by § 150.519 have been conducted. The record of facility tests and inspections provides documentation for the corresponding requirements of Subpart D of Part 150 and § 150.121, thus enabling the official inspector to determine compliance with those requirements.

Section 150.757 requires that the licensee maintain a log of oil throughput at the port. This log is necessary to provide the data from which the quarterly report of oil throughput, covered in § 159.707, is compiled and submitted in compliance with section 18(f)(3) of the Act. The country of origin of the crude oil must be specified in order that cognizant government agencies may monitor patterns of oil imports and pricing.

Inspections. The Coast Guard will inspect deepwater ports to ensure compliance with the Act and regulations. These inspections will cover recordkeeping; op-

eration and maintenance of oil transfer, discharge containment and removal, firefighting, lifesaving, and other emergency systems, equipment and material; and observation of oil transfer operations, terminal controls and procedures, and emergency drills. Results of these inspections, and deficiencies, if any, will be recorded in the Facility Inspection Record.

The regulations proposed in this notice cover the elements that must be considered by applicants in preparing their applications for a license. The Coast Guard proposes regulations at this early date to enable the potential applicants to prepare their applications and to expedite the licensing and construction of deepwater ports.

The Secretary of Transportation has delegated the authority to the Commandant of the Coast Guard to promulgate the regulations in this document under the authority of 33 U.S.C. 1504(a) and 1509(a) and (b) of the Deepwater Port Act of 1974.

In consideration of the foregoing, it is proposed to add a new Subchapter NN to Chapter I of Title 33 of the Code of Federal Regulations to read as follows:

SUBCHAPTER NN—DEEPWATER PORTS

PART 148—GENERAL

Subpart A—General

Sec.	Purpose.
148.1	Definitions.
148.3	
Subpart B—Applications	
148.101	Applicability.
148.103	Application staff.
148.105	Preparation.
148.107	Copies; fees.
148.109	Contents of application for issuance of license.

Subpart C—Application Proceeding GENERAL

148.201	Purpose.
148.203	Applicability.
148.205	Clerk; docket; record.
148.207	Availability of documents in the record.
148.209	Availability of draft environmental impact statement.
148.211	Processing an application.
148.213	Changes to an application.
148.215	Withdrawal of application.
148.217	Designation of adjacent coastal states under § 9(a)(2)

INFORMAL PUBLIC HEARING

148.231	Notice of public hearing.
148.233	Testimony and argument.
148.235	Report of public hearing.

FORMAL HEARING

148.251	Determination to hold formal hearing; notice of formal hearing.
148.253	Assignment of administrative law judge; disqualification.
148.255	Jurisdiction of the administrative law judge.
148.257	Authority of the administrative law judge.
148.259	Ex parte communications.
148.261	Parties.
148.263	Intervention.
148.265	A person not a party.
148.267	Appearance and practice.
148.269	Requirements for documents.
148.271	Subscription.
148.273	Filing.

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Subpart B—Applications

GENERAL

§ 148.101 Applicability.

This subpart prescribes rules that apply to each application, including competing applications described in § 5(d) (3) of the Act, for the issuance, amendment, renewal, and transfer of a license for the ownership, construction, and operation of a deepwater port.

§ 148.103 Application staff.

The application staff is the Deepwater Ports Project of the Office of Marine Environment and Systems, Commandant (G-WDWP/61), U.S. Coast Guard, 400 Seventh Street, S.W., Washington, D.C. 20590.

§ 148.105 Preparation.

(a) Any person may confer with the application staff concerning the preparation of an application.

(b) An applicant may incorporate by reference in his application any current information contained in previous applications or reports that he has submitted to the application staff. Reference must be clear and specific.

§ 148.107 Copies; fees.

(a) An application for a license must be submitted with fifty copies to the application staff.

(b) A nonrefundable application fee of \$100,000 must be submitted with each application for issuance of a license.

(c) Additional costs to adjudicate an application, when assessed, must be submitted to the application staff.

(d) Fees and costs assessed under this section must be made payable to the United States Treasury.

§ 148.109 Contents of application for issuance of license.

In addition to meeting the requirements of sections 4(e)(2) and 5(c) of the Act, each application must include the following:

(a) *Proof of citizenship.* (1) If the applicant is an individual, group of individuals, a partnership or an association, an affidavit from each individual stating that he is a citizen of the United States of America.

(2) If the applicant is a corporation, one copy of its charter or certificate and articles of incorporation, certified by the secretary of state or other appropriate authority.

(b) *Proof of authority.* If the applicant is a state, or combination of states, or any political subdivision, agency, or instrumentality of a state, including a wholly owned corporation, copies of the laws authorizing the operations detailed in the application.

(c) *Service of documents.* The name and address of a person upon whom service may be made if a formal hearing is held on the application.

(d) *Verification.* A statement at the end of the application subscribed and sworn to before a notary public that the person who signed the application has

read it and that its contents are true to his best knowledge and belief.

(e) *Financial information.* (1) Most recent financial statements, including as a minimum an income statement for 12 months ending on the last day of the last quarter prior to 30 days before the submission of the application and a balance sheet as of the same last day of the income statement, accompanied by an opinion of a certified public accountant.

(2) Financial statement of each corporate member of the applicant.

(3) An estimate of the minimum annual oil throughput required for the deepwater port and associated onshore facilities to break even financially.

(4) Copies of any financial commitments which individual corporate members have entered into with applicant.

(5) An estimate of operating and construction costs and projected revenue based on estimated oil throughput.

(6) Plans for financing operating and construction costs, including sources of financing supported by full details as to the type, amount, and percentage of equity and short-term and long-term financing.

(7) A general projection of the use of the facility during the life of the license including a market analysis of the demand for imported petroleum within the geographic area to be served by the deepwater port and guarantees and options made by specific companies which would provide for sustained use of the facility.

(8) A detailed estimate of the cost of removal of all components of the deepwater port.

(f) *General technical information.* (1) Description of the applicant's experience in offshore operations with particular emphasis on involvement in offshore transfer and storage of liquid cargo and ship to shore transfer operations.

(2) A description of the results of any research and development projects that have been conducted during preparation for submission of an application for a license to own, construct, and operate a deepwater port.

(3) The name of any contractor to be used in constructing any part of the deepwater port, if known, and a description of his experience in construction of marine terminal facilities, offshore structures, underwater pipelines, seabed foundations or any other experience that would bear on his qualification to participate in the construction of a deepwater port.

(4) The name and qualifications of each engineering firm that will design the deepwater port, or any portion of the port.

(g) *Water.* A state water quality certification as required by section 401(a) (1) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1341(a) (1).

(g-1) *Coastal zone management.* The certification required by section 307 of the Coastal Zone Management Act of 1972 for each state described in section

- Sec.
148.275 Service of document; other transmittal.
148.277 Conferences.
148.279 Motions.
148.281 Subpoenas.
148.283 Hearing date.
148.285 Reporter; transcript; corrections.
148.287 Order of procedure.
148.289 Evidence.
148.291 Rulings referred or appealed to the Commandant.

APPLICATION APPROVAL OR DENIAL

- 148.321 Decision.
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Subpart D—Issuance of a License

- 148.400 Applicability.
148.403 Issuance of a license.
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Subpart E—Site Evaluation

- 148.501 Applicability.
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Subpart F—Rules of Procedure for Exemptions From Any Requirements in Deepwater Port Regulations

- 148.601 Applicability.
148.603 Petition for exemption.
148.605 Form and contents of petition for an exemption.
148.607 Exemption criteria.

AUTHORITY: Secs. 5(a), 5(b), Pub. L. 93-627, 88 Stat. 2131 (33 U.S.C. 1504 (a), (b)).

Subpart A—General

§ 148.1 Purpose.

This subchapter prescribes regulations for the licensing, construction, design and equipment, and operation of deepwater ports.

§ 148.3 Definitions.

(a) "Act" means the Deepwater Port Act of 1974.

(b) The terms listed in § 3 of the Act, whenever used in this subchapter, have the same meaning that they have in the Act.

(c) "Platform" means a fixed structure which rests on or is embedded in the sea bed that has floors or decks in which an activity or specific function may be carried out.

(d) "Pumping platform complex" (PPC) means a single platform or a series of interconnected platforms that have one or more of the following capabilities:

(1) Pumping oil from a vessel to the shore.

(2) Berthing and messing facilities for assigned personnel.

(3) Landing area for helicopters.

(4) Mooring and loading for small vessels.

(5) Space for controlling or monitoring oil transfer operations.

(6) Space for other deepwater port operations.

(e) "SPM" means single point mooring buoy.

(f) "Gross under keel clearance" means the distance between the keel of a tanker and the ocean bottom when the tanker is fully loaded with oil and moored or anchored in calm water.

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9(a)(1) of the Deepwater Port Act of 1974 if the state has an approved coastal zone management program.

(b) *Grid identification.* Identification of the grid established either by the Secretary of the Interior under § 5 of the Outer Continental Shelf Lands Act (43 U.S.C. 1334) or by a state under the authority of § 3 of the Submerged Lands Act (43 U.S.C. 1311) within which any part of the proposed deepwater port or its approaches may be located. For any grids presently under lease, the applicant must include a copy of an agreement with the lessees providing that the lessees agree not to exercise their rights under the leases within these grids.

(i) *Overall site plan.* A single line drawing showing the location and type of each component of the proposed deepwater port, including floating structures, fixed structures, aids to navigation, manifold systems and onshore storage areas, pipelines, and refineries.

(j) *Site plan for marine components.* A complete site plan consisting of—

(1) The proposed size and location of—

- (i) All fixed and floating structures;
- (ii) Swing circles;
- (iii) Maneuvering areas;
- (iv) Recommended vessel traffic separation plan for approaching the port and the proposed Vessel traffic pattern in the port area;
- (v) Recommended anchorage areas;
- (vi) Recommended mooring area for support vessels;
- (vii) Required and recommended aids to navigation; and
- (viii) Pipelines within the marine site;

(2) The chartered water depth throughout the proposed marine site; and

(3) A hydrographic survey of the proposed marine site.

(k) *Soil data.* An analysis of the general character and condition of the ocean bottom and sub-bottom throughout the marine site and along the path of the pipeline to the shore, including an opinion concerning—

(1) The suitability of the soil to accommodate the anticipated design load of each marine component that will be fixed to the ocean floor; and

(2) The stability of the seabed when exposed to the environmental forces resulting from severe storms, or to lesser forces that continue for an extended period.

(l) *Operational information.* (1) The length, draft, and dead weight tonnage of the largest tanker to be accommodated at each SPM.

(2) An analysis of and justification for the adequacy of the selected gross under keel clearance at the marine site for vessels to be accommodated at each SPM including description of the data, sources of data, and techniques used.

(3) A detailed description of, including the manner of determining, the wind, wave, and current conditions during which the following would occur:

(i) Shutdown of oil transfer operations.

(ii) Prohibition on mooring to an SPM.

(iii) Shutdown of all operations and evacuation of the port.

(4) The speed limits proposed for tankers transiting the traffic lanes and safety zone.

(m) *Floating components data.* (1) A complete description and preliminary design drawing of each floating component, including the hoses and the anchoring or securing structure and navigation lights if the component is a mooring buoy.

(2) The design criteria, developed pursuant to Part 149 of this subchapter, to which each floating component is to be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice to be followed.

(5) A description and the results of any design and evaluation studies performed on a floating component.

(6) A description of safety, firefighting, and pollution prevention equipment to be used on each floating component.

(7) A description of lighting to be used on floating hoses for night detection.

(n) *Fixed marine components data.*

(1) A complete description and preliminary design drawing of each fixed marine component.

(2) The design criteria, developed pursuant to Part 149, to which each fixed marine component is to be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice to be followed.

(5) A description and the result of any design and evaluation studies performed for any fixed marine component.

(6) A description of navigational lighting, safety, lifesaving, firefighting, pollution prevention and removal, and waste treatment equipment to be installed.

(7) A description and preliminary design drawing of the oil pumping equipment, piping system, control and instrumentation system, and any associated equipment, including the oil throughput measuring equipment, leak detection equipment, alarm system, and emergency shutdown equipment.

(8) The personnel capacity of each PPC.

(o) *Offshore pipeline data.* (1) A description and preliminary design drawing of the marine pipeline, including size, throughput capacity, length, depth and protective devices;

(2) The design criteria to which the marine pipeline is to be designed and built;

(3) The design standards and codes to be used;

(4) The title of each recommended engineering practice to be followed;

(5) A description of the metering system to be used to measure flow rate; and

(6) Information concerning all submerged or buried pipelines that will be crossed by the offshore pipeline and the manner in which the crossing will be made.

(p) *Onshore components data.* (1) A description of the location, capacity, and

ownership of, and a preliminary design drawing for construction of new or expansion of existing onshore pipelines, storage facilities, and refineries to be served by the deepwater port.

(2) Location, capacity, and ownership of existing onshore pipelines, storage facilities and refineries to be served by the deepwater port.

(3) A chart showing the location of all planned and existing onshore pipelines, storage facilities, and refineries to be served by the deepwater port.

(q) *Miscellaneous components data.* (1) A description of the communications systems to be used in operation of the deepwater port.

(2) A description of the radar navigation system to be used on operation of the deepwater port to include the type and characteristics of the radar and the antenna location.

(3) A description of plans and method of bunkering vessels using the deepwater port.

(4) Type, size and number of vessels to be used in bunkering, mooring, and servicing the vessels using the deepwater port.

(5) A description of the radar beacon (RACON) to be used in operation of the deepwater port.

(r) *Construction procedures.* A description of the method and procedures to be used in constructing each component of the deepwater port.

(s) *Draft Operations Manual.* A draft Operations Manual for the proposed port.

NOTE: Guidance for preparing a draft Operations Manual is found in the Guidelines for Preparation of a Deepwater Port Operations Manual" and may be obtained from the Commandant.

(t) *Environmental analysis.* An environmental analysis prepared in accordance with "Guide to Preparation of Environmental Analyses for Deepwater Ports."

NOTE: Detailed guidelines and format for preparation of the environmental analysis are published in "Guide to Preparation of Environmental Analyses for Deepwater Ports."

(u) *Aids to Navigation—(1) Position.* For each proposed aid to navigation, the proposed position described by two or more horizontal angles, or by the bearings and distance, from charted landmarks.

(2) *Maintenance.* For each proposed aid to navigation, the name and address of each person proposed to maintain the aid after installation.

(3) *Obstruction lights and rotating lighted beacon.* For each proposed obstruction light and the proposed rotating lighted beacon, the color, characteristic, effective intensity, height above water, and description of illumination apparatus, including the type, model, and name and address of the manufacturer.

(4) *Fog signals on structures.* For each proposed fog signal on a structure, the characteristic and description, including the model and name and address of the manufacturer.

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(5) **Buoys.** (i) For each proposed buoy, the shape, color, number or letter, and depth of water in which located.

(ii) For each proposed buoy light, the information required in paragraph (u) (3) of this section.

(iii) For each proposed fog signal on a buoy, the type, characteristic, and description, including model and name and address of the manufacturer.

(6) **Radar beacon.** For the proposed radar beacon (RACON), radar pulse code, height above water, antenna type, and description, including type, model, and name and address of manufacturer.

(v) **Telecommunications equipment.** The information prescribed by, and submitted on, the appropriate Federal Communications Commission (FCC) forms for applying for the FCC licenses required to operate telecommunication equipment at the port.

(w) **National Pollutant Discharge Elimination System Information.** The information prescribed by, and submitted on, the "National Pollutant Discharge Elimination System (NPDES) Application for Permit to Discharge, Short Form D" for applying for issuance of a discharge permit by the Administrator of the Environmental Protection Agency.

(x) **Discharge of dredged or fill material.** The information prescribed by, and submitted on, Form EP 1145-2-1 contained as Appendix B of "Application for Department of Army Permits for Activities in Waterways, EP 1145-2-1 of 1 October 1974" for each permit issued by the Secretary of the Army in compliance with—

(1) Section 10 of the Rivers and Harbors Act of 1899 (30 Stat. 1151; 33 U.S.C. 403);

(2) Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816; 33 U.S.C. 1344); or

(3) Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (86 Stat. 1032; 33 U.S.C. 1413).

(y) **Antitrust review information.**—(1) **Corporate Structure.** (i) Name, address and principal business activity of applicant and each affiliate.

(ii) Name and address of any firm controlling applicant or each affiliate.

(iii) A copy of the latest annual balance sheet and income statement and consolidated balance sheet and income statement of applicant and each affiliate.

(2) **Ownership and production of crude oil.** (i) For each state in the United States and for each foreign country, information which shows separately for each applicant and each affiliate:

(A) Proved reserves of crude oil as of December 31 of the 3 calendar years prior to the date of application as submitted to the Committee on Petroleum Reserves of the American Petroleum Institute;

(B) Total production of crude oil during the 3 calendar years prior to the date of application, and;

(C) Net share of crude oil production during the 3 calendar years prior to the date of application.

(3) **Ownership and operation of refineries.** For each refinery within the United

States in which the applicant or any affiliate has an interest, information which shows:

(i) The location of the refinery;

(ii) Runs to still for the 3 calendar years prior to the date of application, and;

(iii) Motor gasoline and distillate fuel oil production for the 3 calendar years prior to the date of application.

(4) **Pipeline ownership and use.** (i) A map or diagram which indicates the location, capacity, throughput and direction of all crude oil gathering lines and crude oil and product pipelines in the United States which applicant or any affiliate uses or has an ownership interest in;

(ii) The percent and nature of interest of each owner for each pipeline in which the applicant or any affiliate has an ownership interest, and,

(iii) A copy of the shareholders agreements and attachments thereto for each pipeline in which applicant or any affiliate holds an interest.

(5) **Extant documents relating to deepwater ports.** (i) A list of all documents in the possession of the applicant or in the possession of any affiliate which relate to deepwater ports, were prepared within three years of the application date, and wall under one or more of the following categories:

(A) Prepared by, for, or submitted to the Board of Directors, executive management, or planning committee of the applicant or any affiliate.

(B) Prepared by the planning department, the economic department, the crude oil supply and distribution department, or financial department of applicant or any affiliate.

(C) Concern the financing of deepwater ports.

(D) Concern the projected profitability of deepwater ports.

(E) Concern membership in a joint venture for the construction, operation, or financing of a deepwater port.

(F) Contain or concern the shareholders agreement for the applicant or attachments or amendments thereto, including but not limited to memoranda concerning the negotiation of such agreements, attachments, or amendments.

(G) Concern common carrier regulations of deepwater ports.

(ii) The date, title, subject, author, and affiliate attesting that the documents listed as required in subparagraph 5(i) of this paragraph will be made available during normal business hours to authorized examiners of the Federal Trade Commission for inspection and copying upon 24 hours notice.

(iv) A detailed description of the persons, offices, and departments of each applicant and affiliate which were involved in the planning, evaluating, or approving participation in the construction, ownership, financing, or operation of deepwater ports.

(v) A certificate signed by each applicant and affiliate attesting that each person described as required in subparagraph 5(iv) of this paragraph will be

available to authorized examiners of the Federal Trade Commission for the purposes of oral interviews under oath.

Subpart C—Application Proceeding

GENERAL

§ 148.201 Purpose.

This subpart prescribes rules of procedure and practice for application proceedings.

§ 148.203 Applicability.

(a) Except as provided in paragraph (b) of this section, the rules in this subpart apply to each application proceeding.

(b) The rules for formal hearings in §§ 148.251–148.291 apply only to application proceedings in which the Commandant issues a notice of formal hearing under § 148.251. The rules for informal hearings in §§ 148.231–148.235 apply only to proceedings to consider applications for issuance, transfer, and renewal of a license.

§ 148.205 Clerk; docket; record.

(a) The mailing address for the clerk in each proceeding is Commandant (G-CMC 82), U.S. Coast Guard, Washington, D.C. 20590. The office of the clerk is located in the Nassif Building, 400 Seventh Street SW., Room 8234, Washington, D.C.

(b) The clerk maintains a docket and the record for each proceeding. The docket lists each document in the record. The record contains all documents filed or issued in the proceeding that the clerk has received and any other documents in the proceeding that are docketed in accordance with this subpart.

§ 148.207 Availability of documents in the record.

(a) The procedure for inspecting and copying documents in the record of a proceeding is contained in 49 CFR Part 7 and section 14 of the Act.

(b) Comments submitted by Federal agencies and departments for each proceeding in accordance with sections 5(e) (2) and 7(b) of the Act are docketed when they are received. Copies of the draft and final environmental impact statements prepared in accordance with section 5(f) of the Act are docketed when they are transmitted to the Council on Environmental Quality.

§ 148.209 Availability of draft environmental impact statement.

Copies of the draft environmental impact statement prepared in each proceeding may be obtained from the application staff.

§ 148.211 Processing an application.

The Chief, Office of Marine Environment and Systems takes the action described in section 5(c)(1) of the Act for processing each application received in a proceeding and for issuing the notices described in section 5(c)(1). If he issues notice of application pursuant to section 5(c)(1) of the Act, the application staff thereafter delivers the application described in the notice to the clerk for docketing. A notice of application for an

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amendment also gives notice that interested persons may submit relevant material and written argument concerning the application to the clerk for docketing within 45 days after the date of the notice.

§ 148.213 Changes to an application.

If information in an application becomes inaccurate or incomplete after it is docketed in a proceeding but before the proceeding is terminated, the applicant must promptly file an amendment furnishing the corrected or additional information. Fifty copies of the amendment must be submitted to the application staff when the revisions are filed.

§ 148.215 Withdrawal of application.

An applicant may withdraw his application in a proceeding at any time before the proceeding is terminated by delivering or mailing notice of withdrawal to the clerk for docketing.

§ 148.217 Designation of adjacent coastal states under section 9(a)(2) of the Act.

(a) A request under section 9(a)(2) of the Act for designation as an adjacent coastal state in a proceeding must—

(1) Be submitted in writing to the application staff;

(2) Be signed by the Governor of the State or a person he designates; and

(3) State why the designation should be made and may provide any documentation in support of the statement including documentation concerning risk of damage to the coastal environment of the State making the request that could occur as a result of an oil spill at the deep-water port proposed in the proceeding.

(b) The Secretary approves or denies each request submitted under this section.

INFORMAL PUBLIC HEARING

§ 148.231 Notice of public hearing.

After all applications in a proceeding are docketed, the Commandant issues a notice of public hearing and mails or delivers it to any person who requests it. The clerk docket the notice when it is published. Each notice lists the time and place for the hearings, factual issues in the proceeding, and procedural matters to govern the hearings.

§ 148.233 Testimony and argument.

Interested persons may attend any public hearing, present relevant material at the hearing, and submit briefs and oral argument after the hearing at a time determined by the presiding officer during the hearing.

§ 148.235 Report of public hearing.

As soon as practicable after a public hearing is completed, the presiding officer forwards a report of the hearing to the clerk for docketing. The presiding officer determines and announces to the participants during the course of the hearing what material will be attached to the report.

§ 148.251 Determination to hold formal hearing; notice of formal hearing.

(a) After the reports of public hearings are docketed in a proceeding, the Commandant determines whether there are specific and material factual issues concerning the applications that may be resolved by a formal hearing. If he determines that a formal hearing is necessary, he issues notice of formal hearing to the applicants, the application staff, and the administrative law judge.

(b) A notice of formal hearing lists the factual issues for resolution at the hearing, the applicants, and the administrative law judge assigned to conduct the hearing.

(c) The clerk mails or delivers a copy of the notice of formal hearing in a proceeding to any person who requests notice of formal hearing.

§ 148.253 Assignment of administrative law judge; disqualification.

(a) The Commandant assigns the administrative law judge for a formal hearing.

(b) The administrative law judge may disqualify himself at any time after assignment by filing notice of withdrawal from the proceeding. If on motion of a party the administrative law judge does not disqualify himself, the party may appeal the ruling to the Commandant by filing notice of appeal within seven days after the ruling on the motion is issued. A brief may be filed with the notice of appeal.

(c) If the assigned administrative law judge becomes unavailable during the proceeding, another administrative law judge is assigned.

§ 148.255 Jurisdiction of the administrative law judge.

(a) The jurisdiction of the administrative law judge over a proceeding begins when he is assigned. His jurisdiction ends 20 days after the transcript of the formal hearing is docketed or when he issues notice of withdrawal from the proceeding.

(b) The Commandant exercises the authority of an administrative law judge in a proceeding when no administrative law judge has jurisdiction.

§ 148.257 Authority of the administrative law judge.

The administrative law judge assigned to a formal hearing may—

(a) Administer oaths and affirmations;

(b) Issue subpoenas;

(c) Adopt procedures for the submission of evidence in written form;

(d) Rule on offers of proof and receive relevant evidence;

(e) Examine witnesses at the formal hearing;

(f) Dispose of procedural requests or similar matters;

(g) Convene, recess, reconvene, adjourn, and otherwise regulate the course of the formal hearing;

(h) Certify questions to the Commandant;

(i) If a party to a formal hearing fails to appear at a session of the hearing, proceed with the session without further notice to the party;

(j) Extend or shorten a time prescribed by this subpart to the extent consistent with the 240 day time limit prescribed in § 5(g) of the Act for completing public hearings in a proceeding;

(k) Prescribe a time for doing an act if the time is not prescribed in this subpart; and

(l) Take any other action authorized by or consistent with this subpart, the Act, or 5 U.S.C. 551-559.

§ 148.259 Ex parte communications.

If two or more applications have been filed in a proceeding, or if a person opposing an application has intervened in the proceeding, the administrative law judge may not consult any party on a fact in issue except on notice and opportunity for all parties to participate.

§ 148.261 Parties.

The parties to a formal hearing are the application staff, the applicants, and intervenors in the proceeding.

§ 148.263 Intervention.

(a) Any person may file a petition to intervene in a formal hearing. The petition must be addressed to the administrative law judge, must identify the specific matters in the hearing on which he seeks to intervene and his interest in those matters, and must designate the name and address of a person upon whom service may be made if the petition is granted. A party to the formal hearing may file an answer to a petition within five days after the petition is filed.

(b) A petition to intervene must be filed within ten days after notice of formal hearing is issued.

(c) Intervention may be limited to particular matters or to particular times in the hearing if necessary to prevent repetitious evidence and argument or to control the course of the formal hearing.

(d) If the administrative law judge denies a petition in whole or part, the petitioner may appeal to the Commandant by filing notice of appeal within seven days after the denial is issued. A brief may be filed with the notice of appeal. A party may file a brief in support of or in opposition to the appeal within seven days after the notice of appeal is filed.

§ 148.265 A person not a party.

(a) At any time before a formal hearing, any person who is not a party may submit to the administrative law judge a petition to present evidence at the formal hearing. The petition must be sent to the administrative law judge or to the clerk who will forward it to the administrative law judge. The petition must contain a statement describing in detail the evidence to be presented and must show its relevancy to factual issues listed in the notice of formal hearing.

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(b) If a petition is granted, the ruling delineates the evidence that may be presented at the formal hearing.

§ 148.267 Appearance and practice.

(a) Each party to a formal hearing, except an individual, must appear by his attorney. Each attorney must file a notice of appearance that states his name, address, telephone number, and the name of the person he represents.

(b) The administrative law judge assigned to the formal hearing may suspend or bar an attorney from representing a person in the proceeding if he finds that the attorney—

(1) Is not admitted in good standing to practice before a Court of the United States or the highest court of any state, territory, or possession of the United States; or

(2) Has failed to conform to the standards of conduct required for attorneys in the Courts of the United States.

(c) The administrative law judge may exclude any person from a formal hearing or a conference if the person is contumacious at the hearing or conference.

§ 148.269 Requirements for documents.

(a) Each document, except an application, filed in a proceeding or submitted to the administrative law judge must—

(1) List the docket number of the proceeding; and

(2) Be signed in ink by the person filing or submitting the document and show the capacity of the person signing, his address, and the date of signing.

(b) Each document filed in a proceeding, except an application, must—

(1) Be accompanied by ten copies of the document;

(2) Show the name and address of each person upon whom a copy of the document has been served;

(3) Be accompanied by an affidavit showing proof of service if the person serving the process is not an attorney; and

(4) Contain the following certificate of service if the person serving the process is an attorney:

I hereby certify that I have this day served the foregoing document upon _____ in accordance with § 148.275 of the Rules of Procedure.

Dated at: _____ this _____ day of _____, 19____.

Signature

For _____
Name of Party or
Petitioner

§ 148.271 Subscription.

The signature on a document filed, served, or submitted to the administrative law judge in a proceeding is certification by the person signing that he has full authority to sign the document, that he has read it and knows its contents, that to the best of his knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay.

§ 148.273 Filing.

(a) A document is filed in a proceeding when it meets the requirements in

§ 148.269 of this subpart and is either mailed or delivered to the clerk.

(b) If the clerk receives a document that does not comply with § 148.269 of this subpart, he returns it to the person who submitted it with a statement of reasons for the return.

(c) Filing by mail must be by certified mail.

§ 148.275 Service of document; other transmittal.

(a) The clerk serves each order, ruling, decision, and notice upon all parties to a formal hearing when issued, except a document issued at the formal hearing or a prehearing conference.

(b) Each document before it is filed in a proceeding must be served upon—

(1) All parties, except the person filing the document; and

(2) The administrative law judge or if no administrative law judge has jurisdiction, the Commandant.

(c) Service of a document upon a party must be made upon the attorney representing the party, or for a party not represented by an attorney, upon the party.

(d) Service must be made by handing a copy of the document to the person to be served or depositing a copy of the document in the mail.

(e) This section does not apply to service of subpoenas. Rules for serving subpoenas are in § 148.281 of this subpart.

(f) The clerk mails to a person who is not a party, and who has submitted a petition or motion in the proceeding, a copy of the ruling on the petition or motion when issued and a copy of the action taken on any appeal of the petition. He mails a copy of the notice of the formal hearing, when the notice is issued, to each person whose petition to present evidence has been granted under § 148.265 of this subpart.

(g) The clerk provides the applicants and the administrative law judge with a copy of each application and report of public hearing docketed in the proceeding.

§ 148.277 Conferences.

(a) The administrative law judge may hold one or more prehearing conferences to give the parties an opportunity to present and consider facts and arguments, to exchange exhibits proposed to be offered in evidence, and to obtain stipulations, admissions, and agreements to produce documents and other tangible things. The administrative law judge may consider at a conference the procedure to be followed at the formal hearing, limitations on the number of witnesses at the hearing, and any other matters that may expedite the disposition of the proceeding.

(b) The administrative law judge may hold conferences during a formal hearing to expedite the disposition of the proceeding.

(c) If a prehearing conference is held, the administrative law judge issues a notice reciting the action taken at the conference and any agreements made between the

§ 148.279 Motions.

(a) Any request for a ruling or relief in a proceeding, except a request for a subpoena or a petition to intervene or present evidence at a formal hearing, must be submitted by motion. Each motion must be addressed to the administrative law judge, state the ruling or relief sought and the grounds therefor, and be accompanied, if appropriate, by a proposed form of order. Each written motion must be filed. An oral motion may be made only at the formal hearing or a conference.

(b) Within seven days after service of a written motion, a party may file an answer supporting or opposing the motion.

(c) Unless otherwise authorized by the administrative law judge, no oral argument is heard on a written motion. A brief may be filed with a written motion or an answer to a written motion.

(d) The administrative law judge issues a ruling and any appropriate order for each motion made.

(e) Except as otherwise provided in §§ 148.253 and 148.263 of this subpart, a ruling of the administrative law judge on a motion may not be appealed to the Commandant. The administrative law judge may refer any ruling to the Commandant for review if he determines that the ruling involves an important question of law or policy.

§ 148.231 Subpoenas.

(a) At any time before a formal hearing is completed, a party may submit a request to the administrative law judge for issuance of a subpoena. A request for issuance of a subpoena must show the general relevance and scope of the evidence sought.

(b) A proposed subpoena and fifteen copies, and witness fees for one day and mileage, must be submitted with each request. A proposed subpoena must contain—

(1) The docket number of the proceeding;

(2) The captions "Department of Transportation," "Coast Guard," and "Licensing of Deepwater Port for coastal waters off (insert name of the coastal state closest to the proposed deepwater port)";

(3) The name and office of the administrative law judge;

(4) A statement commanding the person to whom the subpoena is directed to attend the formal hearing and give testimony or, for a subpoena to produce documentary evidence, a statement commanding the person to produce designated documents, books, papers, or other tangible things at a designated time or place; and

(5) Notice of the procedure in § 148.279 and paragraph (e) of this section for quashing a subpoena.

(c) Unless otherwise authorized by the administrative law judge, a subpoena must be served by exhibiting a copy of the subpoena and leaving the copy with the person to be served. After service or attempted service, the person serving the subpoena must return it to the administrative law judge. If a person other than

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a United States marshal or his deputy serves the subpoena, he must attach an affidavit to the subpoena stating the date, time, and manner of service. If service cannot be made, the reasons for not making service must be stated on the subpoena.

(d) A subpoenaed witness is paid the same fees and mileage paid to witnesses subpoenaed in District Courts of the United States. The person requesting a subpoena must pay the fees and mileage.

(e) Any motion to quash a subpoena must be submitted within seven days after service of the subpoena.

(f) If a person does not comply with a subpoena and the administrative law judge on motion rules that good cause has been shown for seeking judicial enforcement of a subpoena, he refers his ruling to the Commandant.

§ 148.283 Hearing date.

(a) The administrative law judge schedules the formal hearing by issuing a notice to the parties.

(b) The clerk mails or delivers a copy of the notice to any person who requests it.

§ 148.285 Reporter; transcript; corrections.

(a) The reporter for a formal hearing is arranged for by the clerk. The reporter prepares a verbatim transcript of the hearing under the supervision of the administrative law judge. Nothing may be deleted from the transcript unless ordered by the administrative law judge and noted in the transcript.

(a) After a formal hearing is completed, the administrative law judge certifies and forwards the transcript to the clerk for docketing.

(c) At any time within 20 days after the transcript is docketed, the administrative law judge may make corrections to the certified transcript. Corrections when filed are attached to the transcript as appendices. Any motion to correct the transcript must be submitted within ten days after the transcript is docketed.

§ 148.287 Order of procedure.

The administrative law judge determines the order of procedure for each formal hearing.

§ 148.289 Evidence.

A party may present evidence and conduct cross-examination of witnesses at a formal hearing. Other persons may present evidence that they have been authorized to present under § 148.263 of this subpart.

§ 148.291 Rulings referred or appealed to the Commandant.

(a) The Commandant reviews each ruling referred or appealed to him under this subpart and issues a ruling and any appropriate order. Unless otherwise ordered by the Commandant or the administrative law judge, review of a ruling does not stay a formal hearing or extend a time period prescribed by this subpart.

(b) If the administrative law judge refers a ruling to the Commandant, he gives notice to the parties of the referral.

APPLICATION APPROVAL OR DENIAL

§ 148.321 Decision.

The Secretary issues the decision approving or denying each application in a proceeding.

§ 148.323 Termination of proceeding before approval or denial of an application.

The Commandant terminates a proceeding if—

(a) All applications are withdrawn before the decision approving or denying them is issued; or

(b) In a proceeding with one application that does not have all of the information required by Subpart B of this Part, the applicant after inquiry by the application staff does not provide adequate assurance that further information to make the application is forthcoming.

Subpart D—Issuance of a License

§ 148.400 Applicability.

This Subpart prescribes rules that apply to the issuance of a license under the Act.

§ 148.403 Issuance of a license.

If an application under the Act is approved, a license is issued which contains the following:

(a) The name and number or identification of the port.

(b) The name of the owner and operator of the port.

(c) Conditions to the ownership, construction, and operation of the deepwater port issued under section 4(e) of the Act.

§ 148.405 Term of license.

Each license prescribes the term of the license as a condition.

Subpart E—Site Evaluation

§ 148.501 Applicability.

This Subpart prescribes rules that apply to site evaluation at potential deepwater port locations.

§ 148.503 Report of evaluation.

Any person who plans to conduct a site evaluation or preconstruction testing for a potential deepwater port location shall submit the following information to the application staff at least 90 days before conducting the site evaluation or preconstruction testing:

(a) The location of the site.

(b) A detailed description of the on-site tests and evaluations to be conducted and of the data collection methods to be used.

Subpart F—Rules of Procedure for Exemptions From Any Requirements in Deepwater Port Regulations

§ 148.601 Applicability.

This Subpart sets forth the procedures governing exemptions from any requirements in this Subchapter.

§ 148.603 Petition for exemption.

Any person required to comply with any specific requirements in this Subchapter may submit a petition to the Commandant for an exemption.

§ 148.605 Form and contents of petition for an exemption.

A petition must be submitted in writing. It may be in any form, but it must be specific and it must contain all data necessary to evaluate its merits.

§ 148.607 Exemption criteria.

The Commandant grants an exemption if he determines that—

(a) Compliance with the regulations would be contrary to the public interest;

(b) Compliance is not necessary;

(c) Compliance would not enhance safety or the environment;

(d) Compliance is not practical because of local conditions or because the materials or personnel needed for compliance are unavailable;

(e) National defense or national economy justify a departure from the rules; or

(f) The alternative proposed in the application would ensure comparable or greater safety, environmental protection, quality of construction, maintenance and operation of a deepwater port, and would be consistent with recognized principles of international law.

PART 149—DESIGN, CONSTRUCTION, AND EQUIPMENT

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AUTHORITY: Secs. 10(a), 10(b), Pub. L. 93-627, 88 Stat. 2137-8 (33 U.S.C. 1509(a), (b))

Subpart A—General

§ 149.101 Purpose.

This part prescribes design, construction, and equipment requirements for each deepwater port.

§ 149.105 Licensee.

The licensee of a deepwater port shall ensure that the port meets the design and construction requirements in this part.

Subpart B—Design, Construction, and Equipment; General

§ 149.201 Applicability.

This subpart prescribes requirements for design, construction, and equipment that apply to each deepwater port.

§ 149.203 Submission of construction drawings.

The licensee of a deepwater port shall submit to the Commandant—

- (a) Two complete sets of construction drawings of each fixed marine and floating component and each offshore pipeline certified by a registered professional engineer at least ninety days before he starts to construct the component; and
- (b) Two sets of record drawings on 105 mm negatives when the component is constructed. Each negative must be—

- (1) Placed in an individual envelope; and
- (2) Identified and indexed.

§ 149.205 Design standards.

(a) Each fixed marine and floating component of a deepwater port, except hoses and aids to navigation buoys, must be designed to withstand at least the combined wind, wave, and current forces of the most severe storm that can be expected to occur in any period of 100 years at the port.

NOTE: "Recommended Procedure for Developing Deepwater Ports Design Criteria" describes a method to determine the wind, wave, and current criteria for use in determining the forces of the storm described by this paragraph. This guide may be obtained from the Commandant.

(b) Each platform must be designed in accordance with the American Petroleum Institute "Recommended Practice for Planning, Designing, and Constructing Fixed Offshore Platforms" (API RP 2A) fifth edition, January 1974, and the codes and standards in API RP 2A, to the extent that the recommended practice, codes, and standards are consistent with this subchapter.

(c) Each electrical installation on a platform must be designed to the extent practicable in accordance with the American National Standards Institute "Practice for Electrical Installations on Shipboard" (ANSI C 110.1-1972).

(d) Each boiler and pressure vessel on a platform must be designed in accordance with Sections I, IV, and VIII of the American Society of Mechanical Engineers "ASME Boiler and Pressure Vessel Code", 1974 edition, to the extent that the code is consistent with this subchapter.

§ 149.206 Construction.

(a) The following walls on a platform must meet the requirements in 46 CFR 92.07-5(b) for "A" class bulkheads on cargo vessels, except that each wall must be made of steel:

- (1) Each wall that separates a galley, a paint and lamp locker, a space housing emergency power generating equipment, or a cargo or machinery space from any other space.
- (2) Each wall of a stairway that connects 3 or more decks.

- (3) Each wall of an elevator shaft, of a dumbwaiter shaft, and of any other shaft connecting two or more decks.

(b) The following walls on a platform must meet the requirements in 46 CFR 92.07-5 (b) or (c) for "A" or "B" class bulkheads on cargo vessels:

- (1) Each corridor wall of a personnel accommodation space.

- (2) Each wall of a stairway that connects two decks or each wall of a structure enclosing an opening to the stairway.

(c) A platform wall that is not described in paragraph (a) or (b) of this section must meet the requirements in 46 CFR 92.07-5 (b), (c), or (d) for "A", "B", or "C" class bulkheads on cargo vessels.

(d) Each deck and stairway on a platform must be made of steel and may have a deck covering.

(e) A space that is described in paragraphs (a) (2) or (a) (3) of this section must be enclosed by walls.

(f) Each interior stairway that connects two decks on a platform must be enclosed by walls or an opening to the stairway must be enclosed by a structure.

(g) Each interior stairway that connects three or more decks on a platform must have an opening to each deck.

(h) Each opening in a wall on a platform must have a door that meets the requirements in this section for the wall. Each door must—

- (1) Be a self-closing type;
- (2) Not have holdback hooks or other means to hold the door open; and

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(3) Not have a louver or other opening, except that a door to a sleeping space may have a louver in the lower half.

(i) Each deck covering on a platform must be a type that is approved under 46 CFR Subpart 164.006 for deck coverings on cargo vessels.

(j) Each ceiling, sheathing, furring, and insulation on a platform, and each holding piece that secures a wall, ceiling, or insulation on a platform, must be an incombustible material of a type that is approved under 46 CFR, Subpart 164.009 for cargo vessels.

(k) The interior finish on each wall and ceiling in a corridor or hidden space on a platform, and any interior finish of a thickness greater than 2/28 inches on any other wall or ceiling on a platform, must be a type that is approved under 46 CFR, Subpart 164.012 for cargo vessels.

§ 149.207 Environmental protection.

Each component must be designed to meet Federal laws and regulations governing the prevention of the discharge of pollutants.

§ 149.209 SPM's.

Each SPM must meet the Rules for Building and Classing Single Point Moorings of the American Bureau of Shipping.

§ 149.211 Emergency equipment.

Each platform must have installed mountings for each item of—

- (a) lifesaving equipment; and
- (b) portable and semiportable fire-fighting equipment.

§ 149.213 Helicopter fueling facilities.

Helicopter fueling facilities must comply with the requirements of the National Fire Protection Association, National Fire Code 407, Part IV "Fueling and Elevated Heliports." For the purpose of this part, "ground level" means "below the lowest platform working level."

§ 149.215 Interference with helicopter operations.

Aids to navigation, communication, or radar equipment must be installed so as not to interfere with helicopter operations.

§ 149.217 First aid station.

Each PPC must have a first aid station that has adjoining space for six beds or, if the personnel capacity of the PPC is less than 90, one bed for every 15 persons.

Subpart C—Pollution Prevention Equipment

§ 149.301 Applicability.

This subpart prescribes requirements for pollution equipment that apply to each deepwater port.

§ 149.303 Overflow and relief valve.

No oil transfer system overflow or relief valve may be installed so as to allow an oil discharge.

§ 149.305 Remotely controlled shut-off valve.

Each pipeline end manifold at a single point mooring (PLEM) must have

a shut-off valve that can be remotely controlled from the cargo transfer supervisor's normal place of duty.

§ 149.307 Blank flange and butterfly valve.

Each floating hose string must have a blank flange and a butterfly valve at the vessel manifold end.

§ 149.309 Manually operated shut-off valve.

Each oil transfer line must have a manual shut-off valve on each SPM buoy.

§ 149.311 Malfunction detection system.

Each oil transfer system must have a system that can—

- (a) Detect and locate all leaks and other malfunctions, between the PLEM and the shore; and

- (b) Be monitored at the cargo transfer supervisor's normal place of duty.

§ 149.313 Oil transfer system alarm.

Each oil transfer system must have an alarm system to signal a malfunction or failure of the system that is—

- (a) Capable of being activated at the cargo transfer supervisor's normal place of duty;

- (b) Audible in all parts of the PPC except in areas of high ambient noise levels where hearing protection is required under § 150.509(d) of this subchapter;

- (c) Visible in areas of the PPC where hearing protection is required under § 150.509(d) of this subchapter by use of a high intensity flashing light; and

- (d) Distinguishable from the general alarm.

§ 149.315 Marking of oil transfer system alarm.

- (a) Each oil transfer alarm switch must be identified by the words "OIL TRANSFER ALARM" in red letters at least one inch high on a yellow background.

- (b) Each audio and each visual oil transfer alarm signaling device under § 149.312 must have a sign with the words "OIL TRANSFER ALARM" in red letters at least one inch high on a yellow background.

§ 149.317 Communications equipment.

- (a) Each deepwater port must have—

- (1) A means that enables two-way voice communication among the following persons—

- (i) The cargo transfer supervisor;
- (ii) the vessel's officer in charge of cargo transfer;

- (iii) The cargo transfer observer;

- (iv) The terminal supervisor;

- (v) The master or person in charge of service craft operating at the deepwater port; and

- (vi) The person in charge on the PPC;

- (2) A means, which may be the communications system itself, that enables each of the persons listed in subparagraph (1) of this section to indicate his desire to communicate with another of those persons.

(3) All communications equipment and facilities required by Title 47, Code of Federal Regulations.

(b) Each portable means of communications used to meet the requirements of this section must be—

- (1) Certified under 46 CFR 111.805 to be operated in a Group D, Class 1, Division 1, Atmosphere; and

- (2) Permanently marked with the atmospheric conditions in which it may be safely operated.

§ 149.319 Discharge containment and removal material and equipment.

- (a) Each deepwater port must have stored, on the pumping platform or on a service craft operating at the deepwater port, oil discharge containment and removal material and equipment that, to the extent best available technology allows, can contain and remove an oil discharge of at least 10,000 U.S. gallons.

- (b) Each deepwater port must have readily accessible additional containment and removal material and equipment for containing and removing oil discharges greater than 10,000 U.S. gallons. For the purpose of this paragraph, "access" may be by direct ownership, joint ownership, cooperative venture, or contractual agreement.

- (c) The type of discharge containment and removal material and equipment that will best meet the requirements of paragraphs (a) and (b) of this section must be determined in view of—

- (1) Oil handling rates of the deepwater port;

- (2) Volume of oil susceptible to being spilled;

- (3) Frequency of oil transfer operations at the deepwater port;

- (4) Prevailing wind and sea state condition at the deepwater port;

- (5) Age, capability, arrangement of and experience with the oil transfer system equipment at the deepwater port; and

- (6) Whether the discharge containment and removal material and equipment is shared and the expected frequency of use and probability of availability.

Subpart D—Safety Equipment

§ 149.401 Applicability.

This subpart prescribes requirements for safety equipment that apply to each deepwater port.

§ 149.402 Equipment not required on a PPC.

Each item of lifesaving and firefighting equipment on a PPC that is not required by this subpart must be approved under 46 CFR, Part 160 or 162.

CURBS, GUTTERS, DRAINS, AND RESERVOIRS

§ 149.403 Curbs, gutters, drains, and reservoirs.

Each platform must have enough curbs, gutters, drains, and reservoirs to collect all of the following discharges and wastes in the reservoirs:

- (1) All discharges from equipment, maintenance ships, and refueling facilities; and

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(2) All laboratory, sanitary, galley, and deck cleansing wastes, and similar wastes.

EMERGENCY POWER

§ 149.411 Emergency power.

(a) Each PPC must have emergency power generating equipment to provide power to operate all of the following at any time:

- (1) Emergency lighting circuits.
- (2) Aids to navigation equipment.
- (3) Communications equipment.
- (4) Radar equipment.
- (5) Alarm systems.
- (6) Sewage treatment equipment.
- (7) Electrically operated fire pumps.
- (8) Other electrical equipment designated in the Operations Manual by the licensee.

(b) No emergency power generating equipment required by this section may be located in a principal engineering space.

MEANS OF ESCAPE

§ 149.421 Means of escape from platform.

(a) Each platform must have at least one means of escape from the highest working level to the water with an entry at each working level.

(b) Each platform with living spaces must have at least two fixed means of escape from the highest level with living spaces to the water with an entry at each working level.

(c) Each platform must have at least one fixed or unfixed means of escape for every ten persons on board the platform, including the means of escape required under paragraphs (a) and (b) of this section.

(d) When two or more fixed means of escape are installed, at least two must be as far from each other as practicable.

(e) Each fixed means of escape required under this section must be a steel ladder or steel stairway.

(f) Each unfixed means of escape required under this section must be—

- (1) A portable ladder;
- (2) A flexible ladder; or
- (3) A knotted man rope.

§ 149.423 Means of escape from helicopter landing pad.

Each helicopter landing pad on the PPC must have at least two fixed means of escape—

(a) From the pad to the first working level below the pad or the water; and

(b) As far from each other as practicable.

PERSONNEL LANDINGS

§ 149.431 Personnel landings.

Each PPC must have at least two personnel landings for access to the platform from the water unless—

(a) Personnel landings are not possible because of the PPC design; and

(b) The PPC has a personnel basket transfer system.

§ 149.433 Personnel landing illumination.

Each personnel landing must have at least 1 foot-candle of artificial illumina-

tion on its guard rails or fence and on its deck.

GUARD RAILS, FENCES, NETS, AND TOEBOARDS

§ 149.441 Open sided deck, deck opening, catwalk, and helicopter pad protection.

(a) Each open sided deck, deck opening, and catwalk on each PPC must have protection that meets the "Safety Requirements for Floor and Wall Openings, Railings, and Toeboards" of the American National Standards Institute (ANSI A12.1-1973), except each must have toeboards.

(b) Each open side of each helicopter landing pad on the PPC must have—

- (1) Safety net; or
- (2) A lowered walkway that is 48 inches wide, is not more than 42 inches below the level of the pad, and has guard rails that meet the requirements of ANSI A12.1-1973, except each must have toeboards.

FIXED FIRE MAIN SYSTEM FOR WATER

§ 149.451 Fixed fire main system for water.

Each PPC must have a fixed fire main system for water that meets the requirements in §§ 149.453 through 149.477.

§ 149.453 Fire pumps.

(a) Each PPC must have at least two independently driven fire pumps that can deliver two streams of water at a continuous pilot tube pressure of at least 75 p.s.i. at each fire hose nozzle.

(b) Each fire pump must have—

(1) A relief valve on its discharge side that is set to relieve at 25 p.s.i. in excess of the pressure necessary to meet the requirement of paragraph (a) of this section;

(2) A pressure gauge on its discharge side; and

(3) Its own water source.

(c) Fire pumps may only be connected to the fire main system.

§ 149.455 Fire pump location.

(a) No fire pump may be located in the same space as another fire pump.

§ 149.457 Fire hydrants.

(a) Each part of the PPC that is accessible to any person, except machinery spaces, must have enough fire hydrants so that it can be sprayed with at least two spray patterns of water. At least one spray pattern of water must be from one length of hose.

(b) Each PPC must have enough fire hydrants so that each machinery space can be sprayed with at least two spray patterns of water from separate hydrants. Each spray pattern of water must be from one length of hose.

§ 149.459 Fire hydrant outlet.

The outlet on each fire hydrant must not point above the horizontal.

§ 149.461 Fire hydrant and control valve shut-off valve.

Each fire hydrant and control valve must have a shut-off valve.

§ 149.463 Fire hydrant access.

Any equipment that is in the same space as a fire hydrant must not interfere with access to that hydrant.

§ 149.465 Spanner.

Each fire hydrant must have at least one spanner at the fire hydrant.

§ 149.467 Fire hose rack.

(a) Each PPC must have a hose rack at each hydrant.

(b) Each fire hose rack must be visible.

(c) Each fire hose rack in an exposed location must be protected from weather.

§ 149.469 Fire hose size.

Each length of fire hose must—

(a) Be of 1½ or 2½ inch nominal hose size diameter;

(b) Be of 50 foot nominal hose size length; and

(c) Meet Underwriters' Laboratories, Inc., Standard 18 or 19, or Federal specification JJ-H-571B or 22-H-451D.

§ 149.471 Fire hose coupling.

Each fire hose coupling must—

(a) Be made of brass, bronze, or material that has strength and corrosion resistant properties at least equal to those of brass or bronze; and

(b) Have 9 threads per inch for 1½ inch hose or 7½ threads per inch for 2½ inch hose.

§ 149.473 Fire hose nozzle.

Each fire hose nozzle must be a combination solid stream and water spray fire hose nozzle that is approved under 46 CFR 162.027.

§ 149.475 Fire hose in exposed location.

The fire hydrant that is nearest to the edge of each exposed location must have enough lengths of fire hose connected to it to gooseneck over the edge.

§ 149.477 Spray applicator.

Each PPC must have a low velocity spray applicator that is approved under 46 CFR 162.027 at each fire hydrant.

OTHER FIRE EXTINGUISHING SYSTEMS

§ 149.481 Other fire extinguishing systems.

(a) Each PPC must have a automatically operated fire extinguishing system in addition to the fire main system required under § 149.451 that meets the National Fire Protection Association standards listed in paragraph (b) of this section in the following locations:

- (1) Dry storage compartments.
- (2) Lamp and paint lockers.
- (3) Pump rooms.
- (4) Machinery spaces.

(b) Each system required under paragraph (a) of this section must be one of the following automatic systems:

(1) Water sprinkle system that meets NFPA No. 13-1973.

(2) Carbon dioxide system that meets NFPA No. 12-1973.

(3) Halogenated agents system that meets NFPA No. 12A-1973.

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(4) Foam system that meets NFPA No. 11-1973.

(c) Each system required under paragraph (a) of this section must activate the general alarm system when it operates.

(d) To the extent practicable, materials in each item of equipment required by paragraph (a) of this section must have enough resistance to the adverse effects of the marine environment so that only minimum maintenance is needed to comply with § 150.503 of this subchapter.

§ 149.483 Foam system for helicopter pads.

Tach PPC must have a foam fire extinguishing system on each helicopter landing pad that—

(a) Can deliver at least 200 g.p.m. of foam solution through two 100 g.p.m. nozzles for 15 minutes; and

(b) Does not interfere with any fire hydrant.

FIRE DETECTION AND ALARM SYSTEMS

§ 149.491 Fire detection and alarm system.

(a) Each PPC must have the following fire detection systems that activate the general alarm system:

(1) An ionization type automatic smoke detection system in each sleeping space.

(2) A combination fixed-temperature and rate-of-rise heat detector system in each non-sleeping space that does not have an automatic fire extinguishing system unless the space is subject to a 15°F or greater per minute rate of rise.

(3) A fixed-temperature detector system in each nonsleeping space that does not have an automatic fire extinguishing system and that is subject to a 15°F or greater per minute rate of rise.

(b) To the extent practicable, materials in each item of equipment required by this section must have enough resistance to the adverse effects of the marine environment so that only minimum maintenance is needed to comply with § 150.503 of this subchapter.

§ 149.501 Portable and semiportable fire extinguishers.

(a) Each PPC must have portable or semiportable fire extinguishers that are approved by the Coast Guard under 46 CFR 162.028 or 162.039.

(b) Each semiportable fire extinguisher must be fitted with hose and nozzle or other apparatus so that the entire space in which the extinguisher is located may be protected.

§ 149.503 Location of extinguishers.

(a) Fire extinguishers must be installed in accordance with Table 145.10(a) in § 145.10 of this chapter.

(b) Each fire extinguisher must be located so it can easily be seen.

§ 149.511 Landing area with no fueling facility.

Each helicopter landing area on the PPC with no fueling facility must have at least two USCG Type B:C, size IV dry chemical extinguishers that are

compatible with operation of the foam system required under § 149.483.

§ 149.513 Landing areas with a fueling facility.

Each helicopter landing area on the PPC with a fueling facility must have—

(a) At least two USCG Type B:C, size II dry chemical extinguishers and at least one USCG Type B:C, size V dry chemical extinguisher; and

(b) A USCG Type B:C, size II dry chemical extinguisher at the emergency control station.

LIFESAVING EQUIPMENT

§ 149.521 Lifeboats and inflatable liferafts: general.

(a) Each PPC must have enough lifeboats or inflatable liferafts, or enough of both, for 200% of the personnel capacity of the PPC, except that each PPC must have at least two lifeboats.

(b) Each lifeboat on a platform must be mounted on the outboard side of the platform in a location that is easily accessible to persons onboard and that is as far apart as practicable from each other lifeboat.

(c) No lifeboat and no launching equipment for an inflatable liferaft may be mounted next to a discharge opening on a platform unless the opening has a baffle or a remotely controlled device to close the opening.

§ 149.522 Lifeboats.

(a) Each lifeboat on a platform must be approved under 46 CFR, Subpart 160.035 and have the equipment required by 46 CFR 94.20-10 for a lifeboat on an ocean and coastwise vessel other than a seagoing barge. Except for boathooks, the equipment must be securely attached to the lifeboat.

(b) Each lifeboat on a platform must be motor propelled and have an installed cover that provides protection from exposure and flash burns during operation of the lifeboat.

§ 149.523 Inflatable liferafts.

Each inflatable liferaft on a platform must be approved under 46 CFR, Subpart 160.051 as an inflatable liferaft intended for an ocean service vessel.

§ 149.524 Launching equipment for lifeboats.

(a) Each PPC must have the following launching equipment for each lifeboat required by § 149.521 of this subpart:

(1) A winch that is approved under 46 CFR, Subpart 160.015 and that has a grooved drum with only one layer of wire.

(2) Mechanical disengaging apparatus that is approved under 46 CFR, Subpart 160.033.

(3) Davits that are approved under 46 CFR, Subpart 160.032.

(4) Load bearing components that meet the requirements in 46 CFR 94.33-5(a), (c), (d), and (e) and 46 CFR 94.33-10.

(b) If a lifeboat is mounted more than 30 feet above mean low water, the

launching equipment for the lifeboat must be capable of operation from the lifeboat and from the PPC.

§ 149.525 Launching equipment for inflatable liferafts.

(a) Each PPC must have enough of the following launching equipment for inflatable liferafts to launch all of the liferafts required by § 149.521 of this subpart within 30 minutes:

(1) A winch that is approved by the Commandant.

(2) Mechanical disengaging apparatus that is approved by the Commandant.

(3) Davits that are approved by the Commandant.

(4) Load bearing components that meet the requirements in 46 CFR 94.33-5(a), (c), (d), and (e) and 46 CFR 94.33-10.

(b) Launching equipment for an inflatable liferaft must be capable of operation from the liferaft and from the PPC.

§ 149.526 Ring life buoys.

(a) Each PPC must have at least 8 ring life buoys and mounting racks.

(b) Each platform must have at least one ring life buoy and mounting rack on each side of the platform.

(c) Each ring life buoy required by this section must be approved under 46 CFR, Subpart 160.050 and must be international orange.

(d) Fifty percent of the ring life buoys required by this section must have an electric water light approved under 46 CFR, Subpart 160.010. Each electric water light must be attached to a buoy by a 3 to 6 foot lanyard.

(e) At least one ring life buoy on each side of each platform must have a buoyant line attached to the buoy that is 1½ times the distance from the buoy to the mean low water line of the platform or 15 fathoms in length, whichever is greater.

(f) Each ring life buoy required by this section must be easily accessible to persons on board.

§ 149.527 Portable radio apparatus.

Each PPC must have portable radio apparatus that meets the requirements in 46 CFR 94.55-1.

§ 149.528 Distress signals.

(a) Each PPC must have 12 hand-held, rocket-propelled, parachute, red flare, distress signals that are approved under 46 CFR, Subpart 160.036.

(b) Distress signals required by this section must be stored in portable watertight containers.

§ 149.529 Life preservers.

(a) Each PPC must have enough adult life preservers for 125% of the personnel capacity of the PPC.

(b) Each life preserver must be approved under 46 CFR, Subpart 160.002, 160.005 or 160.055 and must be easily accessible to persons on board the PPC.

§ 149.533 Litters.

Each platform must be equipped with at least one stokes litter that is placed in

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a location that is accessible to persons on board.

§ 149.535 Markings on lifeboats, lifeboats, liferafts, paddles, and oars.

(a) Each lifeboat, lifeboat, and liferaft must be marked with—

(1) The identification of the deepwater port; and

(2) The personnel capacity in letters and numbers at least 1½ inch high.

(b) Each inflatable liferaft must be marked as required under 46 CFR 160.051.

(c) Each paddle and each oar must be marked with the identification of the deepwater port.

§ 149.537 Markings for life preservers and ring life buoys.

Each life preserver and each ring life buoy must be marked with the identification of the deepwater port.

§ 149.538 Medical equipment.

(a) Each platform must have a first aid kit that meets the requirements in 46 CFR 160.041.

(b) Each first aid station on a PPC must have enough equipment for the person described in § 150.525 of this subchapter to provide emergency medical care.

§ 149.539 Portable lights.

Each portable light on a PPC must—

(a) Have reflectors and guards that prevent flammable and other material from coming in contact with the bulb; and

(b) Have the U.S. Coast Guard approval label or the Underwriters' Laboratories, Inc. Marine Label.

§ 149.541 General alarm system.

(a) Each PPC must have a general alarm system to signal fires and other emergencies.

(b) Each general alarm system must be—

(1) Capable of being activated by the automatic fire detection systems required under § 149.491 and manually by use of alarm boxes located in accordance with the National Fire Protection Association standard No. 72A-1972;

(2) Audible in all parts of the PPC except in areas of high ambient noise levels where hearing protection is required under § 150.509(d) of this subchapter; and

(3) Visible in areas of the PPC where hearing protection is required under § 150.509(d) of this subchapter by use of a high intensity flashing light.

§ 149.543 Marking of general alarm system.

(a) Each general alarm box must be identified by the words "GENERAL-ALARM" in red letters at least one inch high on a yellow background.

(b) Each audio and each visual general alarm signalling device under § 149.541 must have a sign with the words "GENERAL ALARM" in red letters at least one inch high on a yellow background.

§ 149.545 Public address system.

Each PPC must have a public address system operable from two locations on the PPC to allow an announcement of fires, oil transfer system failure or malfunction, and other emergencies.

Subpart E—Aids to Navigation at Deepwater Ports

GENERAL

§ 149.701 Applicability.

This subpart prescribes the minimum requirements for aids to navigation at a deepwater port and the waters adjacent to the port.

§ 149.703 Effective intensity: definition.

For the purpose of this subpart, "effective intensity" is the intensity of a flashing light calculated by using equation [3-27] for effective intensity in the Illumination Engineering Society Lighting Handbook, Fifth Edition, 1972, p. 3-36.

§ 149.705 Applicability of other regulations.

Sections 66.01-5, -25 (a) and (c), -50, and -55 of this chapter also apply to aids to navigation at a deepwater port. For the purpose of § 66.01-25 (a) and (c) of this chapter, aids to navigation at a deepwater port are Class I aids to navigation.

SPECIFICATIONS FOR LIGHTS

§ 149.721 Light source.

Each light must have a tungsten-incandescent light source.

§ 149.723 Intensity.

(a) Each light on a buoy, hose string, and SPM must—

(1) Have at least the effective intensity required by this subpart for the light at all angles, the origin of which is the focal point of the light, that are included within $\pm 1^\circ$ from the focal plane of the light; and

(2) Have at least 50% of the effective intensity required by this subpart for the light at all angles, the origin of which is the focal point of the light, that are included within $\pm 2^\circ$ from the focal plane of the light.

(b) Each light on a platform, including the rotating lighted beacon, must—

(1) Have at least the effective intensity required by this subpart for the light at all angles, the origin of which is the focal point of the light, that are included within $\pm 0.5^\circ$ from the focal plane of the light; and

(2) Have at least 50% of the effective intensity required by this subpart for the light at all angles, the origin of which is the focal point of the light, that are included within $\pm 1^\circ$ from the focal plane of the light.

§ 149.725 Color.

The transparent cover of each light, including the top of the cover, must be uniform in color.

§ 149.727 Chromaticity.

The color emitted by a light at all angles, the origin of which is the focal

point of the light, that are included within $\pm 1^\circ$ of the focal plane of the light must have chromaticity coordinates lying within the boundary defined by the corner coordinates in Table 1 in this section when plotted on the International Commission on Illumination (CIE) 1931 Standard Observer Diagram.

TABLE 1.—Chromaticity coordinates

Color	Chromaticity coordinates	
	x axis	y axis
White.....	0.285	0.332
	.453	.440
	.500	.440
	.500	.382
	.440	.382
	.285	.264
Green.....	.009	.720
	.254	.590
	.207	.397
	.013	.494
Red.....	.665	.235
	.645	.335
	.660	.300
	.700	.300
Yellow.....	.560	.440
	.555	.435
	.612	.382
	.618	.382

§ 149.729 Display of information.

(a) The following information must be displayed on each light:

(1) The manufacturer's name and date of manufacture.

(2) The model designation.

(3) The lamp size in amperes and the minimum voltage needed to operate the light in compliance with the intensity requirements in this subpart.

(b) The following information must be displayed on each rotating lighted beacon:

(1) The information prescribed in paragraph (a) of this section.

(2) The operating speed of the rotating apparatus.

(3) The power required to maintain the operating speed.

OBSTRUCTION LIGHTS

§ 149.751 Number and location on a platform and SPM.

(a) A platform that is 30 feet or less on any side, or in diameter, must have at least one obstruction light.

(b) An SPM must have at least one obstruction light.

(c) A platform that is more than 30 feet but less than 50 feet on any side, or in diameter, must have at least two obstruction lights that are installed as far apart from each other on the platform as possible.

(d) A platform that is more than 50 feet on any one side must have one obstruction light installed on each corner.

(e) A circular platform that has a diameter of more than 50 feet must have at least 4 obstruction lights that are installed as far apart from each other on the platform as possible.

(f) At least one of the obstruction lights on each platform and SPM must be visible from the water regardless of the angle of approach to the structure.

(g) If a platform or SPM has more than one obstruction light, the lights must all be installed in the same horizontal plane.

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(h) Each obstruction light on a platform must be installed at least 20 feet above mean high water.

(i) Each obstruction light on an SPM must be installed at least 10 feet above the water.

§ 149.753 Number and location on a floating hose string.

A floating hose string must have obstruction lights that are—

(a) Installed at equally spaced intervals of not more than 70 feet along the length of the hose string, except that the two sections of hose furthest from the SPM need not have lights; and

(b) Installed all at the same height and at no less than 2 nor more than 5 feet above the surface of the water.

§ 149.755 Characteristics.

(a) Each obstruction light on a platform or SPM must—

(1) Be white; and
(2) Flash 50 to 70 times per minute when operated.

(b) If a platform or SPM has more than one obstruction light, the lights must flash simultaneously.

(c) Each obstruction light on a hose string must—

(1) Be yellow; and
(2) Flash 50 to 70 times per minute when operated.

§ 149.757 Intensity.

(a) Each obstruction light on a platform must have an effective intensity of at least 75 candela.

(b) Each obstruction light on an SPM must have an effective intensity of at least 15 candela.

(c) Each obstruction light on a hose string must have an effective intensity of at least 1 candela.

§ 149.759 Leveling device.

Each obstruction light installed on a platform must have a device permanently attached to the light that facilitates horizontal leveling of the light in two directions 90 degrees apart.

BUOYS

§ 149.773 Characteristics.

Each buoy at a deepwater port must—

(a) Meet the requirements in Subpart 62.25 of this chapter for buoys in United States waters;

(b) Have—
(1) A radar reflector; and
(2) A light installed at least 8 feet above the water.

(c) For each traffic lane, the buoy that is furthest from the safety zone must have a fog signal of a type described in Subpart 62.45 of Part 62 of this chapter.

§ 149.771 Number and location.

Each lateral boundary of a traffic lane at a deepwater port must be marked with buoys that are no more than 5 miles apart.

§ 149.775 Intensity of lights.

(a) Each fixed light on a buoy must have an intensity of at least 75 candela.

(b) Each flashing light on a buoy must

have an effective intensity of at least 75 candela.

MISCELLANEOUS

§ 149.791 Identification of a platform and SPM.

(a) Each platform and SPM must display the name of the port, and the name or number or both, identifying the structure so that the information is visible—

(1) From the water at all angles of approach to the structure; and

(2) If the structure is equipped with a helicopter pad, from aircraft on approach to the structure.

(b) The information required in paragraph (a) of this section must be displayed in numbers and letters that are—

(1) At least 12 inches high;
(2) In vertical block style; and
(3) Displayed against a contrasting background.

§ 149.793 Markings for piles and pile clusters.

(a) Each pile and pile cluster that is within 100 yards of a platform or SPM must be marked with white or red retro-reflective tape.

(b) Each pile and pile cluster that is more than 100 yards from a platform or SPM must meet the obstruction lighting requirements in this subpart for a platform.

§ 149.795 Radar Beacon.

The tallest platform must have an FCC accepted radar beacon (RACON) that—

(a) Has a frequency range of 9300–9500 MHz; and

(b) Is installed at a height and location where its signal can be received by a vessel within at least 10 miles of the platform.

§ 149.797 Rotating lighted beacon.

The tallest platform must have a rotating lighted beacon that—

(a) Has an effective intensity of at least 15,000 candela;

(b) Flashes at least once every 20 seconds;

(c) Has a white light;

(d) Has two light beams that are 180° apart;

(e) Is installed at least 60 feet above mean high water;

(f) Operates in wind up to 100 knots at a speed that is within 6% of the operating speed displayed on the beacon; and

(g) Has a device permanently attached to the light that facilitates horizontal leveling of the light in two directions 90 degrees apart.

§ 149.799 Fog signal.

(a) Each PPC must have a Coast Guard approved fog signal that has a 2 mile range.

NOTE: A list of Coast Guard approved fog signals may be obtained from the Commandant.

(b) Each fog signal on a PPC must—

(1) Be installed at least 10 feet but not more than 150 feet above mean high water; and

(2) Be installed where the sound signal is audible in all directions in a horizontal plane at all ranges up to and including a two mile range.

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AUTHORITY: Secs. 10(a), 10(b), Pub. L. 93-627, 88 Stat. 2137-8 (33 U.S.C. 1509 (a), (b))

Subpart A—General

§ 150.101 Applicability.

The rules in this part apply to the operation of each deepwater port.

§ 150.103 Licensee.

No licensee of a deepwater port may cause or authorize operations contrary to the rules in this part. The licensee shall ensure that the port meets the equipment requirements in Part 149 of this subchapter.

§ 150.105 Operations Manual: general.

The licensee of a deepwater port may not operate the port unless the port has an Operations Manual that meets the requirements of this subchapter and the "Guidelines for Preparation of a Deepwater Port Operations Manual."

NOTE: The "Guidelines for Preparation of a Deepwater Port Operations Manual" may be obtained from the Commandant.

§ 150.107 Operations Manual: amendment.

(a) The Captain of the Port may require the licensee to amend the Operations Manual if he finds that the Operations Manual does not meet the requirements of this Subchapter.

(b) When the Captain of the Port determines that an amendment to an Operations Manual is necessary, he notifies the licensee in writing of a date not less than 14 days from the date of the notice, on or before which the licensee must submit written information, views, and arguments on the amendment. After considering all relevant material presented, the Captain of the Port notifies the li-

censee of any amendment required or he rescinds the notice. The amendment becomes effective not less than 30 days after the licensee receives the notice unless the licensee petitions the Commandant to reconsider the amendment, in which case its effective date is stayed pending a decision by the Commandant. Petitions to the Commandant must be submitted in writing to the Captain of the Port.

(c) If the Captain of the Port finds a situation that requires immediate action to prevent the discharge or risk of discharge of oil or to protect the safety of life and property that makes the procedure in paragraphs (a) and (b) of this section impracticable or contrary to the public interest, he may issue an amendment effective, without stay, on the date the licensee receives notice of it. In such a case, the Captain of the Port includes a brief statement of the reasons for his finding in the notice, and the owner or operator may petition the District Commander, in any manner, to reconsider the amendment.

§ 150.109 Compliance with Operations Manual.

Each licensee shall use and require his personnel to use the procedures in the Operations Manual.

§ 150.111 Operations Manual: changes.

The licensee shall provide a copy of each change to the Operations Manual to the Captain of the Port at least 30 days before implementing the change.

§ 150.113 Deviations.

The Captain of the Port may authorize a deviation by means of a change in the Operations Manual, upon request, if he finds that the proposed alternative procedure, method, or equipment would ensure equivalent protection, safety, or quality level.

§ 150.115 Emergency deviations.

In an emergency, for the protection of life or property, or to avoid danger to the environment, any person may deviate from any requirement of deepwater port regulations. As soon as practicable, the person shall report the nature, extent, and duration of each deviation orally or in writing to the Commandant.

§ 150.117 Notification to the District Commander.

(a) At least 30 days before construction of a pipeline, platform, or SPM at a deepwater port begins, the licensee shall give notice of construction in writing to the District Commander.

(b) On the date construction of a pipeline, platform, or SPM at a deepwater port begins, the licensee shall give notice to the District Commander by telegram of the lights and fog signals in use at the construction site.

(c) On the date that construction of a pipeline, platform, or SPM at a deepwater port is completed, the licensee shall give notice to the District Commander in writing of completion and of each obstruction light and fog signal in use on the completed structure.

(d) When lights used during construction of a platform or SPM at a deepwater port are replaced with obstruction lights required by Part 149 of this subchapter, the licensee shall give notice of replacement in writing to the District Commander.

(e) Upon receipt of an American Bureau of Shipping "Interim Class Certificate" for an SPM at a deepwater port, the licensee shall give notice of receipt in writing to the District Commander.

(f) At least 60 days before the first oil transfer operation begins at a deepwater port, the licensee shall give notice of the operation to the District Commander.

§ 150.119 Notification to the Commandant.

Upon receipt of an American Bureau of Shipping "Classification Certificate" for an SPM at a deepwater port, the licensee shall give notice of receipt in writing to the Commandant.

§ 150.121 ABS Classification.

(a) No licensee may operate an SPM unless he has an American Bureau of Shipping (ABS) "Interim Class Certificate" or a "Classification Certificate" for the SPM.

(b) A certificate must classify the SPM and attached hoses.

(c) The licensee shall maintain in class each SPM having a "Classification Certificate."

§ 150.123 Weather monitoring.

The terminal supervisor shall continuously monitor the wind, wave, current, and visibility conditions at the port.

Subpart B—Personnel

§ 150.201 Applicability.

This subpart prescribes personnel qualifications that apply to each deepwater port.

§ 150.203 General.

No licensee may operate a deepwater port unless he has designated English speaking personnel who meet the requirements of this subpart for the following positions:

- (a) Terminal Supervisor.
- (b) Cargo Transfer Supervisor.
- (c) Cargo Transfer Observer.
- (d) Vessel Traffic Supervisor.
- (e) Mooring Master.
- (f) Assistant Mooring Master.

§ 150.204 Definitions.

As used in this subpart—

- (a) "License" means a Coast Guard license issued under 46 CFR 10; and
- (b) "Licensee" means the licensee of a deepwater port.

§ 150.205 Terminal supervisor.

No person may serve, and the licensee may not use the services of a person, as a terminal supervisor at a deepwater port unless—

- (a) He has enough experience at an oil transfer facility to enable the licensee to determine that he is capable of managing the deepwater port;
- (b) The licensee determines that he knows—

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(1) The hazards of each product to be transferred; and

(2) The port operating procedures described in the Operations Manual; and

(c) The licensee designates that person as terminal supervisor and advises the Captain of the Port in writing of that designation.

§ 150.207 Cargo transfer supervisor.

No person may serve, and the licensee may not use the services of a person, as a cargo transfer supervisor at a deepwater port unless—

(a) He has enough experience in a operating oil transfer equipment to enable the licensee to determine that he is capable of operating the oil transfer equipment of the deepwater port;

(b) He holds a license as chief mate of ocean steam or motor vessels, or as master of a vessel, and has at least one year of experience as a licensed chief mate or master on board a tank vessel;

(c) The licensee determines that he knows—

(1) The rules in Subpart D of this part;

(2) The oil transfer procedures and transfer control systems, in general, of tankers serviced at the facility;

(3) The special handling characteristics of each product to be transferred; and

(4) The procedures described in the Operations Manual for—

(i) Oil transfer;

(ii) Spill prevention, containment, and cleanup;

(iii) Accidents and emergencies; and

(iv) Voice communication; and

(d) The licensee designates that person as cargo transfer supervisor and advises the Captain of the Port in writing of that designation.

§ 150.209 Vessel traffic supervisor.

No person may serve, and the licensee may not use the services of a person, as a vessel traffic supervisor at a deepwater port unless—

(a) He holds a certificate as a radar observer (no limitation as to operation) issued under 46 CFR 10.30-5(c)(1) and has at least 6 months experience as a licensed deck officer on a vessel that has radar;

(b) The licensee determines that he knows—

(1) The procedures for utilizing the port's radar equipment; and

(2) The procedures described in the Operations Manual for—

(i) Vessel control; and

(ii) Voice communications; and

(c) The licensee designates that person as vessel traffic supervisor and advises the Captain of the Port in writing of that designation.

§ 150.211 Mooring master.

No person may serve, and the licensee may not use the services of a person, as a mooring master at a deepwater port unless—

(a) He holds a—

(1) License as master of ocean steam or motor vessels, unlimited tonnage, with a Mooring Master's endorsement for the facility; or

(2) Limited master's license authorizing service on the waters on which the facility is located and with—

(i) First class pilot of steam or motor vessel, unlimited tonnage, endorsement; and

(ii) Endorsement as mooring master for the facility;

(b) The licensee determines that he knows the procedures described in the Operations Manual for—

(1) Vessel control;

(2) Vessel responsibilities;

(3) Spill prevention, containment, and cleanup;

(4) Accidents and emergencies; and

(5) Voice communications; and

(c) The licensee designates that person as mooring master and advises the Captain of the Port in writing of that designation.

§ 150.213 Cargo Transfer Observer.

No person may serve, and the licensee may not use the services of a person, as a cargo transfer observer at a deepwater port unless—

(a) He has the knowledge and experience necessary to operate the oil transfer equipment of a tanker;

(b) He is certificated as a tankerman under 46 CFR 12.20;

(c) The licensee determines that he knows—

(1) The rules in Subpart D of this part;

(2) The oil transfer procedures and transfer control systems, in general, of tankers serviced at the port;

(3) The special handling characteristics of each product to be transferred;

(4) The procedures described in the Operations Manual for—

(i) Oil transfer;

(ii) Spill prevention, containment, and cleanup;

(iii) Accidents and emergencies; and

(iv) Voice communication; and

(d) The licensee designates that person as cargo transfer observer and retains written evidence of that designation at the deepwater port.

§ 150.215 Assistant Mooring Master.

No person may serve, and the licensee may not use the services of a person, as an assistant mooring master at a deepwater port unless—

(a) He holds a license as deck officer on ocean steam or motor vessels, unlimited tonnage;

(b) The licensee determines that he knows the procedures described in the Operations Manual for—

(1) Vessel control;

(2) Spill prevention, containment, and cleanup;

(3) Accidents and emergencies; and

(4) Voice communications; and

(c) The licensee designates that a person as assistant mooring master and retains evidence of that designation at the deepwater port.

§ 150.217 Limitation on Service.

No person may serve in more than one of the following positions at the same time:

(a) Terminal Supervisor.

(b) Cargo Transfer Supervisor.

(c) Cargo Transfer Observer.

(d) Vessel Traffic Supervisor.

(e) Mooring Master.

(f) Assistant Mooring Master.

Subpart C—Vessel Navigation

§ 150.301 Applicability.

This subpart prescribes rules that apply to the navigation of tankers at a deepwater port.

§ 150.303 Definitions.¹

As used in this subpart—

(a) "Tanker" means a vessel that enters a deepwater port to unload or off-load oil at an SPM;

(b) "Traffic separation scheme" (TSS) means the network of traffic lanes and separation zones or lines at a deepwater port;

(c) "Separation zone or line" means a zone or line in the TSS located between two traffic lanes to keep tankers proceeding in opposite directions a safe distance apart;

(d) "Traffic lane" means an area of the TSS in which all tankers ordinarily proceed in the same direction.

§ 150.305 Traffic separation scheme.

No licensee may operate a deepwater port unless the port has a TSS that conforms to Part 1 of the recommendations of the Intergovernmental Maritime Consultative Organization contained in Annex I to IMCO Assembly Resolution A.284 (VIII) of November 20, 1973.

NOTE: A copy of Annex I may be obtained from the Commandant.

§ 150.307 Radar Surveillance.

The vessel traffic supervisor shall maintain radar surveillance of the TSS and safety zone—

(a) Whenever a tanker is proceeding to a traffic lane after submitting the report required in § 150.335 of this subpart; and

(b) Whenever a tanker is in the TSS or safety zone.

§ 150.309 Advisories to vessels.

(a) The vessel traffic supervisor shall advise the master of each tanker underway in the TSS or safety zone of its position and track at 10 minute intervals.

(b) Whenever the vessel traffic supervisor determines that a vessel may potentially interfere with the movement of a tanker in the TSS or safety zone, he

¹Section 3(16) of the Act provides that "safety zone" means the safety zone established around a deepwater port as determined . . . in accordance with section 10(d) of this Act." Section 10(d) further provides that a safety zone is established for the purpose of navigational safety and is to be of an appropriate size that accomplishes this purpose. The Commandant designates the safety zone at each deepwater port.

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shall advise the master of the tanker of the following information and shall update the information at times he considers necessary to assist the tanker in navigation of the TSS and safety zone:

- (1) Position and track of the vessel.
- (2) The vessel's speed over the ground.
- (3) The closest point of approach of the vessel to the tanker.

(c) Whenever a tanker enters a traffic lane inbound to the safety zone, the vessel traffic supervisor shall advise the tanker of the position of each other vessel moored, anchored, or underway in the TSS or safety zone.

§ 150.311 Radio listening watch.

Whenever a tanker is in the TSS or safety zone, the vessel traffic supervisor shall continuously monitor the radio frequency designated in the Operations Manual for use by vessels underway at the port except when transmitting on that frequency.

§ 150.313 Clearances.

(a) The vessel traffic supervisor may not clear a tanker to enter a traffic lane unless—

- (1) Each other tanker in the traffic lane is at least 5 miles from the entrance to the traffic lane; and
- (2) A mooring master is on board.

(b) The vessel traffic supervisor may not clear a tanker to moor at an SPM unless—

- (1) There is an SPM berth available and he has assigned that berth to the tanker;
- (2) The visibility in the safety zone is at least 2 miles; and

(3) The minimum operating conditions prescribed in the Operations Manual for mooring to an SPM have not been exceeded.

(c) The vessel traffic supervisor may not clear a vessel to depart an SPM unless the visibility is at least 2 miles and a mooring master is on board.

§ 150.331 Master of a tanker.

The master of a tanker in the TSS or safety zone shall operate the vessel in accordance with the rules in §§ 150.333–150.343 of this subpart.

§ 150.333 Advance Notice of Arrival.

(a) The master of a tanker bound for a deepwater port shall report the following information to the Captain of the Port and the vessel traffic supervisor of the port at least 24 hours before entering the safety zone at the port:

- (1) The name, gross tonnage, and draft of the tanker.
- (2) The type and amount of cargo on board.

(3) Any condition on the vessel that may impair its navigation such as fire, defective propulsion machinery, or defective steering equipment.

(4) Any leaks, structural damage, or machinery defects that may impair cargo transfer operations or cause a discharge of oil.

(b) If the information reported in paragraph (a) (3) or (a) (4) of this section changes at any time before entering the safety zone, or while the tanker is

in the safety zone, the master of the tanker shall report the changes to the Captain of the Port and vessel traffic supervisor as soon as possible.

§ 150.335 Report before entering inbound traffic lane.

The master of a tanker bound for a deepwater port shall notify the vessel traffic supervisor of the port when the tanker is 20 miles from the entrance of an inbound traffic lane.

§ 150.337 Vessel clearance.

No tanker may enter a traffic lane, or moor at or depart from an SPM, unless it has obtained clearance to do so from the vessel traffic supervisor.

§ 150.339 Navigation in the TSS and safety zone.

(a) No tanker may enter a traffic lane except at the entrance to the lane.

(b) A tanker proceeding in a traffic lane shall keep the separation zone or line to port.

(c) No tanker may enter or depart a safety zone except via a traffic lane.

(d) No tanker may anchor in the TSS or safety zone, except in an anchorage area.

(e) A tanker in a traffic lane shall keep at least 5 miles behind any other tanker ahead of him in the traffic lane.

(f) No tanker may operate in any area of the TSS or safety zone in which the net under keel clearance of the tanker is less than 5 feet. As used in this paragraph, "Net under keel clearance" means that distance between the ocean bottom and the portion of a tanker's hull closest to the ocean bottom when the tanker is underway or is moored or anchored in other than calm water.

§ 150.341 Mooring Master.

No tanker may be underway in the TSS or safety zone unless a mooring master is on board.

§ 150.343 Radio listening watch.

The master of a tanker in the TSS or safety zone shall continuously monitor the radio frequency designated in the Operations Manual of the port for use by vessels underway at the port except when transmitting on that frequency.

Subpart D—Oil Transfer Operations

§ 150.400 Applicability.

This subpart prescribes rules that apply to the transfer of oil at a deepwater port.

§ 150.403 Definitions.

As used in this subpart—

(a) "Single Point Mooring" (SPM) means an offshore berth which provides a link between the undersea pipeline and a moored vessel for the transfer of oil and to which the vessel can be secured and can weathervane during the oil transfer as dictated by the environment (wind, current, tides, etc.);

(b) "PLEM" means pipeline end manifold at the SPM;

(c) "OTS" means an oil transfer system of a deepwater port and includes the SPM-OTS and the undersea pipeline

running from the end of the hose string that connects to the manifold on the vessel to the onshore terminal;

(d) "SPM-OTS" means that portion of an OTS from the PLEM to the end of hose string that connects to the manifold on the vessel; and

(e) "Hose string" (both floating and float/sink type) means that portion of an SPM-OTS consisting of flexible hose which connects the vessel's manifold to the SPM.

§ 150.405 Periodic tests and inspections: OTS components.

No person may transfer oil through an OTS at a deepwater port unless—

(a) The SPM-OTS of the OTS has been tested and inspected as required for maintenance of class in accordance with the Rules for Building and Classing Single Point Moorings published by the American Bureau of Shipping;

(b) Each oil transfer hose in the SPM-OTS of the OTS in which the working pressure recommended by the manufacturer has been exceeded, except when exceeded for testing required by this section, has, since the pressure was exceeded, been—

- (1) removed;
- (2) hydrostatically tested to 1.5 times its maximum working pressure; and

(3) visually examined externally and internally for evidence of leakage, loose covers, kinks, bulges, soft spots, and gouges, cuts, or slashes that penetrate the hose reinforcement;

(c) Within the 23 months immediately preceding the month during which oil transfer operations are to be conducted, each submarine hose in the SPM-OTS of the OTS has been removed from the ends of each submarine coupling, surfaced, and subjected to external and internal visual examinations for evidence of flaws as described in paragraph (b) (3) of this section and hydrostatically tested to 1.5 times its maximum working pressure; and

(d) Each submarine hose in the SPM-OTS of that OTS has been visually examined externally for evidence of flaws as described in paragraph (b) (3) of this section since the last storm at the deepwater port requiring shutdown of oil transfer operations.

§ 150.407 Periodic tests and inspections: discharge containment equipment.

No person may transfer oil at a deepwater port unless the discharge containment equipment required by § 149.310 of this subchapter is tested and inspected as follows:

(a) Within the five months immediately preceding the month during which the oil transfer operation is conducted at a deepwater port, a visual examination must have been performed to determine whether there existed any conditions which might impair the effectiveness of the equipment in performing its intended function. This visual examination must have included the condition of such items as fabric and fabric coatings, seams and bonding points, metal hardware parts, shackles, fittings, towing and

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other lines, cables, flotation devices, inflation mechanisms, and any other components integral to the equipment.

(b) Within the 11 months immediately preceding the month during which the oil transfer operation is conducted at a deepwater port, representative pieces or sections of the containment equipment must have been deployed under simulated discharge conditions and the integrity of equipment strength members, containment skirt, flotation devices, and any other design performance factors of the equipment assessed. Deployment under actual discharge conditions within the time period specified in this subparagraph will satisfy this requirement.

§ 150.409 Periodic tests and inspections: removal material and equipment.

No persons may transfer oil at a deepwater port unless the removal material and equipment required by § 149.319 of this subchapter is tested and inspected as follows:

(a) Within the two months immediately preceding the month during which oil transfer operations are to be conducted at a deepwater port, any machinery, pumps, hydraulic parts, and other operating features of removal equipment must have been visually examined and operated in accordance with the instructions of the manufacturer for evidence of need or maintenance or repair.

(b) Within the 11 months immediately preceding the month during which oil transfer operations are to be conducted at a deepwater port the removal equipment must have been tested in conjunction with the containment equipment deployment required by § 150.407 (b) of this subpart for evidence of need of maintenance or repair.

§ 150.411 Repair or replacement of equipment.

(a) Whenever a component of an OTS at a deepwater port is found to be inoperative or otherwise defective, the licensee shall replace or repair the component before further oil transfer operations are undertaken using the OTS.

(b) Whenever an item of discharge containment and removal material or equipment required by § 149.319 of this subchapter is found to be inoperative or otherwise defective, the licensee shall replace or repair the component before further oil transfer operations are undertaken.

§ 150.413 Requirements for oil transfer.

No person may transfer oil through an OTS unless—

(a) Before connecting the hose string to the vessel manifold at the start of each oil transfer operation, it is determined by visual examination that the hose string in use for that transfer operation has no leakage, loose covers, kinks, bulges, soft spots, and no gouges, cuts, or slashes that penetrate the hose reinforcement;

(b) During each oil transfer operation, it is determined by visual examination that the hose string in use for that transfer operation has no leakage;

(c) The vessel's mooring attachment to the SPM is strong enough to hold in all expected conditions of surge, current, and weather;

(d) Oil transfer hoses are long enough to allow the vessel to move to the limits of its mooring attachment to the SPM without placing strain on the hoses;

(e) Each oil transfer hose is supported in a manner that prevents strain on its coupling;

(f) Each part of the OTS necessary to allow the flow of oil is lined up for the transfer;

(g) Each part of the OTS not necessary for the transfer operation is securely blanked or shut off;

(h) Except when used to receive or discharge ballast, each overboard discharge or sea suction valve that is connected to the vessel's oil transfer, ballast, or cargo tank systems is sealed, lashed, or locked in the closed position.

(i) Each connection in the OTS meets the requirements of § 150.415 of this subpart;

(j) The discharge containment and removal material and equipment required by § 149.391 of this subchapter is in place;

(k) Each scupper and overboard drain on the vessel is closed and the drain from the drip pan under the vessel manifold leading to the tank is open;

(l) Any continuing loss of oil from the coupling at the vessel manifold does not overflow the drip pan under the manifold;

(m) The communications equipment required by § 149.319 of this subchapter is operative for the transfer operation;

(n) The emergency means of shutdown required by Part 149 of this subchapter is in position and operative;

(o) The cargo transfer supervisor, cargo transfer observer, and any other designated personnel are on duty and present to conduct the transfer operations in accordance with the Operations Manual and with the oil transfer procedures that apply to the vessel during the transfer operation;

(p) The vessel's officer in charge of cargo transfer and the cargo transfer observer have held a conference and each understands the following details of the transfer operations:

(1) The identity of the product to be transferred.

(2) The sequence of transfer operations.

(3) The transfer rate.

(4) The name or title and location of each person participating in the transfer operation.

(5) Particulars of the transferring and receiving systems.

(6) Critical stages of the transfer operation.

(7) Federal regulations that apply to the transfer of oil.

(8) Emergency procedures.

(9) Discharge containment procedures.

(10) Discharge reporting procedures.

(11) Watch or shift arrangement.

(12) Transfer shutdown procedures.

(q) The vessel's officer in charge of cargo transfer and the cargo transfer observer agree to begin the transfer operation;

(r) Between sunset and sunrise the lighting required by Part 149 of this subchapter is provided;

(s) Flame screens are structurally sound and locked in place in all cargo tank vents and ullage holes on the vessel; and

(t) The declaration of inspection required by § 150.417 of this subpart is executed.

§ 150.415 Requirements for connections.

Each temporary connection between the hose string and a vessel manifold must—

(a) Have suitable materials in joints and couplings to make a tight seal;

(b) If using an American National Standards Institute (ANSI) standard flange coupling, have a bolt in at least every other hole of the coupling and in no case less than four bolts;

(c) If using other than an ANSI standard flange coupling, have a bolt in each hole of the coupling; and

(d) Have bolts in each bolted coupling that are all—

(1) The same size;

(2) Tightened so as to uniformly distribute the load around the coupling; and

(3) Free of any signs of strain, elongation, or deterioration.

§ 150.417 Declaration of inspection.

(a) No person may transfer oil at a deepwater port unless a declaration of inspection has been executed before the start of each oil transfer operation by the cargo transfer observer and the vessel's officer in charge of cargo transfer.

(b) The declaration of inspection required by paragraph (a) of this section may be in any form but must contain—

(1) The name of the tanker and berth to which moored;

(2) The date the oil transfer operation will start;

(3) Certification by the cargo transfer observer and the vessel's officer in charge of cargo transfer that the requirements for oil transfer specified in § 150.413 of this subpart, and the pre-transfer procedures described in the Operations Manual, have been followed; and

(4) The signatures of the cargo transfer observer and the vessel's officer in charge of cargo transfer.

§ 150.419 Stopping transfer operations.

Before stopping the flow of oil during an oil transfer operation at a deepwater port the cargo transfer supervisor shall advise the vessel's officer in charge of oil transfer of the intent to do so.

§ 150.421 Displacement of oil in an SPM-OTS with water.

The Terminal Supervisor shall displace the oil in an SPM-OTS with water and close the valve at the PLEM whenever—

(a) A vessel is about to depart the SPM and a storm warning has been re-

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celved forecasting weather conditions to occur after the vessel's departure that will exceed the design operating criteria listed in the Operations Manual for the SPM-OTS; or

(b) A vessel is about to depart the SPM because of storm conditions; or

(c) A vessel is about to depart the SPM and the SPM is not scheduled for use in an oil transfer operation within the next 48 hours.

§ 150.423 Limitations.

(a) No person may transfer oil at a deepwater port—

(1) Unless a terminal supervisor is on duty at the port;

(2) During a severe electrical storm in the vicinity of the deepwater port;

(3) During a fire at the deepwater port, receiving terminal on shore, or aboard a vessel berthed at the deepwater port;

(4) Unless there are enough available personnel and equipment at the port to contain and remove a discharge of 10,000 U.S. gallons of oil into the water.

(5) By lighterage unless otherwise authorized by the Captain of the Port; and

(6) Unless the weather conditions at the port meet the operating conditions prescribed in the Operations Manual for transferring oil at the port.

(b) No person may connect or disconnect a hose string unless he is certificated as a tankerman under 46 CFR 12.20.

Subpart E—Operations

§ 150.500 Applicability.

The rules in this subpart apply to operations on each PPC at a deepwater port.

§ 150.503 Maintenance of equipment.

(a) The licensee shall maintain each item of equipment required under this subchapter in operative condition or shall replace it with an item in good condition.

(b) The licensee shall maintain each excess item of equipment required under this subchapter in operative condition, or shall remove it from service.

§ 150.504 Fire main system.

The licensee may use the fire main system only for firefighting and deck-washing.

§ 150.505 Fire pump.

The licensee shall keep at least one of the fire pumps required by this subchapter ready for use on the fire main system at all times.

§ 150.507 Firehose: connection and stowage.

(a) Except as otherwise provided in paragraph (c) of this section, the licensee shall keep at least one length of firehose with a combination nozzle connected to each fire hydrant at all times.

(b) The licensee shall stow each firehose connected to a fire hydrant on a hose rack when not in use.

(c) A firehose in an exposed location may temporarily be removed from an ex-

posed location to protect the firehose from damage during heavy weather.

§ 150.508 Stowage of life saving equipment.

(a) The licensee shall ensure that each inflatable liferaft required by this § 149.521 of this subchapter is stowed as near as practicable to launching equipment for the liferaft.

(b) The licensee shall ensure that each life preserver required by § 149.529 of this subchapter is stowed next to a lifeboat, inflatable liferaft, or means of escape in lockers, boxes, or closets that cannot be locked and that are plainly marked.

§ 150.508a Replacement of distress signals.

The licensee shall ensure that each distress signal required by § 149.528 is replaced no later than three years after the date of its manufacture.

§ 150.508b Lifeboat launching equipment test.

The licensee shall ensure that lifeboat launching equipment required by § 149.524 of this subchapter is tested immediately after installation in accordance with 46 CFR 94.35-5.

§ 150.509 Use of Personal Protection Equipment.

(a) When any person is in a work area, the licensee shall ensure that such person wears:

(1) Safety shoes that meet the specifications prescribed by the American National Standard Institute (ANSI) Requirements for Men's Safety-toe Footwear, Z41.1(1967).

(2) Protective hats that meet the specifications prescribed by the ANSI Safety Requirements for Industrial Head Protection, Z89.1(1969).

(b) When an eye hazard from flying particles or heavy dust exists, the licensee shall ensure that each person in the area of the hazard is wearing eye protection equipment that meets the specifications prescribed by the ANSI Practice for Occupational and Educational Eye and Face Protection, Z87.1(1968).

(c) When hazardous work is being performed, the licensee shall ensure that any person who wears corrective eye glasses wear eye protection equipment that can be worn over eye glasses, or prescription ground safety lenses that meet the specifications prescribed by the ANSI Practice for Occupational and Educational Eye and Face Protection, Z87.1(1968), if these lenses provide protection against the hazard involved.

(d) When any person is exposed to combinations of sound levels and durations exceeding those listed in Table 150.509 of this part, the licensee shall ensure that such person is wearing ear protection equipment that reduces sound levels to the prescribed levels.

(e) When any person is working near the water, the licensee shall ensure that such person wears a unicellular plastic foam work vest that meets the requirements of 46 CFR 160.053.

TABLE 150.509.—Maximum permissible noise exposures¹

Duration per day, hours:	Sound level ² dBA slow response
8	90
6	92
4	95
3	97
2	100
1½	102
1	105
¾	110
½	115

¹ When the daily noise exposure is composed of two or more periods of noise exposure of different levels, their combined effect must be considered rather than the individual effect of each. If the sum of the fractions

$(\frac{C_1}{T_1} + \frac{C_2}{T_2} + \dots + \frac{C_n}{T_n})$ is more than one, then, the mixed

exposure exceeds the limit value. (C_n) is the total time of exposure at a specified noise level. (T_n) is the total time of exposure permitted at that level.

² Exposure to impulsive or impact noise should not exceed 140 dB peak sound pressure level.

³ Measured on the A scale of a standard sound level meter at slow response.

§ 150.511 Maintenance of personal protection equipment.

(a) The licensee shall clean and disinfect eye protection equipment that has been used before it is reissued.

(b) The licensee shall clean and disinfect protective hats that have been worn before they are reissued.

§ 150.513 Sanitation.

The licensee shall ensure that garbage is covered and that no person is working in the vicinity of uncovered garbage or of overboard discharges from sanitary lines that are not protected by a baffle or splash boards.

§ 150.515 Refueling for aircraft.

If the PPC is not equipped with a permanent fueling facility for aircraft, no person may fuel or cause or authorize the fueling of aircraft unless he has received the permission of the Captain of the Port.

§ 150.517 Station bill.

(a) The licensee shall post copies of a station bill on each PPC.

(b) The licensee shall designate in writing on the station bill, by title and in order of succession, each person on the PPC who is a person in charge of the PPC for purposes of supervision in an emergency.

(c) The station bill must set forth—

(1) The special duties and duty stations of each person, by name, on the PPC for each emergency listed in the Operations Manual that involves the use or application of equipment required by Part 149 of this subchapter; and

(2) The signals for calling persons to their emergency stations and for abandoning the PPC.

§ 150.519 Emergency drills.

The licensee shall conduct each emergency drill specified in the Operations Manual at least once each month.

§ 150.521 Housekeeping.

(a) The licensee shall keep walking and working areas clear of all loose hazards that could cause tripping or stumbling.

(b) The licensee shall store portable equipment when not in use.

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(c) The licensee shall eliminate slippery conditions on the platform as they occur.

(d) No person may suspend a portable light by its cord unless the means of attachment of the cord to the light prevents the light from being suspended by the electrical connections.

(e) The licensee shall keep each area near a lifeboat, inflatable liferaft, or means of escape described in §§ 149.421 and 149.423 of this subchapter clear of obstructions that would interfere with immediate use of the lifeboat, liferaft, or means of escape.

§ 150.523 Illumination.

(a) The licensee shall illuminate each walking and working area.

(b) No person may enter any dark place without a flashlight or other suitable portable light.

(c) No person may use matches or open flame lights as illumination.

§ 150.525 Emergency medical technician.

The licensee shall ensure that at least one person who holds a certificate of completion from a state, or from the National Registry of Emergency Medical Technicians, of the Department of Transportation-National Highway Traffic Safety Administration Basic Training Course (81 hours) for emergency medical technicians is on each PPC at all times.

§ 150.527 First aid station.

A first aid station may not be used for any purpose that prevents its immediate use as a first aid station.

Subpart F—Aids to Navigation at Deepwater Ports

§ 150.601 Applicability.

The rules in this subpart apply to the operation of aids to navigation at a deepwater port.

§ 150.603 Applicability of other regulations.

Section 66.01-20 of this chapter also applies to aids to navigation at a deepwater port.

§ 150.605 Voltage.

The licensee shall maintain the voltage of each light at or above the operating voltage listed on the light.

§ 150.607 Lights.

(a) The licensee shall operate each light from thirty minutes before sunset until thirty minutes after sunrise.

(b) During construction of a platform or SPM, the licensee shall mark the structure with at least one of the following:

(1) The obstruction lights required in Part 149 of this subchapter for the structure;

(2) The fixed lights of a vessel attending the structure; or

(3) General illumination lights on the structure that meet or exceed the intensity requirements for the obstruction lights required in Part 149 of this subchapter for the structure.

(c) The licensee shall ensure that the focal plane of each platform obstruction light when operated, and of the rotating lighted beacon when operated, is always coincident with the horizontal plane passing through the light source.

§ 150.611 Fog Signals.

(a) The licensee shall operate the fog signal on each PPC whenever the visibility in any horizontal direction from the structure is less than 5 miles.

(b) During construction of a platform, compliance with paragraph (a) of this section is not required if the PPC is attended by a vessel moored alongside the platform and the vessel sounds a 2 second whistle blast every 20 seconds whenever the visibility in any horizontal direction from the vessel is less than 5 miles.

Subpart G—Reports and Records

§ 150.701 Applicability.

This subpart applies to the reports required by the Coast Guard to be submitted by the licensee of a deepwater port, and to the records and other information required by the Coast Guard to be maintained by the licensee.

§ 150.702 Definition.

For the purposes of this part, "barrel" means 42 United States gallons at 60 degrees Fahrenheit.

REPORTS

§ 150.703 Maintenance of ABS Classification.

Whenever the licensee submits a report to the American Bureau of Snipping (ABS) that is required for maintenance of SPM class in accordance with ABS Rules for Building and Classing Single Point Moorings, he shall submit a copy of the report to the Commandant U.S. Coast Guard.

§ 150.705 Report of Discrepancy to Navigational Aid.

The licensee shall submit to the District Commander a report of any discrepancy affecting the proper operation or characteristics of any navigational aid at the deepwater port. The report must be submitted promptly, by the fastest means of communication available, upon determination that a discrepancy exists which cannot be corrected within twelve hours. The report must include—

(a) Name or designation of aid;

(b) Location of aid;

(c) Nature of discrepancy; and

(d) Estimated time of correction.

Correction of the discrepancy must also be reported promptly.

§ 150.707 Report of Oil Throughput; Payment to Deepwater Port Liability Fund.

The licensee shall submit to the District Commander a report of oil cargo throughput of the deepwater port. The report must be submitted on a quarterly basis, beginning on the first day of the calendar quarter immediately following the commencement of oil transfer opera-

tions at the port, and must contain the following information—

(a) Oil cargo throughput during previous calendar quarter measured in barrels; and

(b) Calculated payment to the Deepwater Port Liability Fund as required by § 18(f)(3) of the Act. The payment must be enclosed unless the District Commander advises the licensee that collections have been suspended.

§ 150.709 Notice of the Discharge of Oil.

(a) The purpose of this section is to prescribe the manner in which the notice required in § 18(b) of the Act is to be given and to list the government officials to receive that notice.

(b) Any master or person in charge of a vessel in a safety zone, and a deepwater port licensee, shall, when reporting knowledge of a discharge of oil in compliance with § 18(b) of the Act, immediately notify by telephone, radio telecommunication, or a similar means of rapid communication, one of the following persons listed in order of priority:

(1) Duty Officer, National Response Center, U.S. Coast Guard, 400 Seventh Street SW., Washington, D.C. 20590; toll free telephone number 800-424-8802 except for discharges in waters adjacent to Alaska and Hawaii.

(2) Commanding Officer or Officer-in-Charge of any Coast Guard unit in the vicinity of the discharge.

(3) The government official pre-designated in the applicable Regional Contingency Plan as the On-Scene Coordinator for the geographic area in which the discharge occurs. Regional Contingency Plans are available at Coast Guard District Offices and Environmental Protection Agency (EPA) Regional Offices, as listed in 33 CFR 153.105.

(4) Commander of the Coast Guard district in which the discharge occurs. States and their corresponding Coast Guard districts are listed in 33 CFR 153.105.

(5) Regional Administrator of the Environmental Protection Agency for the region in which the discharge occurs. States and their corresponding EPA regions are listed in 33 CFR 133.105.

§ 150.711 Casualty or Accident Report.

(a) The licensee shall submit to the Officer-in-Charge, Marine Inspection, having jurisdiction, a report of casualty or accident whenever any of the following occur:

(1) Any component of the deepwater port is hit by a vessel and damage to property is in excess of \$1,500.

(2) Damage to the deepwater port in excess of \$25,000.

(3) Material damage affecting the usefulness of lifesaving or firefighting equipment.

(4) Loss of life.

(5) Injury causing any person to remain incapacitated for more than 72 hours, arising from or directly connected with the use or employment of any emergency equipment described in Part 149 of this subchapter.

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(b) The written report, in narrative form, must contain the following information—

(1) Name, number, or other designation of the deepwater port;

(2) Names and addresses of the owner, his agent (if any), operator (if any), and the person in charge;

(3) Nature and probable cause of the casualty or accident;

(4) Date and time the casualty or accident occurred, if known, otherwise approximately when it occurred;

(5) Details of damage incurred, especially with respect to lifesaving and firefighting equipment;

(6) Nature and extent of injury to any person;

(7) Names and addresses of persons involved; and

(8) Other comments, especially with respect to use or need for emergency equipment.

(c) In the investigations of casualties and accidents occurring at deepwater ports, the procedures in 46 CFR 136 for marine casualties apply, as far as practicable.

§ 150.713 Report of Sabotage or Subversive Activity.

The licensee shall submit to the Captain of the Port, having jurisdiction, a report of sabotage or subversive activity involving or endangering any vessel at the deepwater port, or the deepwater port. The report must be submitted by the fastest possible means of communication immediately upon discovery of evidence of sabotage or subversive activity; written confirmation must follow.

RECORDS

§ 150.751 General.

(a) The licensee shall maintain copies of all reports, records, test and inspection results, and operating data required by these rules in a manner suitable for Coast Guard inspection at the deepwater port or an adjacent onshore facility.

(b) Except as specified in §§ 150.753-150.759 of this subpart, these copies must be maintained for three years.

§ 150.753 Key Personnel; designations and qualifications.

The licensee shall retain documentation of the designation and qualifications of key terminal personnel for the duration of each individual's employment at the port. Such documentation must include—

(a) Designation required by Subpart B of this part; and

(b) Qualifications of personnel required by Subpart B of this part.

§ 150.755 Port Inspection Records.

(a) Machinery Record. The licensee shall maintain a record of all machinery, both fixed and portable, such as generators, cargo pumps, firepumps, and discharge containment and removal systems. This record must contain, for each piece of machinery, the—

(1) Nameplate and general descriptive data;

(2) Serial number;

(3) Location and purpose; and

(4) Record of tests and inspections.

(b) Emergency Equipment Record. The licensee shall maintain a record of all firefighting, lifesaving, and other emergency equipment, such as fire hoses, nozzles, applicators, fire extinguishers, life rafts, life preservers, and alarm systems. This record must contain, for each piece of emergency equipment—

(1) Nameplate (if any) and general descriptive data;

(2) Serial number (if any);

(3) Location and purpose; and

(4) Record of tests and inspections.

(c) Record of Emergency Drills. The licensee shall retain for one year a record of each monthly emergency drill conducted under § 150.519 of this part, containing the date, time, and signature of the person in charge at the time of the drill.

(d) Record of Port Inspections. The licensee shall retain for three years a record of each test and inspection performed by port personnel. The record must include the date and results of the test or inspection and the signature of the person conducting the test or inspection. These tests and inspections include, but are not limited to, those required in Subpart D of this part for oil transfer systems, discharge containment equipment, and discharge removal material and equipment, and those required for maintenance of ABS Classification, as specified in the Rules for Building and Classing Single Point Moorings published by the American Bureau of Shipping.

§ 150.757 Oil Throughput Log.

The licensee shall maintain an Oil Throughput Log, from which the Report of Oil Throughput required by § 150.707 of this subpart is prepared. Records in this log must be retained for three years, and must specify for each oil transfer operation—

(a) Vessel name, nationality, owner, and date of arrival;

(b) Country of origin of crude oil; and

(c) Total quantity of oil transferred in barrels.

§ 150.759 Declaration of Inspection.

The licensee shall retain signed copies of the Declaration of Inspection forms required by § 150.417 for one month from date of signature.

(Secs. 5(a), 5(b), 10(a), 10(b), Pub. L. 93-627, 88 Stat. 2131, 2137, 2100)

Dated: May 2, 1975.

R. I. PRICE,
Rear Admiral, U.S. Coast Guard
Chief, Office of Marine Environment and Systems.

Approved:

WILLIAM T. COLEMAN, Jr.,
Secretary of Transportation.

[FR Doc.75-11971 Filed 5-6-75;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

MEMORANDUM OF UNDERSTANDING BETWEEN THE ENVIRONMENTAL PROTECTION AGENCY AND THE DEPARTMENT OF TRANSPORTA- TION

This memorandum establishes policies and guidelines relating to the definition of transportation and nontransportation related onshore and offshore facilities and the responsibilities of the Environmental Protection Agency and the U.S. Coast Guard with respect to the prevention of oil discharges from vessels and onshore and offshore facilities.

SECTION I—GENERAL

1. Section 11(j)(1)(C) of the Federal Water Pollution Control Act, as amended authorizes the President to issue regulations consistent with maritime safety and with marine and navigation laws establishing procedures, methods, and requirements for equipment to prevent discharges of oil from vessels and onshore and offshore facilities.

2. This authority was delegated by the President in Executive Order 11548. Section 1 of that Executive order delegates responsibility and authority to the Secretary of the Interior to carry out the provisions of subsection (j)(1)(C) of section 11 of the Act after consultation with the Secretary of Transportation relating to procedures, methods and requirements for equipment to prevent discharges of oil from nontransportation related onshore and offshore facilities. The authority delegated to the Secretary of the Interior was subsequently vested in the Administrator of the Environmental Protection Agency in Reorganization Plan No. 3 of 1970 and section 9 of Executive Order 11548.

3. Section 2 of Executive Order 11548 delegates responsibility and authority to the Secretary of Transportation in consultation with the Secretary of the Interior, to carry out the provisions of subsection (j)(1)(C) of section 11 of the Act relating to procedures, methods and requirements for equipment to prevent discharges of oil from vessels and transportation-related onshore and offshore facilities. The Secretary of Transportation in turn redelegated this authority to the Commandant, U.S. Coast Guard.

4. Although Executive Order 11548 divided responsibility and authority into transportation-related and nontransportation-related facilities, no indication of the extent of transportation relation is given. In the broadest sense every facility is transportation related. Any activity that can possibly discharge oil must transport materials to some extent and have materials transported either to, from, or by the facility.

5. In distinguishing between transportation-related and nontransporta-

tion-related facilities, a systems approach was utilized. It is recognized that the life-cycle of oil is characterized by various operations conducted at many different types of facilities. Most facilities necessarily engage in more than one type of operation. These operations include drilling, producing, refining, storing, transferring, transporting, using and disposing. To the extent possible and considering agency resource capabilities and expertise, it is considered most practical to assign one agency the responsibility for regulating a complete operation at any one facility. The Department of Transportation will generally be responsible for regulating the transferring of oil to or from a vessel at any facility, including terminal facilities: the transporting of oil via highway, pipeline, railroad, or vessel; and certain storing operations. The Environmental Protection Agency will generally be responsible for regulating drilling, producing, refining, storing, disposing and certain transferring operations at various types of facilities.

6. While the following definitions are intended to be as specific and inclusive as possible, it is recognized that certain problems concerning these definitions will arise from time to time requiring the cooperation and agreement of the Department of Transportation and the Environmental Protection Agency for resolution.

SECTION II—DEFINITIONS

The Environmental Protection Agency and the Department of Transportation agree that for the purposes of Executive Order 11548, the term—

(1) "Non-transportation-related onshore and offshore facilities" means—

(A) Fixed onshore and offshore oil well drilling facilities including all equipment and appurtenances related thereto used in drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(B) Mobile onshore and offshore oil well drilling platforms, barges, trucks, or other mobile facilities including all equipment and appurtenances related thereto when such mobile facilities are fixed in position for the purpose of drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(C) Fixed onshore and offshore oil production structures, platforms, derricks, and rigs including all equipment and appurtenances related thereto, as well as completed wells and wellhead equipment, piping from wellheads to oil separators, oil separators, and storage facilities used in the production of oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(D) Mobile onshore and offshore oil production facilities including all equipment and appurtenances related thereto as well as completed wells and wellhead equipment, piping from wellheads to oil separators, oil separators, and storage facilities used in the production of oil when such mobile facilities are fixed in position for the purpose of oil production operations, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(E) Oil refining facilities including all equipment and appurtenances related thereto as well as in-plant processing units, storage units, piping, drainage systems and waste treatment units used in the refining of oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(F) Oil storage facilities including all equipment and appurtenances related thereto as well as fixed bulk plant storage, terminal oil storage facilities, consumer storage, pumps and drainage systems used in the storage of oil, but excluding in-line or breakout storage tanks needed for the continuous operation of a pipeline system and any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(G) Industrial, commercial, agricultural or public facilities which use and store oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(H) Waste treatment facilities including in-plant pipelines, effluent discharge lines, and storage tanks, but excluding waste treatment facilities located on vessels and terminal storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels and associated systems used for off-loading vessels.

(I) Loading racks, transfer hoses, loading arms and other equipment which are appurtenant to a nontransportation related facility or terminal facility and which are used to transfer oil in bulk to or from highway vehicles or railroad cars.

(J) Highway vehicles and railroad cars which are used for the transport of oil exclusively within the confines of a nontransportation related facility and which are not intended to transport oil in interstate or intrastate commerce.

(K) Pipeline systems which are used for the transport of oil exclusively within the confines of a nontransportation related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce, but excluding pipeline systems used to transfer oil in bulk to or from a vessel.

(2) "Transportation-related onshore and offshore facilities" means—

(A) Onshore and offshore terminal facilities including transfer hoses, loading arms and other equipment and appurtenances used for the purpose of handling or transferring oil in bulk to or

from a vessel as well as storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels, but excluding terminal waste treatment facilities and terminal oil storage facilities.

(B) Transfer hoses, loading arms and other equipment appurtenant to a nontransportation related facility which is used to transfer oil in bulk to or from a vessel.

(C) Interstate and intrastate onshore and offshore pipeline systems including pumps and appurtenances related thereto as well as in-line or breakout storage tanks needed for the continuous operation of a pipeline system, and pipelines from onshore and offshore oil production facilities, but excluding onshore and offshore piping from wellheads to oil separators and pipelines which are used for the transport of oil exclusively within the confines of a nontransportation related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce or to transfer oil in bulk to or from a vessel.

(D) Highway vehicles and railroad cars which are used for the transport of oil in interstate or intrastate commerce and the equipment and appurtenances related thereto, and equipment used for the fueling of locomotive units, as well as the rights-of-way on which they operate. Excluded are highway vehicles and railroad cars and motive power used exclusively within the confines of a nontransportation related facility or terminal facility and which are not intended for use in interstate or intrastate commerce.

SECTION III—COORDINATION AND ENFORCEMENT

The above definitions have been developed to facilitate the development and enforcement of regulations for prevention of oil discharges and to correspond as much as possible to the existing responsibilities of the Department of Transportation and the Environmental Protection Agency. It is recognized, however, that in some situations the Department of Transportation may have expertise that could be helpful to the Environmental Protection Agency in the development or enforcement of these regulations and vice versa. Such a situation might arise in connection with the regulation of the nontransportation related facilities included within definitions 1 (J) and (K) in section II above.

It is agreed that in such situations the Department of Transportation and the Environmental Protection Agency will provide assistance to and coordinate with each other in the development and enforcement of the regulations to the extent that existing resources permit.

Done this 24th day of November 1971 at the city of Washington.

For the Department of Transportation.

JOHN A. VOLPE.

For the Environmental Protection Agency.

WILLIAM D. RUCKELSHAUS.

[FR Doc.71-18542 Filed 12-17-71; 8:48 am]

UNITED NATIONS THIRD CONFERENCE ON THE LAW OF THE SEA:
INFORMAL SINGLE NEGOTIATING TEXT*

UNITED NATIONS

THIRD CONFERENCE
ON THE LAW OF THE SEA

A/CONF.62/WP.8/Part I
7 May 1975
Original: ENGLISH

INFORMAL SINGLE NEGOTIATING TEXT

PART I

TEXT PRESENTED BY THE CHAIRMAN OF THE FIRST COMMITTEE

Note by the President of the Conference

At its 55th plenary meeting on Friday 18 April 1975 the Conference decided to request the Chairman of its three Main Committees each to prepare a single negotiating text covering the subjects entrusted to his Committee. In his concluding statement, before the Conference made this request, the President stressed that the single text should take account of all the formal and informal discussions held so far, would be informal in character and would not prejudice the position of any delegation nor would it represent any negotiated text or accepted compromise. It should, therefore, be quite clear that the single negotiating text will serve as a procedural device and only provide a basis for negotiation. It must not in any way be regarded as affecting either the status of proposals already made by delegations or the right of delegations to submit amendments or new proposals.

*[Reproduced from U.N. Document A/CONF.62/WP.8/Part I-III.]

[As indicated in the Note by the President of the Conference, the Chairmen of the three Main Committees of the Conference were asked to prepare a single negotiating text covering the subjects entrusted to their Committees. The text prepared by the Chairman of the Second Committee appears at I.L.M. page 710; the text presented by the Chairman of the Third Committee appears at page 743. A Note by the President, identical to the one above, preceded each of these texts in the original documents. They have been omitted at I.L.M. pages 710 and 743.]

[At the close of the eight-week session in Geneva on May 9, 1975, the President of the Conference indicated that Governments could use the informal single negotiating text as a basis for study and negotiation pending the next meeting. That session will be held in New York in late March of 1976.]

[A working paper on settlement of disputes, presented by the Co-Chairmen of that informal working group, appears at I.L.M. page 762.]

PART I. THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE

SECTION 1. GENERAL

Article 1

1. The sovereignty of a coastal State extends beyond its land territory and internal waters, and in the case of an archipelagic State, its archipelagic waters, over an adjacent belt of sea described as the territorial sea.
2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.
3. The sovereignty over the territorial sea is exercised subject to the provisions of these articles and to other rules of international law.

SECTION 2. LIMITS OF THE TERRITORIAL SEA

Article 2

Every State shall have the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines drawn in accordance with the provisions of the present Convention.

Article 3

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Article 4

Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

Article 5

In the case of islands situated on atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea shall be the seaward edge of the reef, as shown by the appropriate symbol on official charts.

Article 6

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured. Where because of the presence of a delta or other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, such baselines shall remain effective until changed by the coastal State in accordance with the present Convention.
2. A coastal State may employ the method of mixed baselines, i.e. drawing the baseline in turn by the methods provided for in article 4 and this article to suit different conditions.
3. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters.
4. Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of baselines to and from such elevations has received general international recognition.
5. Where the method of straight baselines is applicable under the provisions of paragraph 1 account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

6. The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.

7. The coastal State must clearly indicate straight baselines on charts, supplemented by a list of geographical coordinates of points, deposited with the Secretary-General of the United Nations who shall give due publicity thereto.

Article 7

1. Except as provided in Part VII, waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

2. Where the establishment of a straight baseline in accordance with article 6 has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea, of the exclusive economic zone or of the high seas, a right of innocent passage, as provided in these articles shall exist in those waters.

Article 8

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks. The coastal State must clearly indicate these baselines on large-scale charts deposited with the Secretary-General of the United Nations, who shall give due publicity thereto.

Article 9

1. This article relates only to bays the coasts of which belong to a single State.

2. For the purposes of these articles a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water mark of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6. The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article 6 is applied.

Article 10

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast. Offshore installations and artificial islands shall not be considered as permanent harbour works.

Article 11

Roadsteads which are normally used for the loading, unloading, and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must clearly demarcate such roadsteads and indicate them on charts together with their boundaries, to which due publicity must be given.

Article 12

1. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low-tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

Article 13

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

2. The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

SECTION 3. INNOCENT PASSAGE IN THE TERRITORIAL SEA

Subsection A. Rules applicable to all ships

Article 14

Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

Article 15

1. Passage means navigation through the territorial sea for the purpose of:

(a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or

(b) proceeding to or from internal waters or a call at such a roadstead or port facility.

2. Innocent passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress or for the purposes of rendering assistance to persons, ships or aircraft in danger or distress. Passage shall otherwise be continuous and expeditious.

Article 16

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State, if in the territorial sea it engages in any of the following activities:

(a) any threat or use of force against the territorial integrity or political independence of the coastal State or in any other manner in violation of the Charter of the United Nations;

(b) any exercise or practice with weapons of any kind;

(c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;

(d) any act of propaganda aimed at affecting the defence or security of the coastal State;

- (e) the launching, landing, or taking on board of any aircraft;
- (f) the launching, landing or taking on board of any military device;
- (g) the embarking or disembarking of any commodity, currency or person contrary to the customs, fiscal or sanitary regulations of the coastal State;
- (h) any act of wilful pollution, contrary to the provisions of the present Convention;
- (i) the carrying on of research or survey activities of any kind;
- (j) any act aimed at interfering with any systems of communication of the coastal or any other State;
- (k) any act aimed at interfering with any other facilities or installations of the coastal State;
- (l) any other activity not having a direct bearing on passage.

3. The provisions of paragraph 2 shall not apply to any activities carried out with the prior authorization of the coastal State or in the case of any of the activities referred to in sub-paragraphs(e) to (l), as are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress. In such cases the foreign ship shall, as appropriate, inform the authorities of the coastal State as promptly as possible of the action taken.

4. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.

Article 17

Submarines and other underwater vehicles are required to navigate on the surface and to show their flag, unless otherwise authorized by the coastal State.

Article 18

1. The coastal State may make laws and regulations, in conformity with the provisions of the present Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:

- (a) the safety of navigation and the regulation of marine traffic, including the designation of sealanes and the establishment of traffic separation schemes;
- (b) the protection of navigational aids and facilities and other facilities or installations including those for the exploration and exploitation of the marine resources of the territorial sea and the sea-bed and subsoil thereof;
- (c) the protection of cables and pipelines;
- (d) the conservation of the living resources of the sea;
- (e) the prevention of infringement of the fisheries regulations of the coastal State, including, inter alia, those relating to the stowage of gear;
- (f) the preservation of the environment of the coastal State and the prevention of pollution thereto;
- (g) research of the marine environment and hydrographic surveys;
- (h) the prevention of infringement of the customs, fiscal, immigration, quarantine or sanitary or phytosanitary regulations of the coastal State.

2. Such laws and regulations shall not apply to or affect the design, construction, manning or equipment of foreign ships or matters regulated by generally accepted international rules unless specifically authorized by such rules.

3. The coastal State shall give due publicity to all laws and regulations made by it under the provisions of this article.

4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations of the coastal State and shall at all times, and particularly when using sealanes and traffic separation schemes designated or prescribed by the coastal State under the provisions of these articles, comply with all generally accepted international regulations relating to the prevention of collisions at sea.

Article 19

1. A coastal State may, where it considers it necessary having regard to the density of traffic concentration, require foreign ships exercising the right of innocent passage through its territorial sea to use such sealanes and traffic separation schemes as may be designated or prescribed by the coastal State for the regulation of the passage of ships.

2. Tankers and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to confine their passage to such sealanes.

3. A coastal State may from time to time, after giving due publicity thereto, modify the traffic separation schemes or substitute other sealanes for any sealanes previously designated by it under the provisions of this article.

4. In the designation of sealanes and the prescription of traffic separation schemes under the provisions of this article a coastal State shall take into account:

- (a) the recommendations of competent international organizations;
- (b) any channels customarily used for international navigation; and
- (c) the special characteristics of particular ships and channels.

5. The coastal State shall clearly demarcate all sealanes designated by it under the provisions of this article and indicate them on charts to which due publicity shall be given.

Article 20

Foreign nuclear-powered ships and ships transporting nuclear substances shall, when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for such ships by international agreements.

Article 21

1. The coastal State shall not interrupt or hamper the innocent passage of foreign ships through the territorial sea and, in particular, in the application of these articles or of any laws or regulations made under the provisions of these articles, it shall not:

- (a) impose requirements on foreign ships which have the practical effect of denying or prejudicing the right of innocent passage; or
- (b) discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State.

2. The coastal State is required to give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea.

Article 22

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

2. In the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject.

3. The coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign

ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

Article 23

1. If a ship exercising the right of innocent passage through the territorial sea does not comply with the laws and regulations concerning navigation, it shall be liable for any damage caused to the coastal State, including its environment and any of its facilities, installations or other property or to any ships flying its flag.

2. If in the application of its laws and regulations, a coastal State acts in a manner contrary to the provisions of these articles and loss or damage results to any foreign ship exercising the right of innocent passage through the territorial sea, the coastal State shall compensate the owners of such ship for that loss or damage.

Subsection B. Rules applicable to merchant ships

Article 24

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

Article 25

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage, save only in the following cases:

- (a) if the consequences of the crime extend to the coastal State;
- (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
- (c) if the assistance of the local authorities has been requested by the captain of the ship or by the consular officer of the country whose flag the ship flies; or
- (d) if it is necessary for the suppression of illicit traffic in narcotic drugs and psychotropic substances.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the captain so requests, advise the consular officer of the flag State before taking any steps, and shall facilitate contact between such officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

5. The coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

Article 26

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities

assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

Subsection C. Rules applicable to government ships

(1) Government ships other than warships

Article 27

The rules contained in subsections A and B shall apply to government ships operated for commercial purposes.

Article 28

1. The rules contained in subsection A and in article 24 shall apply to government ships operated for non-commercial purposes.

2. With such exceptions as are contained in the provisions referred to in the preceding paragraph, nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law.

(2) Warships

Article 29

1. For the purposes of the present Convention, "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the Government of the State and whose name appears in the appropriate Service list or its equivalent, and manned by a crew who are under regular armed forces discipline.

2. The rules contained in subsection A shall apply to warships.

Article 30

If any warship does not comply with the laws and regulations of the coastal State relating to passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may require it to leave the territorial sea by such safe and expeditious route as may be directed by the coastal State.

Article 31

Subject to articles 29, 30 and 32, nothing in these provisions affects the immunities which warships enjoy under these provisions or other rules of international law.

(3) State responsibility for government ships

Article 32

If, as a result of any non-compliance by any warship or other government ship operated for non-commercial purposes with any of the laws or regulations of the coastal State relating to passage through the territorial sea or with any of the provisions of these articles or other rules of international law, any damage is caused to the coastal State, including its environment and any of its facilities, installations or other property, or to any ships flying its flag, international responsibility shall be borne by the flag State of the ship causing the damage.

SECTION 4. CONTIGUOUS ZONE

Article 33

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:

(a) prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;

(b) punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond 24 nautical miles from the baseline from which the breadth of the territorial sea is measured.

PART III. THE EXCLUSIVE ECONOMIC ZONE

Article 45

1. In an area beyond and adjacent to its territorial sea, described as the exclusive economic zone, the coastal State has:

(a) sovereign rights for the purpose exploring and exploiting, conserving and managing the natural resources, whether renewable or non-renewable, of the bed and subsoil and the superjacent waters;

(b) exclusive rights and jurisdiction with regard to the establishment and use of artificial islands, installations and structures;

(c) exclusive jurisdiction with regard to:

(i) other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and

(ii) scientific research;

(d) jurisdiction with regard to the preservation of the marine environment, including pollution control and abatement;

(e) other rights and duties provided for in the present Convention.

2. In exercising its rights and performing its duties under the present Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States.

3. The rights set out in this article shall be without prejudice to the provisions of Part IV.

Article 46

The exclusive economic zone shall not extend beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

Article 47

1. All States, whether coastal or land-locked, shall, subject to the relevant provisions of the present Convention, enjoy in the exclusive economic zone the freedoms of navigation and overflight and of the laying of submarine cables and pipelines and other internationally lawful uses of the sea related to navigation and communication.

2. The provisions of articles 74, 76 to 97 and 100 to 102 and other pertinent rules of international law shall apply to the exclusive economic zone in so far as they are not incompatible with the provisions of this Part.

3. In cases where the present Convention does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive economic zone, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.

4. In exercising their rights and performing their duties under the present Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations enacted by the coastal State in conformity with the provisions of this Part and other rules of international law.

Article 48

1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:

(a) artificial islands;

(b) installations and structures for the purposes provided for in article 45 and other economic purposes;

(c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.

2. The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures including jurisdiction with regard to customs, fiscal, health, safety and immigration regulations.

3. Due notice must be given of the construction of such artificial islands, installations or structures, and permanent means for giving warning of their presence must be maintained. Any installations or structures which are abandoned or disused must be entirely removed.
4. The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures.
5. The breadth of the safety zones shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres around them measured from each point of their outer edge, except as authorized by generally accepted international standards or as recommended by the appropriate international organizations.
6. Ships of all nationalities must respect these safety zones and shall comply with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations, structures, and safety zones. Due notice shall be given of the extent of safety zones.
7. Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized searoutes essential to international navigation.
8. Artificial islands, installations and structures shall have no territorial sea of their own and their presence does not affect the delimitation of the territorial sea or of other zones of coastal State jurisdiction or of the continental shelf.

PART IV. CONTINENTAL SHELF

Article 62

The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

Article 63

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.
3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.
4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

Article 64

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or the air space above those waters.

Article 65

1. All States shall be entitled to lay submarine cables and pipelines on the continental shelf.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention of pollution from pipelines, the coastal State may not impede the laying or maintenance of such cables or pipelines.

3. The delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal State.

4. Nothing in this Part shall affect the right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea, or its jurisdiction over cables and pipelines constructed or used in connexion with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.

5. When laying submarine cables or pipelines, States shall pay due regard to cables or pipelines already in position. In particular possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article 66

The provisions of article 48 shall apply mutatis mutandis to artificial islands, installations and structures on the continental shelf.

Article 67

The coastal State shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes.

Article 68

The coastal State shall, with respect to the artificial islands, installations and structures and sea-bed activities subject to its jurisdiction, take appropriate measures for the protection of the marine environment from pollution, and ensure compliance with appropriate minimum international requirements provided for in Part ... (preservation of the marine environment) and with other applicable international standards.

Article 69

1. The coastal State shall make payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

2. The rate of payment or contribution shall be x% of the value or volume of production at the site. Production does not include resources used in connexion with exploitation.

3. The International Authority shall determine the extent to which developing countries shall be obliged to make payments or contributions provided for in paragraphs 1 and 2.

4. The payments or contributions provided for in paragraphs 1 and 2 shall be made to the International Authority on terms and procedures to be agreed upon with the Authority in each case. The International Authority shall distribute these payments and contributions on the basis of equitable sharing criteria, taking into account the interests and needs of developing countries.

Article 70

1. The delimitation of the continental shelf between adjacent or opposite States shall be effected by agreement in accordance with equitable principles, employing, where appropriate, the median or equidistance line, and taking account of all the relevant circumstances.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part ... (settlement of disputes).

3. Pending agreement, no State is entitled to extend its exclusive economic zone beyond the median line or the equidistance line.

4. For the purposes of this article, "median line" means the line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

5. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the provisions of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

6. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.

Article 71

The provisions of article 49 shall apply mutatis mutandis to research concerning the continental shelf and undertaken there.

Article 72

The provisions of this Part shall not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling irrespective of the depth of water above the subsoil.

INFORMAL SINGLE NEGOTIATING TEXT

PART III

TEXT PRESENTED BY THE CHAIRMAN OF THE THIRD COMMITTEE

PART ...

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

CHAPTER ONE

GENERAL PROVISIONS

Article 1

"Pollution of the marine environment" means: the introduction by man, directly or indirectly, of substances or energy in the marine environment (including estuaries) resulting in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.*/

Article 2

States have the obligation to protect and preserve all the marine environment.

Article 3

States have the sovereign right to exploit their natural resources pursuant to their environmental policies and they shall, in accordance with their duty to protect and preserve the marine environment, take into account their economic needs and their programmes for economic development.

Article 4

1. States shall take all necessary measures consistent with this Convention to prevent, reduce and control pollution of the marine environment from any source using for this purpose the best practicable means at their disposal and in accordance with their capabilities, individually or jointly, as appropriate, and they shall endeavour to harmonize their policies in this connexion.

2. States shall take all necessary measures to ensure that marine pollution does not spread outside their national jurisdiction and that activities under their jurisdiction or control are so conducted that they do not cause damage by pollution to other States and their environment, nor cause pollution beyond the areas where States exercise sovereign rights in accordance with this Convention.

3. The measures taken pursuant to these articles shall deal with all sources whatsoever of pollution of the marine environment. These measures shall include, inter alia, those designed to minimize to the fullest possible extent:

(a) Release of toxic, harmful and noxious substances, especially those which are persistent:

(i) from land-based sources;

*/ A provision containing a definition of marine pollution could be embodied in a special introductory chapter of this Convention, together with all other definitions.

(ii) from or through the atmosphere;

(iii) by dumping.

(b) Pollution from vessels, in particular for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels.

(c) Pollution from installations and devices used in the exploration or exploitation of the natural resources of the sea-bed and subsoil, in particular for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.

(d) Pollution from all other installations and devices operating in the marine environment, in particular for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.

4. In taking measures to prevent pollution of the marine environment States shall have due regard to the legitimate uses of the marine environment, which are not incompatible with the provisions of this Convention and shall refrain from unjustifiable interference with such uses.

Article 5

In taking measures to prevent or control marine pollution, States shall guard against the effect of merely transferring, directly or indirectly, damage or hazards from one area to another or from one type of pollution to another.

CHAPTER TWO

GLOBAL AND REGIONAL CO-OPERATION

Article 6

States shall co-operate on a global basis and as appropriate on a regional basis, directly or through competent international organizations, global or regional, to formulate and elaborate international rules, standards and recommended practices and procedures consistent with this Convention, for the prevention of marine pollution, taking into account characteristic regional features.

Article 7

A State which becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations.

Article 8

In the cases referred to in Article 7, States in the area affected, in accordance with their capabilities, and the competent international organizations, shall co-operate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage. Towards that end, States shall jointly promote and develop contingency plans for responding to pollution incidents in the marine environment.

Article 9

States shall co-operate directly or through competent international organizations for the purpose of promoting studies, undertaking programmes of scientific research and encouraging the exchange of information and data acquired about pollution of the marine environment. They shall endeavour to participate actively in regional and international programmes to acquire knowledge for the assessment of the nature and

extent of pollution and the pathways and risks of, exposures to and the remedies for pollution.

Article 10

In the light of the information and data acquired pursuant to Article 9, States shall co-operate directly or through competent international organizations in working out appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the prevention of marine pollution.

CHAPTER THREE

TECHNICAL ASSISTANCE

Article 11

1. States shall directly or through competent international or regional organizations:

(a) promote programmes of scientific, educational, technical and other assistance to developing countries for the preservation of the marine environment and the prevention of marine pollution. Such assistance shall include, inter alia,

- (i) training of scientific and technical personnel;
- (ii) facilitation of their participation in relevant international programmes;
- (iii) supply of necessary equipment and facilities;
- (iv) enhancing the capacity of developing countries to manufacture such equipment;
- (v) development of facilities for and advice on research, monitoring, educational and other programmes.

(b) provide appropriate assistance, in particular to developing countries, for the minimization of the effects of major incidents which may cause serious pollution in the marine environment.

(c) provide appropriate assistance in particular to developing countries concerning the preparation of environmental assessments.

Article 12

Developing States shall, for purposes of the prevention of marine pollution or the minimization of its effects, be granted preference in:

- (a) the allocation of appropriate funds and technical assistance facilities of international organizations, and
- (b) the utilization of their specialized services.

CHAPTER FOUR

MONITORING

Article 13

1. States shall, consistent with the rights of other States endeavour, as much as is practicable individually or collectively through the competent international organizations to observe, measure, evaluate and analyse, by recognized methods the risks or effects of pollution of the marine environment.

2. In particular, States shall keep under surveillance the effect of any activities which they permit or in which they engage to determine whether these activities are likely to pollute the marine environment.

Article 14

States shall provide at appropriate intervals reports of the results obtained relating to risks or effects of pollution of the marine environment to United Nations Environment Programme or any other competent international or regional organizations, which should make them available to all States.

CHAPTER FIVE

ENVIRONMENTAL ASSESSMENT

Article 15

When States have reasonable grounds for expecting that planned activities under their jurisdiction or control may cause substantial pollution of the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in paragraph 2 of article 13.

CHAPTER SIX

STANDARDS

Article 16

1. States shall establish national laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures.

States shall also take such other measures as may be necessary to prevent, reduce and control pollution of the marine environment from land-based sources.

2. States shall endeavour to harmonize their national policies at the appropriate regional level.

3. States, acting in particular through the appropriate intergovernmental organizations or by diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment from land-based sources, taking into account characteristic regional features, the economic capacity of developing countries and their need for economic development.

4. Laws, regulations, measures, rules, standards and recommended practices and procedures referred to in paragraphs 1 and 3 respectively shall include those designed to minimize to the fullest possible extent the release of toxic, harmful and noxious substances, especially persistent substances, into the marine environment.

Article 17

1. Coastal States shall establish national laws and regulations to prevent, reduce and control pollution of the marine environment arising from activities concerning exploration and exploitation of the sea bed and from installations under their jurisdiction, pursuant to Chapter Four of this Convention.

States shall also take any other measures as may be necessary to prevent, reduce and control such pollution.

Such laws, regulations and measures shall be no less effective than generally accepted international rules, standards and recommended practices and procedures.

2. States shall endeavour to harmonize their national policies at the appropriate regional level.

3. States, acting in particular through the appropriate intergovernmental organizations or by diplomatic conference, shall establish global and regional rules,

standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment arising in connexion with sea-bed activities and installations mentioned in paragraph 1 above.

Article 18

The provisions referring to measures to prevent, reduce and control pollution of the marine environment from activities concerning exploration and exploitation of the international sea-bed area are contained in Chapter of this Convention.

Article 19

1. States shall establish national laws and regulations to prevent, reduce and control pollution of the marine environment from dumping */ of wastes and other matter.

States shall also take such other measures as may be necessary to prevent, reduce and control such pollution.

Such laws, regulations and measures shall ensure that dumping is not carried out without the permission of the competent authorities of States.

2. States, acting in particular through the competent intergovernmental organizations or by diplomatic conference, shall endeavour to establish as soon as possible and to the extent that they are not already in existence, global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment by dumping of wastes and other matter.

3. Dumping of wastes and other matter, within shall not be carried out without the express approval of the coastal State, which has the exclusive right to permit, regulate and control such dumping.

4. National laws, regulations and measures shall be no less effective in preventing, reducing and controlling pollution from dumping than global rules and standards.

Article 20

1. States, acting through the competent international organization or by general diplomatic conference, shall establish as soon as possible and to the extent that they are not already in existence, international rules and standards for the prevention, reduction and control of pollution of the marine environment from vessels.

2. States shall establish effective laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag. The requirements of such laws and regulations shall be no less effective than generally accepted international rules and standards referred to in paragraph 1.

3. The coastal State may establish, in respect of the territorial sea, more effective laws and regulations for the prevention, reduction and control of marine pollution from vessels. In establishing such laws and regulations the coastal State shall, consistent with the aim of achieving maximum possible uniformity of rules and standards governing international navigation, conform to the international rules and standards referred to in paragraph 1 of this Article. Such laws and regulations must not have the practical effect of hampering innocent passage through the territorial sea.

4. Where internationally agreed rules and standards are not in existence or are inadequate to meet special circumstances and where the coastal State has reasonable grounds for believing that a particular area of the economic zone is an area where,

*/ The definition of dumping of wastes and other matter may be included in a special introductory chapter of this Convention together with all other definitions.

for recognized technical reasons in relation to its oceanographical and ecological conditions its utilization, and the particular character of its traffic, the adoption of special mandatory measures for the prevention of pollution from vessels is required, the coastal State may apply to the competent international organization for the area to be recognized as a "special area". Any such application shall be supported by scientific and technical evidence and shall, where appropriate, include plans for establishing sufficient and suitable land-based reception facilities.

5. Nothing in this Article shall be deemed to affect the establishment by the coastal State of appropriate non-discriminatory laws and regulations for the protection of the marine environment in areas within the economic zone, where particularly severe climatic conditions create obstructions or exceptional hazards to navigation, and where pollution of the marine environment, according to accepted scientific criteria, could cause major harm to or irreversible disturbance of the ecological balance.

6. Laws and regulations established pursuant to the internationally agreed rules and standards referred to in paragraph 4 of this Article, shall not become applicable in relation to foreign vessels until six months after they have been notified to the competent international organization.

Article 21

1. States shall establish national laws and regulations and shall take measures to prevent, reduce and control pollution of the marine environment from the atmosphere, taking into account internationally agreed rules, standards and recommended practices and procedures.

2. States shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control marine pollution from atmospheric sources.

CHAPTER SEVEN

ENFORCEMENT

Article 22

States shall have the right to enforce laws and regulations adopted in accordance with the provisions of this Convention for the protection and preservation of the marine environment from land-based sources of marine pollution.

Article 23

States shall have the right to enforce laws and regulations adopted in accordance with the provisions of this Convention for the protection and preservation of the marine environment from pollution arising from activities concerning exploration and exploitation of the continental shelf as provided for in this Convention.

Article 24

The international authority as referred to in Chapter of this Convention shall enforce, in co-operation with the flag States, the rules and standards adopted in accordance with the provisions of this Convention for the protection and preservation of the marine environment from pollution arising from activities concerning exploration and exploitation of the international sea bed area.

Article 25

Laws and regulations adopted in accordance with the provisions of this Convention for the protection and preservation of the marine environment from dumping at sea shall be enforced:

(a) by any State within its territory;

for recognized technical reasons in relation to its oceanographical and ecological conditions its utilization, and the particular character of its traffic, the adoption of special mandatory measures for the prevention of pollution from vessels is required, the coastal State may apply to the competent international organization for the area to be recognized as a "special area". Any such application shall be supported by scientific and technical evidence and shall, where appropriate, include plans for establishing sufficient and suitable land-based reception facilities.

5. Nothing in this Article shall be deemed to affect the establishment by the coastal State of appropriate non-discriminatory laws and regulations for the protection of the marine environment in areas within the economic zone, where particularly severe climatic conditions create obstructions or exceptional hazards to navigation, and where pollution of the marine environment, according to accepted scientific criteria, could cause major harm to or irreversible disturbance of the ecological balance.

6. Laws and regulations established pursuant to the internationally agreed rules and standards referred to in paragraph 4 of this Article, shall not become applicable in relation to foreign vessels until six months after they have been notified to the competent international organization.

Article 21

1. States shall establish national laws and regulations and shall take measures to prevent, reduce and control pollution of the marine environment from the atmosphere, taking into account internationally agreed rules, standards and recommended practices and procedures.

2. States shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control marine pollution from atmospheric sources.

CHAPTER SEVEN

ENFORCEMENT

Article 22

States shall have the right to enforce laws and regulations adopted in accordance with the provisions of this Convention for the protection and preservation of the marine environment from land-based sources of marine pollution.

Article 23

States shall have the right to enforce laws and regulations adopted in accordance with the provisions of this Convention for the protection and preservation of the marine environment from pollution arising from activities concerning exploration and exploitation of the continental shelf as provided for in this Convention.

Article 24

The international authority as referred to in Chapter of this Convention shall enforce, in co-operation with the flag States, the rules and standards adopted in accordance with the provisions of this Convention for the protection and preservation of the marine environment from pollution arising from activities concerning exploration and exploitation of the international sea bed area.

Article 25

Laws and regulations adopted in accordance with the provisions of this Convention for the protection and preservation of the marine environment from dumping at sea shall be enforced:

- (a) by any State within its territory;

(b) by the flag State with regard to vessels and aircraft registered in its territory or flying its flag;

(c) by the coastal State on vessels and aircraft engaged in dumping within its economic zone and continental shelf;

(d) by the port State on vessels and aircraft loading at its facilities or off-shore terminals.

Article 26

1. States shall ensure compliance with international rules and standards referred to in Article 20 for the preservation of marine environment by vessels flying their flag or of their registry, and shall provide for the effective enforcement of such rules and standards irrespective of where the violations may have occurred.

2. A flag State shall, at the documented request of any State, investigate any violation alleged to have been committed by its vessels. If satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, the flag State shall cause such proceedings to be taken as soon as possible, in accordance with its laws. The flag State shall promptly inform the requesting State of the action taken and of its outcome.

3. The penalties specified under the flag State's legislation for its own vessels shall be adequate in severity to discourage violations and equally severe regardless of where the violations occurred.

Article 27

1. When a State has reasonable grounds for believing that a vessel irrespective of its flag or State of registration, which is voluntarily within one of its ports or at one of the offshore terminals, has violated the international rules and standards regardless of where the violation occurred, it must:

(a) undertake an immediate and thorough investigation of the violation;

(b) provide immediate notification of the results of the investigation to the flag State concerned and any States affected by the alleged violation.

2. The coastal State may prevent this vessel from sailing if it presents an excessive danger to the marine environment: it may however authorize it to leave the port or terminal to go to the nearest appropriate shipyard for repairs.

3. When a coastal State has reasonable grounds for believing that a vessel irrespective of its registration, which is voluntarily within one of its ports or at one of its offshore terminals, has released a discharge in the area extending to miles from the baseline from which the territorial sea is measured which constitutes a violation of the international rules and standards, it may, subject to the provisions of Article 28, institute proceedings according to its laws and, if necessary, arrest the vessel.

Article 28

1. A coastal State may apply the measures contained in Article 27 when a vessel, passing through the territorial sea, irrespective of its flag or State of registration, has violated the international rules and standards referred to in Article 20, paragraphs 1 and 2.

2. A coastal State may apply the measures contained in Article 27 at the request of another State when a vessel, irrespective of its flag or State of registration has violated the international rules and standards referred to in Article 20 paragraphs 1 and 2, by releasing a discharge in the area extending to miles from the baseline from where the territorial sea of the requesting State is measured if such State is party to the Convention containing these international rules and standards alleged to be violated.

3. When a coastal State arrests a ship, or when it receives a request from another State in accordance with paragraph 1, it must immediately notify the flag State of these facts, furnishing a report and all other relevant information.

4. The report drawn up by the competent authorities of the coastal State concerned shall be forwarded to the flag State.

5. Proceedings in respect of any violation other than arresting a vessel shall not be instituted by the coastal State until the expiry of six months from the date of notification to the flag State in accordance with paragraph 2 of this Article, and at any time after the expiry of that period if the flag State has previously commenced proceedings and has not discontinued those proceedings.
6. Proceedings in respect of the violation shall not be instituted by the coastal State after the expiry of three years from the date of the violation.
7. Proceedings taken by the coastal State shall not prevent the flag State from exercising its own competence.
8. Proceedings in respect of the violation may not be instituted by another State if such proceedings in respect of the same violation have already been initiated by the flag State pursuant to the provisions of this Article.
9. Only monetary penalties may be imposed by a coastal State in respect of any such violation.

Article 29

When a coastal State arrests a vessel or institutes proceedings pursuant to paragraph 3 of Article 27, it shall immediately release the vessel if the owner or his representative deposits a bond or other reasonable security which may not exceed the maximum penalty stipulated for the violation. The vessel shall not be released if it cannot proceed to sea without presenting an excessive danger to the marine environment. However, the coastal State may permit the vessel to leave the port or offshore terminal in order to proceed to the nearest repair yard available.

Article 30

1. When a coastal State has reasonable grounds for believing that a vessel, regardless of its flag or State of registration, has violated the international rules and standards by releasing discharges in the area extending to _____ miles from the baseline from which the territorial sea is measured, that State requires the vessel to give information by radio or other means of communication.

This information shall concern:

- (i) identification of the vessel and its port of registration,
 - (ii) its last and next ports of call,
 - (iii) and any other information required to be given by the relevant international regulation, being information which will make it possible to establish whether the suspected violation has been committed.
2. The information referred to in the preceding paragraph may only be required if the vessel is in the area extending to _____ miles from the baseline from which the territorial sea is measured.

Article 31

When there are reasonable grounds for believing that the vessel navigating through an area extending to _____ miles from the baseline from which the territorial sea of the coastal State is measured, has discharged in violation of international rules and standards, the vessel may be required to stop and may be boarded for inspection, provided that -

- (a) the violation has been of flagrant character causing severe damage or threat of severe damage to the marine environment, or the vessel is proceeding to or from the internal waters of the coastal State;
- (b) any such inspection shall be limited to an examination of such certificates and records as the vessel is required to carry by the relevant international regulation or of any similar documents which it is carrying;
- (c) a physical inspection of the vessel may thereafter be carried out only if that is necessary to confirm the suspected violation.

Article 32

When a coastal State exercises the rights referred to in Articles 30 and 31 it shall promptly notify the flag State of the suspected violation and of the respective measures which have been taken.

Article 33

The rights conferred on the coastal State by Articles 27 to 32 may be exercised only by officials or agents having the authority to establish that a violation has been committed.

Article 34

When taking measures against a foreign vessel pursuant to Articles 27 to 32, the State in question will immediately inform the consular or diplomatic representative of the flag State of the vessel against which the measures were taken.

Article 35

A vessel may be detained only by virtue of a court order of the State having jurisdiction. The vessel must be immediately released if the person responsible pays the fine imposed.

If as a result of an arrest the coastal State decides that it is necessary to detain the vessel, it must be taken to a safe and convenient place of anchorage.

Article 36

The coastal State may exercise the powers provided for in Article 35 only to the extent that there is no excessive danger to the vessel in question and that no unreasonable risks are created for navigation or the marine environment.

Article 37

The coastal State must provide for recourse in its courts in respect of loss or damage resulting from the inspection, the enquiry or application of measures taken pursuant to Articles 27 to 36 where they exceed those which were reasonably necessary in view of existing information.

Article 38

In the exercise of its rights and duties under this Chapter, a State shall not discriminate in form or in fact against foreign vessels.

Article 39

Nothing in Chapters six and seven shall affect the legal régime of straits used for international navigation.

Article 40

States shall have the right to enforce laws and regulations adopted in accordance with the provisions of this Convention for the protection and preservation of the marine environment from atmospheric sources of marine pollution.

CHAPTER EIGHT

RESPONSIBILITY AND LIABILITY

Article 41

1. States have the responsibility to ensure that activities under their jurisdiction or control do not cause damage to areas under the jurisdiction of other States or to the marine environment of other States and shall, in accordance with principles of international law be liable to other States for such damage.

THE BROOKHAVEN NATIONAL LABORATORY REGIONAL ENERGY STUDIES PROGRAM

The Brookhaven National Laboratory Regional Energy Studies Program is part of a national effort supported by the U.S. Energy Research and Development Administration (ERDA) to create an energy assessment capability which is sensitive to regional conditions, perceptions, and impacts. Within ERDA, this program is supported by the Division of Technology Overview and includes, in addition to a concern for health and environmental impacts of energy systems, analysis of the complex trade-offs between economics, environmental quality, technical considerations, national security, social impacts, and institutional questions. The Brookhaven Program focuses on the Northeast including the New England states, New York, Pennsylvania, New Jersey, Maryland, Delaware, and the District of Columbia. The content of the program is determined through an identification of the major energy planning issues of the region in consultation with state and regional agencies. A major component of the program in 1976 was the Northeast Energy Perspectives Study which examined the implications of alternative energy supply-demand possibilities for the region. In 1977 a major component is the northeast portion of the National Coal Utilization Assessment carried out in collaboration with several other laboratories in other regions of the United States.