

TESTIMONY OF RICHARD F. WALSH
DIRECTOR, OFFICE OF ECONOMICS
DEPARTMENT OF TRANSPORTATION
BEFORE THE HOUSE SUBCOMMITTEE ON
MERCHANT MARINE
ON LEGISLATION CONCERNING DEEPWATER PORTS
JULY 28, 1983

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss H.R. 2353, proposed legislation to amend the Deepwater Port Act of 1974. I am accompanied by Joseph F. Canny, and R. George Pierides from the Office of the Secretary of Transportation and Frank A. Martin, Jr from the Coast Guard. The Office of the Secretary of Transportation, and the Coast Guard share responsibility for administration of the Deepwater Port Act.

My statement will touch on the historical background of the Deepwater Port Act, its administrative features, and the Department's views on the proposed legislation.

Historical Background

Over the decade of the 1960's the United States steadily increased its imports of foreign crude petroleum. By the end of that decade very large tank ships--providing economies of scale on long trips--were becoming commonplace in the world's oil trade. The U.S., however, was unable to avail itself of these economies in its own trade--involving savings of up to half of the ocean transportation cost--because our East and Gulf Coast ports are too shallow to accommodate these large tankers.

Forecast increases in U.S. oil consumption and the lack of deepdraft ports to accommodate large tank ships gave rise to concern about the potential for adverse effects on our Nation's economy, security and standard of living, and about possible environmental damage to our coasts resulting from greatly increased tanker traffic.

Responding to this concern, during the 92d and 93d Congresses, a number of bills pertaining to deepwater ports and other types of offshore development were introduced. By the end of 1974, our crude oil imports reached 2.8 million barrels per day, or about three times the amount in 1960, with no sign that oil consumption levels would stabilize in the foreseeable future. Congress enacted the Deepwater Port Act of 1974 and the president signed it into law on January 3, 1975.

In December 1975, two oil company consortia filed license applications with the Department to construct and operate deepwater ports off the U.S. coast in the Gulf of Mexico. In December 1976--within the 356 days allowed by the statute--licenses were offered to Louisiana Offshore Port, Inc., (LOOP) and to Seadock, Inc. LOOP accepted its license in August 1977, and the only U.S. deepwater port became operational in May 1981. Seadock, however, expressed opposition to many terms of its license, although they were virtually identical with those of the LOOP license. Following the withdrawal of its three major shareholders, Seadock was granted an extension of its license offer until April 1978 to allow time to attract new participants. After failing to form a financially viable enterprise, Seadock advised the Department that it was ceasing its activities.

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In August 1978, the State of Texas, through its Texas Deepwater Port Authority (TDPA) submitted an amendment to the Seadock application for a state owned deepwater port. A license was offered to TDPA in August 1979. TDPA then attempted to obtain user throughput agreements sufficient to back the issuance of revenue bonds, to finance port construction. However, by this time, crude oil imports had declined from their historic peak level of 1978, and potential port users, wary that the demand for imported oil might weaken further, were reluctant to make long-term commitments. Thus, TDPA failed to get the necessary agreements, and in October 1980 requested an additional extension of the license offer to allow the construction of a smaller port in a different location. This request was determined to be an incomplete application for a different port, and was denied. Therefore, in November 1980, the TDPA license offer expired.

In December 1980, Texas Offshore Port, Inc. (TOP) submitted a license application for a smaller deepwater port facility located along the same pipeline route as the Seadock/TDPA projects but closer to shore off Freeport, TX. A license was offered to TOP in September 1981. Subsequently, TOP determined that it would be unable to accept the license offer within the nine month grace period because of drastically reduced oil imports and was granted an extension of the license offer, subject to certain conditions, until June 21, 1984.

As I stated earlier, LOOP began operations in May 1981. However, while its potential throughput capacity is 1.4 million barrels a day, I understand that the current throughput has fallen below what LOOP considers the economic break-even point because of the weak demand for foreign

crude. Currently, crude oil imports are estimated at less than 3 million barrels per day for the United States, about the same level as in 1974. LOOP has had to make strenuous efforts to remain competitive during this period of weak demand for foreign crude and depressed tanker rates which offer shippers a cheap alternative to the large tankship/deepwater port strategy for importing oil. In January 1983, LOOP issued FERC tariff No. 2, which was designed to be economically more attractive than the earlier tariff. Also, on July 11, 1983 LOOP requested the FERC to permit a further reduction in the lower of the two tariff rates issued in January 1983. We understand that while near term throughput at LOOP may be increasing, it is still below the break-even point.

Administrative Features

As background for my discussion of the proposed legislation, I will now summarize for you the salient administrative features of the Deepwater Port Act.

Licensing Agency - The Department of Transportation is designated as the single agency for licensing the ownership, construction and operation of deepwater ports. This has been called the "one-window" concept.

Adjacent Coastal State Veto - Adjacent coastal states have the right to veto any deepwater port proposed to be licensed under the Act. An adjacent coastal state is broadly defined and includes: (1) a State which is directly connected to the port by pipeline; (2) a State located within 15 miles of the proposed port; and (3) a State which could be threatened by a possible oil spill from the port.

Procedure - A timetable of 356 days for action on a license is established involving receipt of applications, environmental impact statement preparation, hearings, final recommendations by all Federal

agencies and issuance or denial of a license offer.

Environmental Review - The Secretary of Transportation, together with the Administrator of the Environmental Protection Agency and the Administrator of the National Oceanic and Atmospheric Administration, establishes environmental review criteria for evaluating an application to build a deepwater port. The criteria include the full range of environmental concerns associated with deepwater ports.

Antitrust Review - Among several prerequisites to the issuance of a license is the requirement for an antitrust review of the application by the Department of Justice and the Federal Trade Commission. Each agency is to give the Secretary an opinion as to whether issuance of the license would adversely affect competition, restrain trade, further monopolization or otherwise create or maintain a situation in contravention of the antitrust laws.

Common Carrier Status - Existing statutes regulating the transportation of oil in interstate commerce are specifically applicable to deepwater ports.

Navigational Safety - The Secretary prescribes procedures to ensure navigational safety at deepwater ports and adjacent waters. The Secretary also designates safety zones around deepwater ports within which no incompatible uses or activities are permitted.

Liability - Strict liability for pollution damage caused by a discharge from a deepwater port itself or from a vessel within its safety zone is prescribed. The Act allocates liability among: (1) the licensee (up to \$50,000,000); (2) the owner and operator of a vessel (up to

\$20,000,000); and (3) a deepwater port liability fund for all other proven damages (including cleanup costs) not actually compensated by the licensee or the owner or operator. The fund is financed by a 2 cent per barrel throughput charge.

Vessel Jurisdiction - A deepwater port may not service a foreign-flag vessel until a bilateral agreement has been placed in effect providing United States jurisdiction over the foreign-flag vessel at the port.

H.R. 2353

I will now summarize the Department of Transportation position on H.R. 2353, the proposed legislation to amend the Deepwater Port Act. In general, we support the intent of the proposed amendment. However, we believe that a number of changes are necessary in order to protect the public interest and to ensure the continued fair and equitable administration of the Act.

Section 1 of H.R. 2353 would simplify the procedure for transferring or amending an existing license. It would provide for basing the Secretary's decision for transferring or amending a license on the findings made during the processing of the original application rather than on the procedure now required for the issuance of a new license.

We do not object to the intent of this proposal, particularly since certain findings made during the processing of the original application would still be valid. In the case of license transfer, we would, however, require evidence that the new applicant is financially responsible and willing to comply with all relevant laws and license conditions. In addition, we consider the existing antitrust review provisions of the Act,

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including discovery, to be essential to the Secretary's decision. And also, we would require that a petition for license transfer be based on current relevant information, and that review of the petition include consideration of any possible need to adjust the license, as well.

Section 2 would expand the provisions of section 4(c) of the Act to allow a licensee to seek amendment of its license to achieve parity with any other deepwater port licensee.

Section 4(c) of the Act stipulates the findings or determinations which the Secretary must make in reaching a decision to grant or deny a license. Therefore, conditions attached to a license can be influenced by factors at the time findings or determinations are made.

While this proposal appears to be reasonable in concept, certain factors--such as the owners' economic position and the characteristics, location and operation of the facilities--may require that conditions and provisions differ from license to license. Therefore, we oppose Section 2.

Section 3 would amend section 4(h) of the Act by removing the limitations on the license term which is now twenty years, and subsequent renewal terms of ten years.

We do not object to this amendment inasmuch as the current renewal process requires a burdensome procedure tantamount to a new license. Furthermore, a deepwater port facility could, with proper repair and maintenance, have an indefinite service life.

Section 4 would expand section 5(a) of the Act to require the Secretary to review and amend or rescind a regulation or license condition upon petition of a licensee unless the Secretary determines that the condition is cost-effective or necessary to achieve the purposes of the Act.

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Section 5(a) of the Act authorizes the Secretary of Transportation to amend or rescind deepwater port regulations. Furthermore, the deepwater port regulations (33 CFR 148, Subpart F) set forth the procedures governing exemptions from any requirements of these regulations.

We consider the proposed change in the established procedures for review, amendment and rescission of regulations to be unnecessary and redundant. However, we would support the proposal if it were restricted to the amendment of license conditions and requirements, provided the need is demonstrated by the licensee and is not contrary to the statute. On the other hand, the objectives of this proposal would be attained by proposed Section 2.

Section 5 would amend section 8 of the Act to free the licensee from Federal Energy Regulatory Commission (FERC) regulation of its tariff and increase the regulatory powers of the Secretary of Transportation to ensure that a deepwater port provides nondiscriminatory service under its common carrier obligation.

While we are in general agreement with the intent of this section in light of present market conditions, we believe it may be appropriate to retain some regulatory authority, in the event current conditions change. We will consider along with other interested agencies what, if any, such authority should be retained, but the Department of Transportation does not have the expertise or the resources necessary to assume tariff regulation responsibilities.

Section 6 would eliminate the Deepwater Port Liability Fund, transfer the Fund's balance to the adjacent coastal States, substitute the fund established by section 311(k) of the Federal Water Pollution Control Act, and remove the oil spill liability of certain vessel owners and operators.

We object to the proposed Section 6 in its entirety for the following reasons:

The Deepwater Port Liability Fund is currently financed by a user fee, while the section 311 (k) pollution fund is financed by general revenues. Consequently, by eliminating the Deepwater Port Liability Fund and shifting its responsibilities to the section 311 (k) fund, the financial burden would also be shifted from the user, where it belongs, to the general taxpayer. We do not believe that such a shift in the financial burden would be appropriate.

The proposed Section 6 would not make the States responsible for either damage claims or cleanup costs resulting from a discharge of oil at a deepwater port, so we see no basis for transferring the balance in the Deepwater Port Liability Fund to the States.

Also, as long as a vessel is engaged in deepwater port activities, has the potential for an oil spill, and is in the deepwater port safety zone, it should not be exempted from oil spill liability.

Section 7 would repeal section 19(c) of the Act which covers bilateral agreements between the United States and other countries for U.S. jurisdiction over their vessels while calling at U.S. deepwater ports.

Each agreement under the Act has provided that the flag state recognizes the jurisdiction of the United States over vessels of its flag, and personnel on board, while they are within safety zones to use the deepwater ports. The extent of the jurisdiction is the same as that while a vessel of the flag is in a coastal port of the United States.

On March 10, 1983, the President proclaimed an Exclusive Economic Zone (EEZ) for the United States, within which the United States has jurisdiction with regard to the installations and structures having economic purposes, and the protection and preservation of the marine environment.

The jurisdiction with regard to vessels asserted by Congress in sections 19(a) and 19(b) of the Act is more extensive than that mentioned above. Further, without bilateral agreements, the exercise of jurisdiction by the United States with regard to foreign vessels and personnel on board could give rise to disputes, based on differing interpretations of international law.

For the foregoing reasons, we believe that the requirement for bilateral agreements should be retained. Nevertheless, we recognize that the requirement for bilateral agreements has been the cause for the loss of some business at LOOP. Therefore, we intend to work with the Department of State to conclude bilateral agreements with countries whose tank ships are likely to call at LOOP.

Section 8 would provide technical revisions which are acceptable to the Department.

Suggested changes to the proposed legislation which reflect and incorporate the views I have presented are in the attached Appendix A.

In conclusion, let me summarize our position on the proposed legislation.

. We do not object to streamlining the process for the transfer or amendment of an existing license. However, we want to retain authority for the Secretary of Transportation to take account of relevant factors which may have a bearing on the decision.

. We believe that uniformity in license conditions may not always be possible because of differences in controlling factors at the times specific findings or determinations are made.

. We endorse repeal of license term limitations as long as we can be satisfied that the deepwater port facilities are properly maintained.

. We question the need for change in current procedures governing exemptions from the requirements of deepwater port regulations. However, we would support new procedures for amending license conditions.

. We believe that some regulatory authority should be retained, jointly with other interested agencies. However, we do not have the expertise or resources necessary to assume tariff regulation responsibilities.

. We oppose any changes in the Deepwater Port Liability Fund. In particular, we oppose shifting the financial burden for the deepwater port liability from users to the general taxpayer, and we oppose transferring the Deepwater Port Liability Fund's balance to adjacent coastal states. We also oppose exemption from oil spill liability of any vessel engaged in the transfer of oil in the safety zone of a deepwater port.

. We believe that we should retain the requirement for bilateral agreements. Otherwise, U.S. jurisdiction over foreign-flag vessels at deepwater ports, even though these ports may be within our EEZ, may not be fully recognized by other nations.

We believe that we have been successful in administering the Deepwater Port Act because of the foresightedness of its drafters and the cooperation of the applicants and licensees. In particular, the provisions for a consolidated Federal agency permitting procedure and for a concise decision-making time-frame have worked so well that similar provisions have since been replicated in other legislation, such as the Ocean Thermal Energy Conversion Act of 1980 and various bills on deep-draft navigation improvement projects.

However, time and experience have shown that the Act contains requirements which are unnecessary or unnecessarily burdensome or both. Moreover, continued enforcement of these requirements could well prove inimical to the viability of our only operating deepwater port which is currently operating in a world oil market and a domestic oil economy far different from those that existed when the Act was drafted. For these reasons, we support changes in the Deepwater Port Act to simplify administrative requirements and to improve review procedures.

Mr. Chairman, that concludes my prepared statement. My colleagues and I would be happy to answer any questions you might have.

ATTACHMENT A
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Amendments to H.R. 2353

On page 2, line 9, strike the word "a" and insert in lieu thereof "its."

On page 2, strike lines 12 to 14 and substitute the following:

"the transferee meets the requirements of this Act and the prerequisites to issuance under subsections (c)(1), (c)(2), and (c)(7) of this section."

On page 2, line 19, strike the word "a" and insert in lieu thereof "its."

On page 3, line 7, strike the word "apply" and insert in lieu thereof "petition."

On page 3, line 24, strike the words "regulation or any."

On pages 3 and 4, lines 25 and 1, strike the word "regulation."

On page 4, line 1, strike the words "reasonably cost-effective and."

On page 4, line 3, strike the word "regulation,".

On page 4, lines 3 and 4, strike the words "reasonably cost-effective and is."

On page 4, line 5, strike the word "regulation,".

On page 4, line 6, strike the word "these" and insert in lieu thereof "any."

On page 4, lines 6 to 9, strike the following:

"The Secretary shall include a summary of any action taken pursuant to this subsection in the annual report to Congress as required by section 20 of this Act."

On page 4, strike lines 10 through 25.

On page 5, strike lines 1 through 25.

On page 6, strike lines 1 through 24.

On page 7, strike lines 1 through 22.