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**DEPARTMENT OF TRANSPORTATION
UNITED STATES OF AMERICA**



**THE SECRETARY'S DECISION
ON
THE DEEPWATER PORT LICENSE APPLICATION
OF
PORT PELICAN, LLC.**

**Washington, D.C.
November 14, 2003**

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I. INTRODUCTION¹

The Deepwater Port Act of 1974, as amended in 1984, 1996 and 2002 (hereinafter the Act)² declared it to be the purpose of Congress to "...authorize and regulate the location, ownership, construction, and operation of deepwater ports in waters beyond the territorial limits of the United States."³ Deepwater ports, as the term has been amended, includes facilities constructed at sea which are used as terminals to transfer natural gas, usually received in the form of Liquefied Natural Gas (LNG) from LNG carriers, to onshore storage facilities and pipelines. According to the U.S. Department of Energy,⁴ energy consumption in the United States is expected to increase more rapidly than domestic energy production through 2025. Further, natural gas demand is expected to exceed domestic production during this period requiring a more than doubling of natural gas imports by 2025. Natural gas can be imported via pipelines from neighboring nations or by ship using specialized LNG carriers. In order to receive LNG, specialized port facilities are required. Currently four such land-based LNG import facilities exist in the continental United States. To meet the expected demand for LNG imports, several more import facilities or facility expansions will be necessary. Recognizing the need for new LNG import facilities, the Act was amended to provide American industry with the option of constructing new LNG port facilities in the waters beyond the United States territorial limits. The construction and operation of deepwater ports will enhance the options available for the importation of natural gas into the United States, thus allowing this nation to benefit from the economic and environmental advantages of LNG imports.

Under the Act, persons seeking to own, construct, and operate deepwater ports must submit detailed applications to the Secretary of Transportation, who, by a delegation published on June 18, 2003 (68 FR 36496), "delegat[ed] to the Maritime Administrator his authority to issue, transfer, amend, or reinstate a license for the construction and operation of a deepwater port as provided for in the Deepwater Port Act, of 1974, as amended." Because this is a delegated authority, all references will continue to be to the Secretary. This delegation did not change the previous delegation of license processing functions to the United States Coast Guard (USCG), now part of the Department of Homeland Security,⁵ and to the Maritime Administration (MARAD), made in 1997,⁶ nor did it change the Secretary's previous delegation of authority to the Administrator of the Research and Special Programs Administration (RSPA) in 49 CFR §1.53(a)(3) for the establishment, enforcement, and review of regulations concerning the safe construction, operation or maintenance of pipelines on Federal lands and the Outer Continental Shelf (33 U.S.C. §1520).

On November 25, 2002, Port Pelican, LLC (hereinafter Port Pelican) – an affiliate of ChevronTexaco Corporation – submitted to USCG and MARAD an application for a license and all Federal authorizations required to own, construct, and operate a deepwater port off the coast of Louisiana. Proposed facilities would consist principally of a terminal to receive, store and regasify LNG and a pipeline to transport the natural gas to the existing offshore gas-gathering system. On December 27, 2002, USCG and MARAD issued a Notice of Application in the *Federal Register* summarizing the application.⁷ Under procedures set forth in the Deepwater Port Act, USCG and MARAD

¹ The application and related public comment and official actions may be viewed at <http://dms.dot.gov/search/> by entering the appropriate docket number; the number for Port Pelican is 14134.

² 33 U.S.C. §§1501-1524. In January 2002 the Act was amended by Public Law No: 107-295, "2002 Maritime Transportation Security Act, which, at Section 106 amends the Act to cover the importation, transportation, and production of natural gas (116 STAT. 2064 at 2086). The Act is codified at 33 U.S.C. §§1501 through 1524, and citations in this document are either to sections of the Act (which were numbered 2 through 25) or, whenever possible, to corresponding sections of the United States Code.

³ Section 2(a)(1), 33 U.S.C. §1501.

⁴ Annual Energy Outlook 2003 With Projections to 2025, Energy Information Administration, Office of Integrated Analysis and Forecasting, U.S. Department of Energy, January 2003.

⁵ The USCG has the additional statutory responsibility to approve an operations manual for a deepwater port. 33 U.S.C. §1503(e)(1). The USCG retained the statutory and delegated authorities upon its transfer to the Department of Homeland Security (Department of Homeland Security Delegation Number: 0170, Sec. 2. (75), March 3, 2003; Pub. L. 107-296, section 888.).

⁶ See 62 FR 11382 (March 12, 1997); 49 CFR §1.46(s) and §1.66(aa).

⁷ Vol. 68, *Federal Register*, No. 117, Wednesday, June 18, 2003, pp 36496-97.

have 240 days from the date of the Notice of Application to hold one or more public hearings in the adjacent coastal state. Louisiana was designated as the adjacent coastal state.

The issue before me is whether to issue a license to Port Pelican, to deny the application or to issue a license subject to certain conditions and the statutory criteria designed to protect and advance the public interest.⁸ This document sets forth my decision on the application submitted by Port Pelican, one of four currently pending applications under the Act. This is a decision I am required by statute to make within 90 days after the last public hearing (33 U.S.C. §1504(d)(3)), which was held on August 18, 2003.

In reaching this decision, I am compelled to evaluate and consider a broad range of expert advice and information from other Federal agencies, adjacent States, and the general public. Moreover, I am directed to make specific findings; that seek to protect, promote and, in some cases, reconcile national priorities in energy, the environment, the economy, and freedom of navigation on the high seas. In placing this awesome responsibility on one Federal official, the Congress commendably has sought to simplify the complex maze of Federal and State jurisdictional responsibilities into a single decision based on a broad range of information and policy perspective.

The Port Pelican deepwater port⁹ and its associated anchorage will be located in the Gulf of Mexico off the Louisiana coast in 83 feet of water. The port area is situated in the Gulf of Mexico approximately 36 miles south southwest of Freshwater City, Louisiana, in Vermilion Block 140 with a safety zone extending into part of Vermilion Block 139. The Port Pelican will deliver natural gas to the United States Gulf Coast using existing gas supply and gathering systems in the Gulf of Mexico and southern Louisiana. Gas will then be delivered to shippers using the national pipeline grid through interconnections with major interstate and intrastate pipelines. Port Pelican consists of the Port Pelican Terminal (the Terminal), an LNG receiving, storage and regasification facility and the Pelican Interconnector Pipeline (PIPL) to transport the gas to the existing offshore gas gathering system.

The Terminal will be constructed in two phases of equal delivery capabilities. Phase I includes the installation of two gravity based structures (GBS) with internal storage tanks and facilities for LNG offloading, and vaporization capability to deliver at peak utilization of 1.0 billion standard cubic feet per day (SCFD) of natural gas to the pipeline system. Additional vaporization equipment and associated support equipment and facilities will be installed during Phase II to increase the facility vaporization and send out rate to 2.0 billion SCFD peak.¹⁰ In actual operations, it is estimated that the port will deliver an average of 1.6 billion SCFD. The total capital expenditures during the construction phases are expected to exceed \$800,000,000.

Port Pelican will operate much like any other LNG port facility. The Terminal will be able to receive the largest LNG carriers in service or on order in 2002. LNG carrier arrival frequency will be planned to match specified terminal gas delivery rates. All marine systems, communication, navigation aids and equipment necessary to conduct safe LNG carrier operations and receiving of product during specified atmospheric and sea states will be provided at the port. Ships ranging in capacity from 100,000 m³ to 160,000 m³ will berth and unload on either side of the terminal. Two loading arm packages are provided, one on each side of the terminal. Each loading arm package includes four 16-inch loading arms - two liquid arms, one vapor arm and one dual use arm. LNG carriers will typically be offloaded at a rate of 12,000 m³ per hour of LNG through the liquid loading and dual use arms and store the LNG in tanks at a temperature of minus 260°F. The terminal storage tanks, located in the GBS, will operate at slightly higher pressure than the LNG carriers allowing the displaced vapor to be returned to the LNG carrier through the vapor arm thus maintaining LNG carrier pressure.

The Terminal will consist of two concrete GBS units fixed to the seabed, which will include LNG storage tanks, support deck mounted LNG receiving and vaporization equipment and utilities, berthing arrangements for LNG carriers, facilities for delivery of natural gas to a pipeline transportation system, and personnel accommodations.

⁸ Section 4 of the Act provides that "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", and then sets forth specific procedures and standards by which the Secretary must make a determination. 33 U.S.C. §1505.

⁹ The term deepwater port is defined in section 3(1) of the Act to include only facilities located seaward of the high water mark. As used herein, the term "deepwater port" shall have the statutory meaning while the term "port" shall include the related onshore facilities.

¹⁰ See 67 FR 79234 (December 27, 2002).

Port Pelican will have two integral LNG storage tanks both with a nominal storage capacity of 160,000 m³. Each LNG storage tank will consist of an insulated, stainless steel or aluminum or other approved primary tank within the concrete interior of the GBS, which provides secondary containment for the tanks. Each tank will be fitted with cryogenic submerged pumps and LNG send out pumps. LNG will be vaporized utilizing two open rack vaporizer trains, each with peak capacity of 1.0 billion SCFD. The open rack vaporizers heat the LNG by exchanging heat with seawater. Seawater is pumped to the top of each open rack vaporizer and flows down the outside of the panels. High pressure LNG flows upward through tubes inside the panels and is warmed to approximately 35°F.

Once regassed, no gas conditioning is required for the Terminal since the incoming LNG will be pipeline quality. Gas will be metered before entering the PIPL. The PIPL will transport gas from the Terminal to a point near the Tiger Shoal Platform "A" where it will connect to the Henry-Floodway Gas Gathering System (HFGGS). The HFGGS will deliver the gas to the onshore U.S. gas pipeline network.

Port Pelican is a Delaware limited liability company, organized on November 1, 2002, for the purpose of the engaging in any lawful business activity as determined by the Board of Directors. Port Pelican has met all citizenship requirements necessary to receive a license under section 4(g) (33 U.S.C. §1503(g)). Port Pelican LLC is a wholly owned subsidiary of Chevron USA, Inc., a major subsidiary of ChevronTexaco Corporation.

II. DECISION

For the reasons set forth in this document, I have decided to issue a license to Port Pelican because it meets the basic criteria in the Act, but only subject to certain conditions designed to protect and advance the national interest, as well as conditions to preserve and enhance the environment. Certain of the conditions are self-evident: the need for an operations manual, the need to submit further technical information and detailed drawings concerning the construction of the deepwater port, etc. Other conditions are the natural product of the application process. I list some, but not all conditions here and discuss only a few of them in any detail. The precise conditions will be listed in the license, itself. I have determined that the cost of processing applicant compliance with each of these conditions is a cost of processing the application. To reach any other conclusion would invite an applicant to evade the costs of processing the application by delaying certain events and making them conditions of the license rather than a *fait accompli* in the license. Therefore, as the applicant meets each of these conditions it will continue to pay for the costs of processing the license. In reaching this decision, I have relied heavily--as the Act intends me to do--on the advice and recommendations of other federal and state agencies and on the views of the public as they have been expressed through the public hearing process. The "one window" application review process¹¹, created by Congress in the Act to enable a comprehensive, coordinated and timely decision, vests in me a special responsibility to adhere to the expert advice I receive or to explain fully why I have chosen an alternative course.

The Environmental Protection Agency (EPA), the National Oceanic and Atmospheric Administration (NOAA), and other Federal and State environmental agencies have made sound and constructive recommendations to preserve the marine environment in which this port will operate and to protect the air and coastal regions from further environmental degradation by on-shore connecting facilities. I have accepted most of these recommendations and will be incorporating them in regulations, license conditions, or the operations manual that will govern the operation of the port complex.

I have sought and relied upon the advice of the Department of the Interior, the Department of Energy and other public and private agencies on the benefits and consequences of the development of this port for the country's energy needs and our nation's commitment to energy sufficiency. Moreover, the Department of State has provided counsel and expert support in the reconciliation of our safety and environmental requirements with our international obligations.

Finally, the U.S. Coast Guard, now a part of the Department of Homeland Security, was instrumental in developing the environmental and marine navigation aspects of the decision, among many other very valuable services rendered.

¹¹ Joint Report, Committees on Commerce; Interior and Insular Affairs; and Public Works, United States Senate, Deepwater Port Act of 1974, S.Rep. 93-1217, 93rd Cong., 2d Sess. (1974)(hereinafter Joint Report) at 45.

Where I have imposed conditions, it has been primarily because I have an obligation to ensure that the port is developed in a way that meets other transportation and environmental objectives, that the efforts of the private sector to undertake this project are not frustrated, and that the Secretary of Transportation, or his delegate, does not perform functions that duplicate or conflict with those vested by Congress in another Federal agency.

In approving this application, I am relying on my broad authority under the Act to impose such conditions as are "necessary to carry out the provision of the Act."¹² These conditions create special obligations with which the applicant must agree to comply. For this reason, Port Pelican may decide not to accept the license and undertake the project. If not, then I hope other potential applicants will step forward. If Port Pelican does accept these conditions, and goes forward with the project, I am satisfied that the Port will be developed in a way that serves the public interest.

III. DECISION MAKING PROCESS

In reaching this decision, I have followed the procedures prescribed by the Act, which are designed to ensure full exposure to a broad range of relevant information and expertise. Also, my decision can only be fully understood if it is placed within the context of the statutory framework:

The Deepwater Port Act.

As originally enacted as Public Law No. 93-627 on January 3, 1975, amended on September 25, 1984 by the Deepwater Port Act Amendments of 1984 (Public Law No. 98-419, 98 STAT. 1607), modified on October 19, 1996 by the Deepwater Port Modernization Act (Title V of Public Law No. 104-324, 110 STAT. 3901 at 3925),¹³ and further amended by Section 106 of the Maritime Transportation Security Act of 2002, (Public Law No. 107-295, 116 STAT. 2063 at 2086)¹⁴ which extended the Deepwater Port Act to natural gas, the statute covers a range of activities for deepwater natural gas ports by:

¹² Section 4(e)(1), 33 U.S.C. §1503(e)(1).

¹³ The Deepwater Port Modernization Act amended the original Act to:

Revise the term "deepwater port" to include a fixed or floating manmade structure (other than a vessel) that is located beyond the territorial sea and off the U.S. coast which is used as a port or terminal for the transportation of oil from the U.S. Outer Continental Shelf.

Eliminate (1) certain utilization and transfer restrictions on deepwater ports and (2) a certain antitrust precondition with respect to the licensing of such ports. Provides for an exemption from certain informational filing requirements. (Sec. 504, 110 STAT. 3926)

Repeal the restriction on the issuance of a deepwater port license requiring that the Secretary of Transportation first receive opinions from the Attorney General and the Federal Trade Commission as to whether such action would adversely affect competition, restrain trade, promote monopolization, or otherwise contravene the antitrust laws. (Sec. 506, 110 STAT. 3927)

Require a deepwater port, among other things, to accept, transport, or convey without discrimination all oil delivered to it. (Sec. 507, 110 STAT. 3927)

Direct the Secretary to prescribe by regulation or by the licensee's operations manual (currently, by regulation) and enforce port procedures. (Sec. 508, 110 STAT. 3927)

¹⁴ Section 106 of the Maritime Transportation Security Act of 2002, Public Law No., 116 STAT. 2064 at 2086 amended the 1974 Act in several ways:

Broadened the scope of the Deepwater Port Act of 1974 to cover the importation, transportation, and production of natural gas. (Sec. 106(a) and (b), 116 STAT. 2086).

Defined the facilities "that are located beyond State seaward boundaries" to include all components and equipment "to the extent they are located seaward of the high water mark." (Sec. 106(b)(2), 116 STAT. 2086).

With regard to natural gas facilities, interconnecting facilities are not included. (Sec. 106(b)(2), 116 STAT. 2086).

1. Providing that no person may engage in the ownership, construction, or operation of a deepwater port except in accordance with a license issued pursuant to the Act. (33 U.S.C. §1503(a))
2. Containing citizenship requirements (33 U.S.C. §1502(4))¹⁵
3. Prohibiting the transportation or transfer of any oil or natural gas between a deepwater port and the United States unless such port is licensed under this Act. (33 U.S.C. §1503(a))
4. Authorizing the Secretary of Transportation to issue, amend, transfer, and reinstate licenses for the ownership, construction, and operation of deepwater ports. (33 U.S.C. §1503(b))
5. Allowing such licenses to be effective unless suspended, revoked, or surrendered. (33 U.S.C. §1503(h))
6. Setting forth prerequisites, conditions, application procedures, regulations, and criteria for the issuance of licenses for deepwater ports. (33 U.S.C. §1504(a))
7. Requiring public notice and hearings before licenses are issued. (33 U.S.C. §1503(g))
8. Allowing adjacent States to set reasonable fees for use of deepwater ports. (33 U.S.C. §1504(h)(2)).
9. Setting forth criteria for determining what is an adjacent State. (33 U.S.C. §§1502(1), 1508)
10. Requiring the Secretary to prescribe procedures governing the environmental and navigational effect of such ports. (33 U.S.C. §1509)
11. Permitting the Secretary to suspend or revoke licenses for noncompliance with the Act. (33 U.S.C. §1503(h))
12. Declaring that the laws of the United States and of the nearest adjacent State, as applicable, shall apply to such ports. (33 U.S.C. §1518)
13. Requiring the Secretary to issue regulations as necessary to assure the safe construction and operation of pipelines on the Outer Continental Shelf. (33 U.S.C. §1504(a) and 1520)
14. Establishing civil and criminal penalties for violations of this Act. (33 U.S.C. §1514(b)(3))
15. Requiring that communications and documents transferred between Federal officials and any person concerning such ports is available to the public. (33 U.S.C. §1513)
16. Allowing civil actions for equitable relief for violations of this Act by Federal officials. (33 U.S.C. §1514(c))

Such facilities are considered to be new sources for purposes of the Clean Air Act and the Federal Water Pollution Control Act. (Sec. 106(b)(2), 116 STAT. 2086)

Deepwater ports for natural gas are excluded from the provisions of Section 5(d) of the Deepwater Port Act of 1974 (33 U.S.C. §1504(d)) (Application Areas). (Section 106(c), 116 STAT. 2086)

The provisions of Section 8(a) and (b) of the Deepwater Port Act of 1974 (33 U.S.C. §§1507 (a) and (b)) do not apply to deepwater ports for natural gas. (Section 106(d), 116 STAT. 2087)

The provisions of the Deepwater Ports Act and not the provisions of the Natural Gas Act, (15 U.S.C. §§717 et seq.), or any regulation or rule issued thereunder, applies with respect to the licensing, siting, construction, or operation of a deepwater natural gas port or the acceptance, transport, storage, regasification, or conveyance of natural gas at or through a deepwater port. (Section 106(d), 116 STAT. 2087)

Consultation provisions concerning Federal departments or agencies having expertise were mandated. (Section 106(e)(1), 116 STAT. 2087).

Provisions allowing an interim final rule as a temporary regulation were included (Section 106(e)(2)), further discussed below, with final rules to follow as soon as practicable. (Section 106(e)(3), 116 STAT. 2087)

Congress mandated compliance with the National Environmental Policy Act of 1969 (42 U.S.C. §4332) (Section 106(f), 116 STAT. 2087).

¹⁵ "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.

17. Prohibiting issuance of a license unless the adjacent State, to which the port is to be connected by pipeline, has developed, or is making reasonable progress toward developing an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972. (33 U.S.C. §1503(c)(9))

Regulations.

This application is subject to existing regulations that were promulgated under the Deepwater Port Act of 1974. Those regulations are currently being revised pursuant to the Deepwater Port Modernization Act of 1996 and the addition of natural gas facilities by the Maritime Transportation Security Act of 2002. However, with the necessary exception that the existing regulations have been interpreted to apply to natural gas facilities in order to effectuate the Congressional intent expressed in the Maritime Transportation Security Act of 2002, and except for modifications required by law that changed the requirements of existing regulations and to which the applicant voluntarily agreed, the application has been processed and this decision is made in conformance with the existing regulations. Furthermore the application is consistent with both existing rules and those currently proposed.¹⁶

Finally, the importance of my ability to enforce the terms and conditions of the license should not be underestimated. Failure of the applicant to comply can result in a suspension or termination of license (33 U.S.C. 1511).¹⁷

¹⁶ With the passage of the Deepwater Port Modernization Act in 1996, the U.S. Coast Guard issued an advance notice of proposed rulemaking (ANPRM)(62 FR 45774, August 29, 1997). This ANPRM reflected the Congressional changes mandated by the 1996 amendment by Public Law No. 104-324, "A bill to authorize appropriations for the United States Coast Guard, and for other purposes." Title V concerned Deepwater Port Modernization, and provided (1) revision of the term "deepwater port" to include a fixed or floating manmade structure (other than a vessel) that is located beyond the territorial sea and off the U.S. coast which is used as a port or terminal for the transportation of oil from the U.S. Outer Continental Shelf; (2) eliminated (a) certain utilization and transfer restrictions on deepwater ports; and (b) a certain antitrust precondition with respect to the licensing of such ports. Provides for an exemption from certain informational filing requirements; (3) repealed the restriction on the issuance of a deepwater port license requiring that the Secretary of Transportation first receive opinions from the Attorney General and the Federal Trade Commission as to whether such action would adversely affect competition, restrain trade, promote monopolization, or otherwise contravene the antitrust laws; (4) required a deepwater port, among other things, to accept, transport, or convey without discrimination all oil delivered to it; and (5) directed the Secretary to prescribe by regulation or by the licensee's operations manual (currently, by regulation) and enforce port procedures (110 STAT. 3901 at 3925). On May 30, 2002, a proposed rule was published (67 FR 37919), with a notice reopening the comment period published August 19, 2002. A Temporary Interim Rule with Request for Comments will be published shortly.

¹⁷ Sec. 1511. - Suspension or termination of licenses

(a) Proceedings by Attorney General; venue; conditions subsequent

Whenever a licensee fails to comply with any applicable provision of this chapter, or any applicable rule, regulation, restriction, or condition issued or imposed by the Secretary under the authority of this chapter, 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) Public health or safety; danger to environment; completion of proceedings

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.

The license, when issued subsequent to this Record of Decision, along with any required documentation, will be in a form and substance satisfactory to me, reflecting the terms, criteria, and conditions set forth in this Record of Decision.

Facts.

Port Pelican filed its application on November 25, 2002. After preliminary analysis of completeness on December 16, 2002, a notice in the Federal Register on December 27, 2002, announced its availability for public inspection.¹⁸ On or about that date the application was also distributed to all Federal departments and agencies and States having duties and responsibilities under the Act. On January 7, the application was posted on the Docket Management System,¹⁹ along with an environmental report provided by Port Pelican, L.L.C.²⁰

On December 27, 2002, pursuant to 33 U.S.C. §1508, Louisiana was designated as an “adjacent coastal State²¹, a status that is conferred by the Secretary, in certain circumstances; and entitles such a State to certain rights and privileges, including effective veto power over a deepwater port application.²² This designation was confirmed in a letter dated January 7, 2003.²³ No other State applied for consideration as an “adjacent coastal State.”

On April 7, 2003, Louisiana Department of Natural Resources, Coastal Management Division requested the National Oceanic and Atmospheric Administration make a consistency determination because the applicant had claimed to be exempt from the Coastal Zone Management Consistency Determinations.²⁴ In response, the applicant filed a Federal Coastal Zone Consistency Certification on July 11, 2003.²⁵ As noted below, this Certification was ultimately approved.

On April 7, 2003, the U.S. Coast Guard and MARAD published a Notice of Intent to prepare an Environmental Impact Statement (EIS) and requested public comments. On April 15, 2003, the U.S. Coast Guard and MARAD announced a public scoping meeting/informational open house to discuss issues to be addressed in the EIS. On April 29, 2003, the U.S. Coast Guard and MARAD held an informational open house in Lafayette, Louisiana. Thirty-nine individuals attended. No comments were received during the open house. Several written comments were received during the scoping process and were considered during the preparation of the EIS.

On May 21, 2003, the draft Environmental Impact Statement “Draft Environmental Impact Statement for Port Pelican LLC Deepwater Port License Application” was submitted to the Environmental Protection Agency,²⁶ and on May 30, 2003, a Notice of Availability and Request for Public Comments was published.²⁷ A public meeting on the Draft EIS was held on July 1, 2003 in Lafayette, Louisiana, to receive views of interested persons on the Port Pelican Draft EIS. Commenters also had the opportunity to make comments on the application.²⁸ No comments were submitted on the Draft EIS during the informational open house or the public meeting. However, five written comments were received during the 45-day public comment period. These comments were also considered during the development of the Final EIS. EPA’s comments were available as of August 1, 2003.²⁹

¹⁸ 67 FR 79234. As noted above, the application and related public comment and official actions may be viewed at <http://dms.dot.gov/search/> by entering the appropriate docket number; the number for Port Pelican is 14134.

¹⁹ <http://dmses.dot.gov/docimages/p74/210833.pdf>

²⁰ <http://dmses.dot.gov/docimages/p74/210835.pdf>

²¹ 67 FR 79234 (December 27, 2002)

²² See sections 9 (33 U.S.C. 1508) and 4(c)(10) (33 U.S.C. 1503).

²³ Letter to The Honorable M.J. Foster, Jr., Governor of Louisiana from Margaret D. Blum, Associate Administrator for Port, Intermodal and Environmental Activities, Maritime Administration and Rear Admiral Paul J. Pluta, Assistant Commandant, Marine Safety, Security and Environmental Protection, United States Coast Guard.

²⁴ http://dmses.dot.gov/docimages/pdf85/239571_web.pdf

²⁵ See http://dmses.dot.gov/docimages/pdf87/250706_web.pdf

²⁶ See <http://dmses.dot.gov/docimages/p76/244607.pdf>.

²⁷ 65 FR 32538; see also <http://dmses.dot.gov/docimages/p76/244738.pdf>.

²⁸ 68 FR 32538 (May 30, 2003).

²⁹ 68 FR 45238 (August 1, 2003): “ERP No. D-CGD-G03021-LA Rating LO, Port Pelican Deepwater Port Construction and Operation, License Approval, Vermillion Lease Block 140 on the Continental Shelf in the Gulf of Mexico southwest of Freshwater City, LA. Summary: EPA had no objection to the preferred alternative.”

In accordance with the Deepwater Ports Act, a final public hearing on Port Pelican LLC license application was held in New Orleans, Louisiana, on August 18, 2003.³⁰ While the stated purpose of the hearing was to obtain views from interested parties on the license application, comments were also accepted regarding the EIS. Two persons made oral presentations. The two persons that spoke endorsed the Port Pelican proposal, generally for reasons of long term economic and environmental advantages to the State and nation. No formal comments were received on the EIS.

In accordance with 40 C.F.R. §1506.9 a copy of the Final EIS was submitted to EPA on August 21, 2003. On August 29, 2003 the Notice of Availability and request for comments was published.³¹

By October 2, 2003, 45 days after the last public hearing, we had received comments from a number of interested Federal agencies and from the State of Louisiana

Issuance of this decision on this date complies with all statutory timetables. I am pleased to note that all hearings and notices in the application review process have also met the statutory deadlines, and, that the entire process from filing of the application to decision has taken less than one year.

IV. POLICY DETERMINATIONS

Having described the application and the process on which this decision is based; I now must address whether the applicant has or will meet the statutory criteria for issuance of a license. I also am concerned with what conditions should be imposed, if the license is issued, to ensure that the construction and operation of the port continue to serve the public interest. Fortunately, section 4(c) (33 U.S.C. §1503(c)) provides explicit guidance on this issue by requiring the Secretary to make nine findings or determinations in reaching a decision.

These determinations require that the Secretary evaluate fully the financial, technical, and management capability of the applicant and its owners to ensure that a licensee is able to comply with all applicable laws, the Act's criteria, regulations, and license conditions, to weather financial and tropical storms, to meet any contingent liabilities, and to fulfill its obligation to construct and operate the port in a timely and efficient manner. Consequently, the licensee takes on a special obligation to perform, and I must be confident of its ability to do so.

These determinations further require that I ensure that the best available technology is utilized in the development of a facility that is environmentally sound, safe, and energy efficient. These requirements, of course, must be tempered by due respect for international treaties and obligations and recognition of the reciprocal benefits that accrue to all nations from the reasonably free use of the high seas. The reconciliation of proposed unilateral action to protect the environment with the objectives of international navigation requires the patience of those who work through multilateral channels to bring about a lasting and global commitment to environmental enhancement. Moreover, the environmental and safety benefits of removing LNG and other vessels from congested harbors and ports must weigh heavily in assessing the overall environmental desirability of deepwater port construction. The concerns of coastal States and other Federal agencies with offshore responsibilities must also be considered seriously in reaching these determinations. The overall national interest must be considered and whether the port is consistent with the nation's goals and objectives.

In making these statutory findings, my task has been complicated by the fact that some of the values involved can be described and quantified with precision, while others, equally important to their advocates, are more hypothetical, speculative, and subjective. It would be plain error, however, to ignore a value, simply because it cannot be reduced to numbers, and I have, accordingly, set forth my reasons and findings for each of these requirements in the following sections, drawing upon the substantial record. I further have described the specific license conditions that are designed to address my findings on each issue.

³⁰ 68 FR 42744 (July 18, 2003).

³¹ 68 FR 52048 (August 29, 2003)

V. CRITERIA FOR ISSUANCE

As discussed above, section 4(c) (33 U.S.C. §1503(c)) provides explicit guidance to the Secretary requiring nine findings or determinations as criteria for issuance of a deepwater port license. As stated earlier, when issued the License, along with any required documentation, will reflect the terms, criteria, and conditions discussed in this Record of Decision, and will be in a form and substance satisfactory to me. The first of the nine determinations that I am required to make relate to the financial capabilities of the applicant – that and each of the other eight criteria are discussed below in the order they appear in the section 4(c).

1. Financial Responsibility

As provided in Section 4(c)(1) of the Act, 33USC§1503(c)(1), the first condition I must determine for issuing a license is that Port Pelican, the applicant, “is financially responsible and will meet the requirements of the section 1016 [33USC§2716] of Oil Pollution Act of 1990” (OPA 90). An additional financial requirement is the Secretary establish bonding requirements or other assurances that the port will be removed upon revocation or termination of the license.

General Obligations. In granting the first deepwater port license, the Secretary provided insights into the general obligations of licensee that are still valid today. In the LOOP decision, he wrote:

Perhaps the most important requirement for financial responsibility arises out of the obligations which flow from the rights and privileges under the license. We cannot grant a license without recognition of the importance of the licensee going forward with the project. Such a grant would be worse than an empty gesture; a license without a port would effectively foreclose opportunities for others to construct a facility for the same service area.³²

I agree with this assessment, the construction and start-up of Port Pelican will require a large capital investment of over \$800 million. We must be assured that the applicant has the resources necessary to complete the project and have the facility available to meet the energy needs of the people of the United States.

Oil spill liability. Under section 4(c)(1) (33 U.S.C. 1503), “The Secretary may issue a license ...if he determines that the applicant is financially responsible and will meet the requirements of section 2716 of this title [33 U.S.C. Section 2716. - Financial responsibility]”. The Department of Homeland Security's United States Coast Guard (USCG) administers the requirements of section 2716, enacted by the Oil Pollution Act of 1990 (OPA 90). The USCG issues certificates of financial responsibility (COFR) and determinations of compliance with financial responsibility requirement to entities that demonstrate the financial ability or insurance sufficient to meet the maximum oil pollution liabilities indicated in the statute. Although Port Pelican does not transport oil, the deepwater port plans to shift 750 barrels of diesel fuel and store some amounts of other oils for aviation purposes. Since there is an appreciable amount of oil being stored and shifted on the platform, the USCG has concluded that OPA 90 would apply. While it is unlikely that Port Pelican could create an oil spill that would require application of the full liability requirements specified in OPA 90, Sec. 2704 sets the limit on liability at \$350,000,000 for a deepwater port. OPA 90 allows the Secretary of the Department in which the Coast Guard is operating (in this case the Department of Transportation³³) to lower that limit to no less than \$50,000,000. Pending a study of the relative operational and environmental risks of deepwater LNG ports, I will consider lowering the limit of liability prior to completion of the project. As a result, I must consider whether the applicant has the financial capability to obtain a determination of compliance with financial responsibility requirements to cover its maximum oil spill liability of \$350,000,000.

Removal Requirements. Pursuant to section 4(e) [33 U.S.C. 1503(e)], the licensee must furnish a bond or other assurances that the components of the deepwater port will be removed (unless such requirement is waived) at the

³² The Secretary’s Record of Decision on the Deepwater Port License Application of LOOP Inc. (December 17, 1976), p. 14.

³³ Under the savings provisions of the Homeland Security Act 6 USC 552(b)(1), the Coast Guard move to Department of Homeland Security is disregarded for purposes of handling license applications that are in hand during the transition period.

termination or revocation of the license. The applicant notes that there are several possible alternatives for continued use of the facility and /or the gravity based structure that would significantly impact decommissioning costs. Port Pelican believes that the alternatives may provide value to both government and private interests and also have the least amount of environmental impact. While Port Pelican's assertion that alternatives uses for port structures at termination or revocation of the license is well thought out and reasonable, those issues can not be determined at this time. Port Pelican estimates that full removal cost of all components of the deepwater port except the pipeline will be \$193.6 million.

Financial Resources. Against these requirements for financial responsibility, we have analyzed the financial resources of the applicant. The application indicates that Port Pelican's owner, Chevron U.S.A. Inc. (CUSA), an indirect wholly-owned subsidiary of ChevronTexaco Corporation (ChevronTexaco) will be obligated, as owner of Port Pelican, to make capital contributions to fund Port Pelican during the construction phase. As such, we look to CUSA as owner of Port Pelican to demonstrate that it has the financial resources necessary to perform this obligation. Further, Port Pelican has indicated that it intends to enter into a terminal use agreement with Pelican Marketing & Trading LLC, an affiliate. The fees under the terminal use agreement will be structured to include a daily fee to cover all capital and operating cost components.

Formed from the merger of Chevron Corporation and Texaco Inc. in October 2001, ChevronTexaco is now the second largest US integrated oil company. Chevron U.S.A., Inc. is a major subsidiary of ChevronTexaco managing and operating most of ChevronTexaco's U.S. businesses and assets related to the exploration and production of crude oil, natural gas and natural gas liquids as well as certain other businesses. The accounts of Chevron U.S.A. are included in ChevronTexaco Corporation's consolidated financial statements. Key financial statistics for ChevronTexaco are summarized below:

Key Financial Statistics
ChevronTexaco Corporation
(\$ In Millions)

	<u>2000</u>	<u>2001</u>	<u>2002</u>
Total Revenue	\$119,130	\$106,245	\$99,049
Net Income	7,727	3,288	1,132
Shareholders' Equity	33,369	33,958	31,604
Total Assets	77,621	77,572	77,359
Total Debt	15,915	17,418	16,269

Current Credit Rating

Standard & Poor's – AA

Moody's – Aa2

ChevronTexaco has substantial financial resources and is rated highly by both Standard & Poor's and Moody's – both issuing investment grade credit ratings. These resources are more than adequate to provide CUSA, as owner of the applicant, with the financial resources necessary to ensure the applicant has the ability to meet its obligations. The financial plan presented by the applicant provides for CUSA to make capital contributions to Port Pelican. In order to meet the financial responsibility requirements of the Act, I will require that the licensee provide within 90 days of the issuance of the license evidence, in form and substance acceptable to the Secretary, assurance that the applicant can meet its financial responsibility obligations. Specifically, ChevronTexaco must assure or guarantee that the capital contributions proposed in the application are, to the extent required, indeed made to Port Pelican. We believe that the capital contributions and terminal use agreement will provide the port with the means to be financially responsible. The capital contributions reported in the application will assure that the applicant has the resources to construct the port and will provide the port with a firm financial foundation to provide it with a

reasonable opportunity for success. While I do not feel compelled to assure that the Port Pelican will be financially successful over the long-term, I note that the terminal use agreement is intended to provide Port Pelican with the cash flow necessary to meet its future obligations.

While the capital contributions and terminal use agreement may provide Port Pelican with the wherewithal in the future to qualify for a determination of compliance with the financial responsibility requirements on its own merits or through the purchase of insurance, it does not now have that capability. As such, I find that if Port Pelican is unable to obtain a such a determination with the financial responsibility requirements on its own accord, then the owner of Port Pelican or ChevronTexaco must demonstrate financial responsibility in accordance with the requirements of section 2716 of the Act.

Finally, I must be satisfied that, at the time of decommissioning, the applicant will have sufficient financial resources to decommission the facilities in a manner acceptable to the Secretary, which may include full removal of the gravity based structure and all associated facilities. Port Pelican will have a strong financial start and a strong possibility of being very successful and being able to provide for its own decommissioning. However, energy markets are highly variable and decommissioning is likely to be a very long ways off. As such, I find that Port Pelican must provide a bond in an amount of \$193.5 million to cover the port's full decommissioning costs. Such a bond must increase over time to compensate for inflation. In the alternative, the owners of Port Pelican may provide a guarantee in lieu of bonding, subject to the requirement that the guarantor or guarantors shall have investment grade credit ratings. Therefore, CUSA, as the current owner of the applicant, may provide a guarantee of ChevronTexaco stipulating that upon termination of the license, in the event that Port Pelican is unable to fund the port's full decommissioning costs, the guarantor will provide or procure that the owner provide these funds to the applicant.

I do not believe any further financial requirements need be imposed on ChevronTexaco or Port Pelican to meet the financial responsibility provisions of the Act.

2. Compliance with Applicable Laws, Regulations and License Conditions

While the Port Pelican proposal does not contemplate any significant advances in the state-of-the-art, the project is of sufficient scope and complexity to require some inquiry into the ability of the applicant to accomplish successfully what it proposes to do.

The expertise of the applicant (and its staff) draws heavily upon the expertise of contractors and personnel employed by ChevronTexaco, which has been operating installations in offshore locations for more than 40 years. One of the world's largest integrated energy companies, ChevronTexaco is involved in every aspect of the energy industry in more than 180 countries. In the U.S. Gulf alone, ChevronTexaco's wholly-owned subsidiary CUSA has average daily production rates of 124,000 barrels of crude oil, one billion cubic feet of natural gas and 15,300 barrels of natural gas liquids. ChevronTexaco owns and operates an extensive pipeline network, including over 2,000 miles of natural gas pipelines. In regards to LNG, a subsidiary of ChevronTexaco has been a partner in the North West Shelf Project (offshore Western Australia) since the mid 1980s. This project produced 264 million cubic feet of natural gas daily during 2002, of which about 60 percent were liquefied for export. ChevronTexaco and its subsidiaries are also actively involved in the development of several new LNG projects worldwide. Finally, ChevronTexaco has extensive experience in marine operations through ChevronTexaco Shipping, which currently manages about 30 owned or chartered vessels. With substantial expertise in all relevant fields, we conclude that ChevronTexaco and its subsidiaries possess sufficient technical and management resources to accomplish the task at hand; all that is necessary is to ensure that these resources are available to Port Pelican to proceed with construction of the project and to solve problems as they arise.

Within 90 days of issuance of the license, the licensee must provide evidence acceptable to the Secretary that the owners will furnish such technical and management support necessary to complete construction of the port in accordance with the conditions of the license.

We are thus able to conclude "...that the applicant can ...comply with applicable laws, regulations and license conditions".³⁴

In order to complete the determination under section 4(c)(2) [33 U.S.C. 1503], we must find "...that the applicant will comply with applicable laws, regulations and license conditions." Willingness cannot be determined, of course, by the attitude of the applicant or expressions of intent, but must be established by its agreement to comply. This written agreement, stipulated by section 4(e)(2) [33 U.S.C. 1503] of the Act, must be provided by Port Pelican agreeing to comply with the license. Similar assurances, delivered within 90 days of issuance of the license, by the parent companies for those license conditions, which they alone can satisfy, must also be provided.

3. National Interest

Section 4(c)(3) (33 U.S.C. §1503(c)(3)) requires me to find that the construction and operation of the port is "in the national interest" and consistent with other policy goals such as energy sufficiency.

In reaching this determination, I am obliged to reconcile the nation's numerous, and sometimes conflicting, priorities with the consequences of deepwater port construction. I am required to balance the national energy requirements with our national commitment to energy independence and consider the impact of licensing Port Pelican on our nation's overall environmental, economic, and security requirements.

Estimates indicate that over the next 20 years, U.S. oil consumption will increase by 33 percent, natural gas consumption by well over 50 percent, and demand for electricity will rise by 45 percent.³⁵ The Department of Energy Information Administration projects that demand for natural gas in the U.S. could reach 35 trillion cubic ft (tcf) annually by 2025. This compares to an annual consumption of 22.2 tcf in 2001. Despite forecasts of increased production within the lower 48 states, the Energy Information Administration predicts that increased imports of natural gas will be required to satisfy domestic demand. To meet at least part of this demand, LNG imports are expected to increase to 2.1 tcf per year in 2025, equal to 6 percent of total U.S. gas supply. This will require all the existing facilities to be fully operational with the expansions completed, as well as the construction and operation of new U.S. LNG import terminals.

On July 10, 2003, Federal Reserve Chairman, Alan Greenspan, before the Senate Energy and Natural Resources Committee,³⁶ called for a "major expansion" of U.S. LNG facilities as a way to help keep gas prices stable. Greenspan said, "Access to world natural gas supplies will require a major expansion of LNG terminal import capacity and development of the newer offshore regasification technologies." Greenspan added, "Without the flexibility such (LNG import) facilities will impart, imbalances in supply and demand must inevitably engender price volatility...More LNG imports could provide a price-pressure safety valve."

Intrinsic to the general purpose of Port Pelican is the use of worldwide sources of natural gas, thereby diversifying sources of natural gas input into the existing pipeline infrastructure in the U.S. Port Pelican would meet the growing gas supply need by enabling regasified LNG to be delivered into the existing pipeline infrastructure in the Gulf of Mexico, ultimately connecting with Henry Hub in southern Louisiana and other third-party pipelines. This gas would then be delivered by shippers into the national gas pipeline grid through connections with other major interstate and intrastate pipelines. Port Pelican will provide significant volumes of natural gas to the nation's gas distribution market, improving the efficiency and flexibility of the existing pipeline infrastructure and providing supply diversification.

Much of the energy our nation uses passes through a vast nationwide network of generating facilities, transmission lines, pipelines, and refineries that convert raw resources into usable fuel and power. That system is currently deteriorating, and is now strained to capacity. Therefore, the construction of a new system of offshore deepwater port facilities will expand our energy infrastructure to connect new supply sources to a growing energy market in an environmentally sound manner.

³⁴ The license conditions reflect the obligations hereinabove examined.

³⁵ National energy policy - www.whitehouse.gov/energy/National-Energy-Policy.pdf

³⁶ www.federalreserve.gov/boarddocs/testimony/2003/20030710/default.htm and www.federalreserve.gov/BoardDocs/testimony/2003/20030610/default.htm

Based on the above, it is abundantly clear to me that Port Pelican will fill a vital role in meeting out national energy requirements for many years to come. However, I must also consider whether Port Pelican contributes to the national objective of energy sufficiency. I must reconcile these vital national energy needs with our firm national desire for energy independence. While these objectives may appear to be conflicting, an increase in the importation of natural gas does indeed meet both objectives. When Congress amended the Deepwater Port Act to include natural gas, I believe it recognized that the importation of natural gas would provide for a reliable alternative energy source. The Department of Energy's Strategic Plan highlights this point when calling for, "Improved energy security by developing technologies that foster a diverse supply of reliable, affordable, and environmentally sound energy...that make a fundamental improvement in our mix of energy options, and improving energy efficiency."³⁷ The Executive Branch, by issuing Executive Order 13212 of May 18, 2001³⁸ – "Actions to Expedite Energy-Related Projects – declared that national policy requires energy sufficiency.

With greater diversity of sources, I believe the nation is better able to cope with disruptions in energy supplies that could undermine our economy and place our national security at risk. Essentially, I believe that energy sufficiency means a stronger more diverse energy network that reliably supplies our nation under unpredictable conditions. The Port Pelican Project and deepwater natural gas ports fill a vital role in this energy network.

As discussed above, Port Pelican is generally in the interest of national security by providing diversity in the energy mix. Additionally, locating the import facility in deepwater many miles from shore makes it a more difficult target for unscrupulous persons interested in disrupting our energy infrastructure or using the facility to harm the American public. Finally, neither the Department of Defense nor the Department of State has indicated that this project presents any national security problems.

It is our nation's long standing policy to make the maximum effort to preserve and protect the environment. The Deepwater Port Act specifies that terminals be licensed and operated in a manner that protects the marine and coastal environment by preventing or minimizing any impact that might occur as a consequence of the port development. As described later, a large and substantial effort has been made to evaluate the environmental impact of Port Pelican and some localized negative impacts have been identified. However, I have concluded that Port Pelican will contribute to an overall improvement in our environment. I have reached this conclusion primarily based on the environmental superiority of natural gas as an energy source as compared to oil and coal. Over the last decade numerous new electric power plants have been built with natural gas as their energy source and many more are likely to follow. According to Energy Information Administration, the natural gas share of electricity generation is projected to grow from 17 percent in 2001 to 29 percent in 2025. Without a source of natural gas that Port Pelican and like deepwater natural gas ports will supply, fewer gas-fueled power plants would be built or operated in U.S. In addition, Port Pelican will provide positive impacts compared to a land-based facility or alternative energy imports. In this regard, the port will help reduce congestion and enhance safety in ports throughout the Gulf of Mexico. I have also concluded that because the activities of Port Pelican will be closely monitored, a number of permits and license conditions placed on Port Pelican, any negative impact on the environment will be kept to the minimum.

4. Navigation, Safety, and Use of the High Seas

Section 4(c)(4) [33 U.S.C. §1503(c)(4)] lists criteria for the issuance of a license upon a finding that "...a 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."

As a declaration of policy, the Congress explicitly stated in section 2(b)[33 U.S.C. §1501(b)] "...that nothing in the Act shall be construed to affect the legal status of the high seas, the superadjacent airspace, or the seabed and subsoil, including the Continental Shelf."

³⁷ The Department of Energy Strategic Plan, September 30, 2003

³⁸ 66 FR 28357, May 22, 2001, as amended by Executive Order 13302 of May 15, 2003, 68 FR 27429, May 20, 2003

The United Nations Convention on the Law of the Sea (UNCLOS)³⁹ article 60 grants coastal States the exclusive right to construct and to authorize and regulate installations and structures in its Exclusive Economic Zone, including deepwater ports.⁴⁰ Also, the freedom of all nations to make reasonable use of waters beyond their territorial boundaries is recognized by the 1958 International Convention on the High Seas, which defines the term “high seas” to mean all parts of the sea that are not included in the territorial sea or in the internal waters of a state.⁴¹ Prior to the United States agreeing to abide by the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) concept of the Exclusive Economic Zone (EEZ),⁴² under the Act a distinction had been made between foreign flag vessels using the deepwater port and those only navigating in the vicinity of the ports. At that time, for vessels calling at deepwater ports, the United States exercised the right and authority as the licensing state to condition the use of the port on compliance with reasonable regulations, including acceptance of general jurisdiction of the United States.⁴³ If such conditions were not accepted by a foreign state, use of the deepwater port must be denied to vessels registered in or flying the flag of that state.⁴⁴ As discussed below, that is no longer the case.

³⁹ Even though the United States is not a party to UNCLOS, as a matter of policy the United States complies with most of its provisions:

United States Oceans Policy, Statement by the President (March 10, 1983), Weekly Compilation of Presidential Documents (Vol. 19, No. 10), Administration of Ronald Reagan, 1983 / Mar. 10

* * *

Today I am announcing three decisions to promote and protect the oceans interests of the United States in a manner consistent with those fair and balanced results in the Convention and international law.

First, the United States is prepared to accept and act in accordance with the balance of interests relating to traditional uses of the oceans—such as navigation and overflight. In this respect, the United States will recognize the rights of other states in the waters off their coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal states.

Second, the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the convention. The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses.

* * *

⁴⁰ Title 33 U.S.C. Section 1518 precedes the entry into force of UNCLOS article 60. It also precedes the designation of the Exclusive Economic Zone of the United States, which grants us certain rights and jurisdiction under customary international law, as stated in UNCLOS Part V. While Article 60(7) indicates that a deepwater port does not have the status of an island, has no territorial sea of its own, and its presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf, the United States interprets Article 12 to mean that any roadstead located outside the territorial sea and used for the loading or unloading of ships is included in the territorial sea. See letter dated July 30, 2003, from Margaret F. Hayes, Acting Deputy Assistant Secretary For Oceans and Fisheries, United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs to Margaret D. Blum, Associate Administrator for Port, Intermodal and Environmental Activities, U.S. Maritime Administration.

⁴¹ Prior to UNCLOS coming into force, a rule of reason was applied. For example, whether use of the high seas by a deepwater port is reasonable could be determined by examining, among other things, the extent to which deepwater port facilities do not unreasonably interfere with the high seas freedoms of other nations, including the freedoms of navigation, fishing, laying submarine cables and pipelines, and overflight. In fact, a properly located deepwater port could enhance navigation and safety by reducing the chances of vessel collision and pollution of the marine environment in heavily congested areas. Thus, under the reasonable uses test, one would propose to exercise the international right of the United States to make a permissible use of the high seas in a cautious and restrained manner. The use by foreign nations of the same ocean area can be accommodated if they reasonably respect the rights and interests of the United States. The amount of controversy would be decreased where the deepwater port, although in international waters, had close proximity to our shores, suggesting that there was little danger of interference with actual use of the high seas by other nations.

⁴² See note 39, op cit.

⁴³ Section 19(c), 33 U.S.C. §1518(c).

⁴⁴ Id.

In accordance with the Section 10(d) of the Act (33 U.S.C. § 1509(d)), Port Pelican has requested a safety zone. The U.S. Coast Guard has determined it is reasonable to establish a 500-meter safety zone.⁴⁵

International law also plays a role in this area, and the U.S. Department of State commented that under international law, navigation safety zones are governed by three principal sources: UNCLOS, specifically Articles 22, 60 and 211; the International Convention on the Safety of Life at Sea, 1974, Annex, Chapter V, primarily Regulation V/10; and the General Provisions on Ship's Routing, adopted by the International Maritime Organization (IMO) pursuant to Assembly Resolution A.572 (14), as amended.⁴⁶ The Convention on the Continental Shelf of 1958 also provides for the construction and operation of continental shelf installations and the coastal States' establishment of safety zones, which may extend to a distance of 500 meters around such installations.⁴⁷ For those vessels navigating in the vicinity of a deepwater port, we are entitled to take measures necessary to avoid collision and environmental hazard within the safety zone. Outside the 500-meter safety zone, uniform international rules to ensure navigational safety around the deepwater port can best be achieved by seeking appropriate ships' routing measures through the International Maritime Organization (IMO).

Because USCG is also reviewing an area to be avoided that is beyond the 500 meter domestic safety zone, as well as certain recommended routes from the Sabine Pass Fairway⁴⁸ to the deepwater port, the IMO will be approached. This comports with advice given by the Department of State.⁴⁹

In addition to these safety measures, the Captain of the Port has authority to introduce additional vessel movement controls to enhance the safety of ship movements to and from the deepwater port.

Moreover, the Operations Manual, which Port Pelican is required by regulations to develop for Coast Guard approval, will specify vessel operating procedures for LNG tankers calling at the deepwater port.⁵⁰

Finally, the U.S. Department of State addressed the issue of extended U.S. jurisdiction:

The [Act] at 33 U.S.C. 1518(a)(3) requires the State Department to notify the government of each foreign state having vessels under its authority or flying its flag that may call at a deepwater port, that the United States intends to exercise jurisdiction over such vessels. The notification shall indicate that absent the foreign State's objection, its vessels will be subject to U.S. jurisdiction whenever calling at the deepwater port or are within the 500 meter safety zone and using or interfering with the use of the deepwater port. Further, Section 1518(c)(2) states that entry by a vessel into the deepwater port is prohibited unless a bilateral agreement between the flag State of the vessel and the United States is in force, or if the flag State does not object to the exercise of U.S. jurisdiction.

⁴⁵ Section 10(d) of the Act requires the designation of a safety zone around and including the deepwater port to insure navigational and environmental safety

⁴⁶ July 30, 2003 letter from Margaret F. Hayes, op. cit.

⁴⁷ Convention on the Continental Shelf, 15 U.S.T. 471 (1958), Article 5 provides in part: 2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled 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, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection. 3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones. 4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

⁴⁸ 33 CFR § 166.200. As this fairway scheme is not an IMO routing system, there are no plans to present this issue at IMO.

⁴⁹ July 30, 2003 letter from Margaret F. Hayes, op. cit.

⁵⁰ The USCG has the additional statutory responsibility to approve an operations manual for a deepwater port. 33 U.S.C. § 1503(e)(1). The USCG retained the statutory and delegated authorities upon its transfer to the Department of Homeland Security (Department of Homeland Security Delegation Number: 0170, Sec. 2. (75), March 3, 2003; Pub. L. 107-296, section 888.).

Thus, any ship calling at a deepwater port in our Exclusive Economic Zone would be subject to U.S. jurisdiction as if it were in the territorial sea. As the proposed Port Pelican deepwater port would be in the Exclusive Economic Zone, this principle would apply here. Any ship flying the flag of a party to UNCLOS would be subject to Articles 12 and 60 and would be bound to the same jurisdictional principles of 33 U.S.C. Section 1518, thus obviating the need for further bilateral agreements. However, if a ship flying the flag of a non-party to UNCLOS (Liberia, for example) were to call at the deepwater port, the State Department would only object to such calls if the non-party flag State had filed an objection with us.⁵¹

Based on the above, I am confident and have determined that Port Pelican is permitted under the principles of international law, and it 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. Protecting and Enhancing the Environment.

Section 4(c)(5) [33 U.S.C. §1503(c)(5)] requires the Secretary to determine, in accordance with environmental review criteria established pursuant to section 6 [33 U.S.C. §1506] "...that the applicant has demonstrated that the deepwater port will be constructed and operated using the best available technology, so as to prevent or minimize adverse impact on the marine environment."

In addressing this and other related issues, we have benefited from the information and advice provided by the EPA, the Minerals Management Service, and the National Oceanic and Atmospheric Administration, among others. Port Pelican also provided much useful data. We have received comments and suggestions in response to the draft environmental impact statement from many state, Federal and local governments and agencies, in addition to interested persons and groups. The final environmental impact statement (EIS) contains our evaluation and disposition of all such comments received.

The EIS and the review performed by the MARAD's Office of Environmental Activities and the U.S. Coast Guard supports my determination under section 4(c)(5); the applicant has demonstrated that the port will be constructed with the best available technology to minimize or prevent adverse impact on the marine environment.

In order to assure that all possible care is taken to protect the environment, however, the license will contain a continuing obligation to employ the best available technology and special environmental conditions. These conditions control changes in the project, construction of the project, construction of offshore and nearshore pipelines, operations of the project, air emissions, industrial and wastewater discharges, potential for impacts to fisheries and other marine species, potential for impacts to protected marine species, potential for adverse affects on any historical and archaeological sites, and potential for adverse impacts from project decommissioning. The License will also be subject to conditions consistent with this Record of Decision, including but not limited to:

1. National Pollution Discharge Elimination System (NPDES) Permit: Port Pelican LLC will obtain an NPDES permit and will comply with all conditions and mitigation measures identified as conditions to the permit. Port Pelican LLC will provide to the U.S. Coast Guard a copy of the permit, including all conditions and requirements.
2. Facility Response Plan and Operations Manual: Provide and receive approval from the U.S. Coast Guard prior to operations. The Plan and Manual will describe measures to be implemented by Port Pelican LLC personnel and their contractors to prevent, and if necessary, control any inadvertent spill of petroleum products and hazardous materials such as fuels, lubricants, and solvents. The Plan and Manual will identify typical fuel, lubricants, and hazardous materials stored or used, and the location, quantity, and method of storage. Additionally, the Plan and Manual will identify and define emergency notification procedures in the event of a spill, procedures for collection and disposal of waste generated during spill cleanup or equipment maintenance. In addition to these requirements, the Operations Manual will describe other measures to be implemented by Port Pelican LLC personnel and their contractors to prevent, and if necessary, control any potential for adverse impacts to the environment during the operation of the

⁵¹ Id.

deepwater port. In particular, the Operations Manual will contain specific measures to minimize impacts to air and water quality, impacts to essential fish habitat, and the incidental take of endangered species, as described in more detail below. The Manual and Plan will be updated with site-specific information prior to construction, prior to transport and installation of the Gravity Based Systems (GBS), and prior to commencement of operations. The Manual and Plan will be updated as changes occur or on a specific time line as identified by the U.S. Coast Guard.

3. Industrial Process Water Intake Location, Velocity: The center of the seawater intake array will be sited at 60 ft below mean sea level. The screen size will be 0.25 inches to maintain a maximum seawater through-screen intake velocity of 0.5 ft/s.

NOAA Fisheries determined that the following level of anticipated take (lethal, or non-lethal) is not likely to appreciably reduce either the survival or recovery of sperm whales, leatherback, green, hawksbill, Kemp's ridley, or loggerhead sea turtles in the wild by reducing their reproduction, numbers, or distribution:

- One take per year of a leatherback sea turtle by a vessel strike.
- One take per year of either a green, Kemp's ridley, or hawksbill sea turtles by a vessel strike.
- Six takes per year of loggerhead sea turtles by a vessel strike.
- One take of any species of sea turtles over the lifetime of the action for explosive decommissioning of the terminal.

If the actual incidental take exceeds this level, MARAD must immediately reinstate formal consultation.

8. Impacts to Cultural Resources: During the construction and installation of the project's facilities, the licensee must properly avoid or further investigate certain anomalies discovered in the geohazard surveys and described in the Final EIS.
9. Avoidance of Geologic Hazards: Any significant geological hazard encountered during installation of the GBSs will be avoided. Additional geophysical surveys will be conducted for pipeline route(s) selected for licensing. Port Pelican LLC will make the results of such surveys known to appropriate personnel in MMS and the U.S. Coast Guard.
10. Corps of Engineers Section 404 Permit,⁵² if required: Port Pelican LLC will coordinate with the appropriate Corps of Engineers District Office to obtain a Section 404 permit. Port Pelican LLC will obtain the permit and adhere to all conditions, including an approved anchoring plan. Port Pelican LLC will provide to the U.S. Coast Guard a copy of the permit, including all conditions and requirements.
11. Title V Operating Permit and Prevention of Significant Deterioration of Air Quality: Port Pelican LLC will obtain a Title V air permit from the Environmental Protection Agency (EPA). Port Pelican will obtain other air permits, if required by EPA, prior to installation of the GBSs and pipeline and prior to operations. Port Pelican LLC will provide to the U.S. Coast Guard a copy of the permit(s), including all conditions and requirements.
12. Decommissioning: Port Pelican LLC will conduct all decommissioning activities in accordance with approved plans required by the licensing authority, and in compliance with all applicable and appropriate regulations and guidelines in place at the time of the decommissioning.
 - If explosives are used, they will be of the type normally used for decommissioning of Outer Continental Shelf (OCS) facilities in the Gulf of Mexico. Should explosives be used for decommissioning, Port Pelican LLC would, prior to their use, present for approval to interested agencies appropriate impact zone models, specifics as to explosive type and weight, and a description of possible effects on listed species and the actions to be taken to eliminate or reduce such effects.
 - Prior to decommissioning, and in consultation with the appropriate Federal agencies, an evaluation would be conducted to determine the nature and extent of habitat that has developed during the operational life of the facilities. Port Pelican LLC will coordinate with these agencies to develop a mutually agreeable decommissioning plan.
 - Port Pelican LLC will provide to the U.S. Coast Guard a copy of the plan, including all agreements, a timetable, and any other pertinent information.
 - Port Pelican will follow NOAA fisheries protocols during decommissioning as identified in the "Take" permit.

Other conditions, consistent with this Record of Decision, may be included in the License.

⁵² Section 404 of the Clean Water Act requires authorization from the Secretary of the Army, acting through the Corps of Engineers, for the discharge of dredged or fill material into all waters of the United States, including wetlands, both adjacent and isolated. Discharges of fill material generally include, without limitation: placement of fill that is necessary for the construction of any structure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for intake and outfall pipes and subaqueous utility lines; fill associated with the creation of ponds; and any other work involving the discharge of fill or dredged material. A Corps permit is required whether the work is permanent or temporary. Examples of temporary discharges include dewatering of dredged material prior to final disposal, and temporary fills for access roadways, cofferdams, storage and work areas.

6. Advice of the Administrator of EPA

Section 4(c)(6) [33 U.S.C. §1503(c)(6)] provides that the license may be issued if the Secretary "...has not been informed, within 45 days following 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." While I have not been informed by the Administrator of EPA that the deepwater port will not conform with all applicable provisions of the Clean Air Act, the Clean Water Act f/k/a the Federal Water Pollution Control Act, or the Marine Protection Research and Sanctuaries Act, EPA has recommended that the Port Pelican license be subject to certain conditions. I concur with the EPA Administrator's conditions noted above.

7. Consultations with the Secretaries of State, Defense and Army

One of the primary purposes of the Act is to cut through the maze of Federal agency jurisdictions, each of which has a legitimate interest in some aspect of deepwater port development, and to provide a single point of coordination and review. The Act specifies the interests of the Departments of State, and Defense, and the U.S. Army Corps of Engineers concerning the international safety and navigation implications of a deepwater port are recognized in section 4(c)(7)[33 U.S.C. §1503(c)(7)]⁵³

On January 7, 2003 MARAD and the U.S. Coast Guard representatives met with the Department of State. The Department of State was consulted frequently thereafter during the preparation and promulgation of all regulations in order to enable their evaluation of the effect of the proposed ports on programs within their jurisdiction and to ensure consistency with international law. As part of this continuing dialogue, full consideration was given to their comments on the deepwater port safety zones and related matters. I have asked the assistance of the State Department in the establishment of internationally recognized safety zones and acceptance by foreign states of U.S. jurisdiction within such zones. Upon the advice of the Department of State, because of UNCLOS, unlike the previous license granted to the Louisiana Offshore Oil Port in 1977, there is no longer a need for the Secretary of State to take steps to negotiate bilateral agreements with the seven foreign flag states whose vessels are most likely to use the port.⁵⁴

On March 20, 2003, MARAD and the U.S. Coast Guard hosted an interagency meeting attended by representatives of the White House Council on Environmental Quality, the Department of the Interior, the Department of Defense (Office of the Secretary (OSD)), the EPA, the Federal Energy Regulatory Commission, the U.S. Army Corps of Engineers (USACE), the Department of Energy, and the Research & Special Projects Administration of the Department of Transportation. Other agencies were contacted by phone.

In response to numerous consultations with the Office of the Secretary of the Army, by letter dated October 3, 2003, the OSD, on behalf of himself and the Secretary of the Army, stated the application had been reviewed and there was no objection to the issuance of a license to Port Pelican.

⁵³ Consultation also took place pursuant to Section 106(e)(1) of the Maritime Transportation Security Act of 2002 (Extension of Deepwater Port Act to Natural Gas), wherein Congress declared "(1) Agency and department expertise and responsibilities.--

Not later than 30 days after the date of the enactment of this Act, the heads of Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the construction or operation of deepwater ports for natural gas shall transmit to the Secretary of Transportation written comments as to such expertise or statutory responsibilities pursuant to the Deepwater Port Act of 1974 (33 U.S.C. §§1501 et seq.) or any other Federal law." 116 STAT. 2087

⁵⁴ See The Secretary's Decision on the Deepwater Port License Application of LOOP, Inc., dated December 17, 1976, page 23.

As to the USACE, while it is intended that the Section 10 permit⁵⁵ for the Port Pelican project, if required, be issued concurrently with the license, the license has been made conditional on subsequent issuance of the appropriate permits should such issuance be delayed.

8. Approval of the Governor of Louisiana

Section 4(c)(8) [33 U.S.C. §1503(c)(8)] conditions issuance of a license on the approval(s) of the Governor of "adjacent coastal State or States." The rights and responsibilities of states have been made a special subject of Congressional concern in the Act.⁵⁶ Special status is conferred on certain States by section 9 [33 U.S.C. §1508], which provides for designation of certain States as "adjacent coastal States." Section 9(a)(1) provides that the Secretary must:

"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."

In addition, section 9(a)(2) provides:

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.

The governor of any state so designated by the Secretary as an "adjacent coastal State" can, by timely notification to the Secretary of his disapproval, prevent the issuance of a deepwater port license. Other interested states are to be given full consideration in the licensing process, as specifically provided in section 9(b)(2).

Louisiana, as the State that would be directly connected by pipeline to the proposed deepwater port, is automatically conferred status as an "adjacent coastal State." The State has been involved in the Port Pelican project since its inception. Section 9(b) [33 U.S.C. §1508(b)] states: " 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." The 45 days time limit has passed and therefore the adjacent State is presumed to have granted its approval of the Port Pelican project.

9. Coastal Zone Management Act

Section 4(c)(9) [33 U.S.C. §1503(c)(9)] authorizes issuance of a license "if the state adjacent to the proposed deepwater port is making reasonable progress toward developing an approved coastal zone management program."⁵⁷ A state is considered under section 9(c) [33 U.S.C. §1508(c)] to be making such progress if it is receiving a planning grant pursuant to section 305 of the Coastal Zone Management Act.⁵⁸ Louisiana, the state adjacent to Port Pelican

⁵⁵ Section 10 of the Rivers and Harbors Act of 1899 requires authorization from the Secretary of the Army, acting through the Corps of Engineers, for the construction of any structure in or over any navigable water of the United States. Structures or work outside the limits defined for navigable waters of the United States require a Section 10 permit if the structure or work affects the course, location, or condition of the water body. The law applies to any dredging or disposal of dredged materials, excavation, filling, rechannelization, or any other modification of a navigable water of the United States, and applies to all structures, from the smallest floating dock to the largest commercial undertaking. It further includes, without limitation, any wharf, dolphin, weir, boom breakwater, jetty, groin, bank protection (e.g. riprap, revetment, bulkhead), mooring structures such as pilings, aerial or subaqueous power transmission lines, intake or outfall pipes, permanently moored floating vessel, tunnel, artificial canal, boat ramp, aids to navigation, and any other permanent, or semi-permanent obstacle or obstruction.

⁵⁶ Section 2(a)(4), 33 U.S.C. §1501(a)(4).

⁵⁷ At the time of enactment of the Deepwater Port Act in 1974, most States were only beginning to implement the Coastal Zone Management Act provisions.

⁵⁸ 16 U.S.C. §§1451 et seq.

has enacted a Coastal Zone Management Act system. Under those provisions it has reviewed said application under the aforementioned authority and found it to be consistent with the provisions of the Louisiana Coastal Resource Program (see Louisiana Dept of Natural Resource Letter Dated October 13, 2003, incorporated by reference herein).

VI. CONCLUSION

In determining that the deepwater port, proposed by Port Pelican, LLC, subject to certain license conditions, I have reached the following conclusions:

Port Pelican, LLC will reduce significantly the risks of environmental harm from the importation of natural gas. The latest technology in pollution prevention and control will be applied in the construction of this deepwater port. Any possible environmental damage caused by the accidental release of natural gas resulting from off loading, transshipment, or harbor collision will be reduced substantially because of the efforts undertaken to make certain the deepwater port is constructed and operated in an environmentally-sound manner.

Imbalance between natural gas supply and demand would lead to higher natural gas prices and possibility of the substitution of other energy sources (e.g., coal, oil, nuclear). Depending on market conditions and availability of substitute energy sources, the substitute fuels might not be as clean burning as natural gas.

The U.S. will continue to be dependent, in part, on the importation of foreign natural gas for the foreseeable future, and the development of more economical and environmentally sound means of importing natural gas is therefore not inconsistent with this nation's commitment to increasing our domestic resources and securing greater energy independence.

Deepwater ports will contribute to greater energy independence by enhancing our natural gas reserves and increasing our flexibility by enabling the U.S. to receive large amounts of natural gas. This is important in light of the fact that overseas exploration has developed significant natural gas resources. Much of this gas has no local market due to lack of demand, infrastructure, and/or ability to pay for gas. Without access to export markets, this gas is effectively stranded.


The construction of Port Pelican deepwater port may have a significant impact on the employment levels for several local Parishes in Louisiana. The port is expected to create over 100 permanent jobs for the region primarily in the operations of the port and on tugboats that will service the port. By the terms of the equal opportunity program to be required by the license, many of the employment opportunities will be available to minorities and women.

I have accepted generally the advice and recommendations of other federal and state agencies. Where I have not adopted specific recommendations, I have selected an alternative course that, in my judgment, will work to achieve the objective more effectively.

I recognize that the conditions that have been designed to ensure that the port is constructed and operated in accordance with the national interest concerns may not be acceptable to the applicant. If so, then the license will not be issued, and other potential applicants will have another opportunity to consider submitting a proposal. If the license conditions are accepted and the license is issued, by the authority delegated to me by the Secretary of the Department of Transportation I am directing all Departmental modes to exercise their responsibilities with due diligence, in cooperation with other Federal and State agencies, to ensure that the letter and spirit of the license requirements are followed.

Consequently, I conclude that construction and operation of the Port Pelican 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.

November 14, 2003


Captain William G. Schubert
Maritime Administrator
Washington, D.C.