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STATEMENT OF JOHN W. BARNUM, THE UNDER SECRETARY OF TRANSPORTATION, U.S. DEPARTMENT OF TRANSPORTATION, BEFORE THE U.S. SENATE SPECIAL JOINT SUBCOMMITTEE OF THE COMMITTEES ON COMMERCE, INTERIOR AND INSULAR AFFAIRS, AND PUBLIC WORKS, WITH REGARD TO S. 1751, "THE DEEP-WATER PORT FACILITIES ACT OF 1973", JULY 24, 1973.

Mr. Chairman, Members of the Subcommittee:

I welcome the opportunity to appear before this Subcommittee today to express the Department's profound interest in the subject matter under consideration--the development of deepwater ports and other offshore facilities--and to express our hope that we can be helpful to your three committees as you deliberate on the various legislative alternatives for such development.

The Department of Transportation is well aware of the importance of deepwater port development and of the complex safety, economic, natural resource, environmental, and transportation problems involved. Our responsibilities in the development and operation of deepwater ports are manifold. The Secretary of Transportation is charged with the responsibility for development of transportation policies and programs and, therefore, is concerned with the location of deepwater port facilities in a manner that is consistent with and supportive to the other elements of the transportation infrastructure. One of the most important considerations involved is the economic consequences of the facilities' locations in relation to existing and projected transportation systems, including pipelines.

The Department is concerned about deepwater port facility location as it relates to transportation industry fuel consumption costs, provision of transportation required to support and distribute refinery products, and the

the location of these facilities, attendant refineries, and distribution systems insofar as they affect the safety, convenience, and economy of existing transportation facilities and systems.

It may be expected that in the not too distant future the United States will be highly dependent upon offshore terminals and their associated transportation systems (pipeline, rail, motor, and vessel) to supply its energy needs. Due to the vast amounts of resources which would be committed to the establishment of deepwater port facilities and the high degree of their dependence upon these associated transportation systems, the Department envisions that our involvement in the development and operation of deepwater port facilities will be ever-increasing.

In addition, as you are well aware, the Coast Guard is the primary maritime law enforcement agency of the Federal Government. Furthermore, Coast Guard responsibilities within the ports of the United States also include merchant vessel safety, port safety, aids to navigation, and marine environmental protection as well as search and rescue.

The Department of Transportation therefore fully supports the development of an adequate Federal statute respecting the development and operation of deepwater ports. The principal reason why Federal legislation is necessary is because it is contemplated that these ports will be established in the high seas, outside the jurisdiction of the states. Except for this factor, these offshore ports will be substantially the same as any other port. The kinds of problems will be the same and the regime of laws applicable to these offshore ports should be basically the same as has been found necessary over the years with regard to our conventional ports. For these reasons,

the Department favors provisions placing responsibility in a single agency, with requirements for consultations with appropriate Federal, State, and local agencies. S. 1751 would achieve that result, and therefore we would urge your Committee to give it favorable consideration.

As I have indicated, the Department supports the application of appropriate existing Federal statutes to the deepwater port facility. Effective regulation of the offshore ports will require the application of these statutes to the terminals themselves and to activities directly associated with their use and operation. Also, other activities conducted in the vicinity which interfere with or impose a threat to their use and operation must be regulated in a manner consistent with international law. To the extent that any questions may exist as to the application of specific laws and regulations, the effectiveness of the imposition and enforcement of requirements relating to safety and environmental protection will be hampered. Therefore, the legislative jurisdictional statement by which the listed laws are applied to deepwater ports and all activities connected with their use and operation should be clear.

As a final point I should note that determinations should be made in the legislation relating to offshore terminals concerning the application of civil and criminal laws and the creation of civil police authority. As you are aware, state and local legislation govern most of the activities existing in ports. Consequently, Federal jurisdiction is limited in scope. Therefore, if Federal law is to be applicable in an offshore area, the equivalent of these state and local measures must be provided. In this

connection, we feel that if adjacent state law is assimilated, the statute should provide a mechanism to maintain the civil law up to date. This is not presently the case with regard to federal enclaves or the Outer Continental Shelf. While the current state criminal laws are assimilated, the civil law is not. This produces anomalous and undesirable results.

The Department and the Coast Guard were asked by the Subcommittee to prepare answers to certain questions for the record, which I would like at this time to submit for the record.

Mr. Chairman, this completes my prepared statement, and we will attempt to answer any questions you or the other Committee members may have.