

Testimony of

Deputy Assistant Secretary of Transportation Joseph Canny

Before the

Subcommittees on Water Resources and Environment and on  
Coast Guard and Maritime Transportation, of the  
Committee on Transportation and Infrastructure, regarding  
H.R. 2940, a bill to amend the Deepwater Port Act of 1974.

Good afternoon, Mr. Chairman. I am Joseph Canny, Deputy  
Assistant Secretary for Transportation Policy. With me this  
afternoon is Captain Robert Skewes, Chief of the Coast  
Guard's Operating and Environmental Standards Division.

It is a pleasure to be here to offer the Administration's  
views on H.R. 2940, the "Deepwater Port Modernization Act."

Since passage of the Deepwater Port Act of 1974 the  
Department of Transportation has worked in partnership with  
the Louisiana Offshore Oil Port (LOOP) as well as a number  
of other offshore oil port applicants to process their  
applications through the Department's "one stop shop."

Subsequently we have worked with LOOP, the only currently

licensed deepwater port, to facilitate evolution of their operations in a manner that is flexible and beneficial to the port and to the Nation.

As required by the Deepwater Port Act, the Department took considerable steps to assure that prospective ports would not be operated as monopolies in a manner that would restrain trade by controlling significant amounts of the Nation's daily import oil needs. The license granted to LOOP guarantees significant non-owner access to the Port and complaints over undue control have never arisen.

We also spent considerable time and effort assessing the port's ability to perform oil transfer operations in a safe and environmentally sound fashion. We are convinced that our oversight efforts, as well as the professional nature of LOOP's management, have been significant factors in LOOP's outstanding safety and pollution prevention record. There has not been one fatality or serious injury in the fifteen years the port has been in operation.

However, LOOP has been shipping only a small fraction of the crude oil that was forecast to be handled by the facility.

We have recognized for a number of years that some of the baseline assumptions from the early 1970's--most notably that deepwater ports capable of handling very large crude oil carriers would proliferate and be a conduit for the majority of U.S. oil imports--are no longer valid. Oil shipments to the U.S. come from a variety of sources and utilize a wide range of tanker sizes. For large crude oil tankers, offshore lightering has proven more economical than offloading at a deepwater port.

The Administration supports the thrust of H.R. 2940 as well as a number of specific provisions in the bill.

Specifically, the Administration supports clarifying the Act to permit the transportation of domestically produced oil, including oil from the Outer Continental Shelf. We support lifting existing restrictions on the handling of commodities other than oil, and on the use of deepwater ports to handle commodities for export. The current structure of the industry makes it unwise and unnecessary to restrict these types of service by statute. We believe it is in the

national interest to permit owners of deepwater ports wider discretion to make the most economically efficient use of their facilities.

While the Administration recognizes the desirability of affording deepwater ports wider discretion to make business decisions, the Administration also notes that there is still a high degree of national interest in many aspects of deepwater port design and operations. These interests include safety and pollution prevention. They also include ensuring that licensees are managerially and financially willing and able to construct, maintain, and operate their facilities in a successful, prudent manner.

In these regards, the Administration believes that the existing Deepwater Port Act is basically sound. The Department of Transportation must retain, as section 4(e) of the bill provides, authority to approve any proposed amendment, transfer, or reinstatement of a deepwater port license. Similarly, the Department must retain appropriate authority to regulate aspects of design and operations affecting safety and pollution prevention.

Primary responsibility for assuring that safety and environmental protection requirements are met has been assigned to the Coast Guard. Over the years, the Coast Guard has developed and maintained an effective regulatory regime and a close working relationship with LOOP. At an operating level, the LOOP operations manual, approved by the Coast Guard, governs LOOP actions on a day-to-day basis. The regulatory regime, operations manual, staff expertise, and working relationship have resulted in an exemplary safety and environmental record at LOOP over the last fifteen years.

Under our existing regulations, approvals of modifications to the design or operations manual of a deepwater port that do not require license amendments have been delegated to the Coast Guard. Specific changes to a deepwater port's design or operations manual are made after technical review by appropriate Coast Guard officials. Indeed the vast majority of any such changes can be accomplished without amending the license.

The Coast Guard's regulations provide industry with a known set of technical topics and standards for developing the designs and operations manuals for deepwater ports. Changes to these topics and standards are appropriately made by regulation, where interested parties, including industry and the public, can have a role in their development. We are ready and willing to work with industry to revise any such standards or criteria that may be outdated or unnecessarily specific.

In light of these considerations, the Department believes it is essential that we retain the authority contained in section 10 of the Act to regulate aspects of design and operations affecting safety and pollution prevention. Consequently, we urge that section 8 of the bill be deleted.

Attached to my statement for the record are additional technical changes to the bill which we believe are necessary to accomplish the public interest goals which I have outlined above.

On the advisability of section 6 of the bill, which would strike existing antitrust review provisions in section 7 of the Act, the Department defers to the Department of Justice, which opposes the proposed repeal of section 7 of the Act (33 U.S.C. 1560).

On section 5 of the bill, which would clarify limits, in section 5 of the Act, on fees for state environmental monitoring requirements, the Department defers to the affected coastal states.

Mr. Chairman, I'd be pleased to answer any questions you or other members of the Subcommittees may have.

Attachment to the Testimony of Deputy Assistant Secretary Joseph Canny before the Subcommittees on Water Resources and Environment and on Coast Guard and Maritime Transportation, Committee on Transportation and Infrastructure, regarding H.R. 2940, a bill to amend the Deepwater Port Act of 1974.

ADMINISTRATION SUGGESTED AMENDMENTS TO  
H.R. 2940 - The Deepwater Port Modernization Act

Section 4(c) [page 4, lines 24-25 and page 5, line 1]. Strike "maximum extent possible" (in both instances) and insert "maximum extent practical". Use of the term "possible" may set an impractical standard in some circumstances that could lead to unnecessary litigation.

Section 4(c) [page 5, lines 6-7]. Strike "a license or operations manual" and insert "an operations manual". Section 4(e) of the bill will adequately address licenses.

Section 4(c) [page 5, line 10]. Strike "informal". This term would cause confusion; deleting it does not change the substance.

Section 4(d) [page 5, lines 13-18]. This provision is closely related to other parts of this bill. This provision (to strike prior approval by the Secretary for substantial changes--as a license condition under section 4(e)(2) of the Deepwater Port Act (DWPA))--will not create potential safety and environmental hazards or unduly impair the efficiency of port operations or development as long as section 4(e) of the bill is retained (to provide the Secretary authority to administer amendments, transfers, and reinstatements) and section 8 of the bill is deleted (to retain sufficient regulatory authority from other sections of the DWPA).