

Feb 2004

**MEMORANDUM OF UNDERSTANDING
 RELATED TO THE LICENSING OF DEEPWATER PORTS
 AMONG THE
 US DEPARTMENT OF THE ARMY
 U.S. DEPARTMENT OF COMMERCE
 U.S. DEPARTMENT OF DEFENSE
 U.S. DEPARTMENT OF ENERGY
 U.S. DEPARTMENT OF HOMELAND SECURITY
 U.S. DEPARTMENT OF THE INTERIOR
 U.S. DEPARTMENT OF STATE
 U.S. DEPARTMENT OF TRANSPORTATION
 U.S. ENVIRONMENTAL PROTECTION AGENCY
 FEDERAL ENERGY REGULATORY COMMISSION
 COUNCIL ON ENVIRONMENTAL QUALITY**

I. Purpose:

The Purpose of this Memorandum of Understanding (MOU) is to establish a framework for cooperation among the Participating Agencies with responsibilities related to the licensing of deepwater ports pursuant to the Deepwater Port Act of 1974, as amended (DPA).

This Agreement emphasizes the importance for the lead agencies, the U.S. Coast Guard (USCG) and Maritime Administration (MARAD), on behalf of the Secretary of the Department of Homeland Security (DHS) and the Secretary of the Department of Transportation (DOT), respectively, to receive specific information from the other Participating Agencies at key stages of project development to foster an efficient procedure to develop documentation that will meet the statutory requirements of all affected agencies. Specifically, the intent of this MOU is to establish a process to facilitate the timely processing of deepwater port applications, whereby participating agencies will:

- Work together with applicants and other stakeholders, as appropriate, both before and after complete applications for the necessary authorizations or permits are filed;
- Identify and resolve any issues as quickly as possible;
- Attempt to build a consensus among governmental agencies; and
- Expedite the environmental review required for licensing decisions associated with deepwater ports.

II. Background:

Executive Order (EO) 13212 (“Actions to Expedite Energy-Related Projects”) signed by President Bush on May 18, 2001 (66 FR 28357), sets forth Administration policy that executive departments and agencies must take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy. EO 13212 directs agencies to expedite their reviews of authorizations for energy-related projects and to take other action necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protection.

EO 13212 applies to the licensing of deepwater ports under the Deepwater Port Act of 1974 (DPA, 33 U.S.C. 1501, *et seq.*). The Maritime Transportation Security Act of 2002 (P.L. 107-295) amended the DPA in November, 2002 to extend the definition of deepwater ports to cover natural gas, including liquefied natural gas (LNG), facilities. The Secretary of DHS and the Secretary of DOT delegated the processing of deepwater port applications to the USCG and MARAD, respectively. The DPA establishes a specific time frame of 330 days from the date of publication of a Federal Register notice of a "complete" application to the date of approval or denial of a deepwater port license. The USCG and MARAD, in cooperation with other Federal agencies, must comply with the requirements of the National Environmental Policy Act (NEPA, 42 U.S.C. 4332) within that time frame. Pursuant to § 5(f) of the DPA, Congress anticipates that such compliance will fulfill the requirements of all Federal agencies in carrying out their NEPA responsibilities pursuant to the DPA.

The DPA allows for the licensing of deepwater ports in the Exclusive Economic Zone along all maritime coasts of the US. A variety of energy corporations have submitted applications or have announced their intentions to apply for deepwater port licenses, primarily for LNG.

Consistent with EO 13212 and the cooperation necessitated by the DPA, the Participating Agencies enter into this MOU to expedite actions on pending and future applications for licensing deepwater ports.

III. Participating Agencies:

The agencies with regulatory responsibilities relevant to deepwater ports in the OCS that are participating in this MOU are:

- U.S. DEPARTMENT OF COMMERCE (DOC)
 - National Oceanic and Atmospheric Administration (NOAA)
 - National Marine Fisheries Service (NOAA Fisheries)
 - National Ocean Service (NOS)
- U.S. DEPARTMENT OF DEFENSE (DOD)
 - (Installations and Environment) Utilities and Energy
 - Secretary of the Army, U.S. Army Corps of Engineers (COE)
- U.S. DEPARTMENT OF ENERGY (DOE)
 - Office of Fossil Energy
- U.S. DEPARTMENT OF HOMELAND SECURITY (DHS)
 - U.S. Coast Guard (USCG)
- U.S. DEPARTMENT OF THE INTERIOR (DOI)
 - Minerals Management Service (MMS)
 - U.S. Fish and Wildlife Service (FWS)
- U.S. DEPARTMENT OF STATE (DOS)
- U.S. DEPARTMENT OF TRANSPORTATION (DOT)
 - Maritime Administration (MARAD)

Research and Special Programs Administration (RSPA)
U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)
FEDERAL ENERGY REGULATORY COMMISSION (FERC)
COUNCIL ON ENVIRONMENTAL QUALITY (CEQ)

NOAA Fisheries, within DOC, is responsible for a variety of activities in marine and coastal ecosystems as mandated by several statutes and authorities. These activities include managing protected species, managing commercial and recreational fisheries, and protecting marine and coastal habitats. These activities are conducted pursuant to a number of environmental laws including the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), Magnuson-Stevens Fishery Conservation and Management Act, and the Fish and Wildlife Coordination Act (FWCA). Deepwater port construction and operation in coastal and/or ocean areas may overlap with several NOAA responsibilities depending on the location and type of project proposed. Federal agencies authorizing activities that may affect any of these resources are required to consult with NOAA Fisheries regarding adverse affects to these resources and habitats upon which they depend.

The NOS, also within DOC's NOAA, is responsible for various coastal and ocean programs that may be relevant to deepwater ports. NOS administers the Coastal Zone Management Act (CZMA) and approves and works with states to implement comprehensive Coastal Management Programs and National Estuarine Research Reserves and mediates disputes regarding CZMA issues. Under CZMA section 307(c)(3)(A), applicable states must concur with consistency certifications submitted with deepwater port applications before Federal agencies can issue their approvals. NOS also manages designated National Marine Sanctuaries (NMS) and coastal protection and restoration activities. While oil and gas activities are mostly prohibited within NMS, pursuant to Section 304(d) of the National Marine Sanctuaries Act, Federal actions near NMS may require consultation with the Secretary of Commerce. NOS also may be able to provide technical assistance related to nautical charts, coastal observing stations, GIS capabilities, and tide and current information.

The DOD, through the Office of the Deputy Under Secretary of Defense (Installations and Environment) Installations, Requirements and Management Directorate, will coordinate deepwater port license applications within the Department. DOD officials will review the applications for determination of impact on the Department's activities. DOD will notify Participating Agencies of any areas of concern and participate in any necessary discussions to adequately address DOD issues related to the proposed project.

The COE is responsible for the administration of laws for the protection and preservation of waters of the United States, including wetlands. Pursuant to the requirements of section 10 of the Rivers and Harbors Act of 1899, and section 404 of the Federal Water Pollution Control Act (FWPCA; also known as the Clean Water Act), the COE may issue authorizations for the discharge of dredged or fill material into navigable waters, including wetlands.

The DOE is charged with developing and coordinating national energy policy. In addition, DOE regulates the commodity import and export of natural gas, including LNG, under section 3 of the Natural Gas Act (NGA, 15 U.S.C. § 717(b)).

The USCG has been delegated the responsibility from the Secretary of DHS¹ and MARAD has been delegated authority from the Secretary of DOT to approve or deny any application for a deepwater port submitted pursuant to the DPA. In general, the USCG is the lead agency for compliance with NEPA and is responsible for matters related to navigation safety, engineering and safety standards, and facility inspections. MARAD is responsible for determining financial capability of the potential licensees, citizenship, and is responsible for preparing the project record of decision and issuing or denying the license. The various other responsibilities under the DPA, including the duty of consultation, are shared by USCG and MARAD.

The MMS, within DOI, is responsible for issuing and enforcing regulations to promote safe operations, environmental protection, and resource conservation for all mineral exploration, development, and production activities located in the OCS. In this role, MMS administers leasing and minerals royalty programs, oversees facility permitting, conducts NEPA analysis (e.g. air quality, archeology, biological impacts, socio-economic impacts, etc.), grants pipeline rights-of-way through submerged portions of the OCS, performs facility inspections (including safety related items as authorized by the USCG), maintains databases of facility (fixed, floating, and submerged) locations and attribute data, approves oil spill response plans, administers an operator bonding program, and engages in appropriate engineering and oil spill research.

Under the DPA, as amended, the Secretary of the Interior is also responsible for determining the fair market rental value of the "...subsoil and seabed of the Outer Continental Shelf of the United States to be utilized by the deepwater port, including the fair market rental value of the right-of-way necessary for the pipeline segment of the port located on such subsoil and seabed."

The FWS, within DOI, is responsible for the conservation, protection and enhancement of fish, wildlife, plants and their habitats. Pursuant to a number of environmental laws, including the ESA, MMPA, Migratory Bird Treaty Act, the FWCA, and the Coastal Barrier Resources Act FWS has principal trust responsibility for protecting and conserving migratory birds, certain threatened and endangered species, certain marine mammals, interjurisdictional fish, and certain coastal habitats. FWS manages the National Wildlife Refuge System (NWRS). The agencies processing the application for Federal licenses are required to consult with the FWS on projects potentially affecting any of these resources. The FWS also consults on projects potentially affecting fresh water or marine resources

¹ The DPA provides authority to the Secretary of DOT to issue, amend, transfer or reinstate a license for ownership, construction or operation of a deepwater port. The Secretary of DOT delegated, in 49 C.F.R. § 1.46(s), to the Commandant of the USCG authority to process (in coordination with the Maritime Administration) applications for licenses under the DPA. Sections 888 and 1512 (d) of the Homeland Security Act of 2002 effectuate transfer of authority for USCG authorities and functions from the Secretary of DOT to the Secretary of DHS.

and water quality. In addition, the FWS may authorize use by permit for areas within the NWRS.

The DOS is responsible for providing its views on the adequacy of any deepwater port license application, and its effects on programs within its jurisdiction.

The RSPA, has been delegated authority from the Secretary of Transportation under the DPA to exercise powers and perform duties relating to the establishment, enforcement and review of regulations concerning the safe construction, operation or maintenance of deepwater port pipelines on Federal lands and the OCS. In addition, under 49 U.S.C. 60101, RSPA establishes Federal standards, through its Office of Pipeline Safety, for siting, design, construction, equipment, personnel qualifications and training, public education, fire protection, and security for LNG facilities under 49 C.F.R. Part 193.

The EPA is responsible for administering a wide variety of environmental laws. The responsibilities of EPA relevant to licensing of deepwater ports are primarily associated with assuring such deepwater ports conform with all applicable provisions of the Clean Air Act (CAA), as amended; the FWPCA, as amended; and the Marine Protection, Research, and Sanctuaries Act, as amended. EPA provides such assurance through communication with USCG and MARAD and through independent issuance of the permits that those laws require. If within 45 days of the last public hearing on a proposed license for a designated application area (DPA § 4(c)(6)), the EPA Administrator informs the Secretary of Transportation that the deepwater port will not conform to all applicable statutory and regulatory requirements under these statutes, the Secretary may not issue the license. In addition, under section 309 of the CAA, EPA publicly evaluates the completeness and adequacy of environmental impact statements (EISs) prepared by other Federal agencies and, if it finds a proposed project environmentally unsatisfactory from the standpoint of public health or welfare, or environmental quality, refers the matter to CEQ. Based on this NEPA oversight authority, EPA may refer an Environmental Assessment (EA)/Finding of No Significant Impact (FNSI) to CEQ if the underlying action requires an EIS or is unsatisfactory from the standpoint of public health or welfare, or environmental quality.

The FERC is responsible for authorizing the construction and operation of interstate natural gas pipelines. It issues certificates of public convenience and necessity for such pipelines under section 7 of the NGA and authorizes the construction and siting of facilities for the import or export of natural gas under section 3 of the NGA, including onshore LNG facilities. For natural gas deepwater ports, FERC will retain jurisdiction over any third-party offshore facilities not proposed or approved for construction as part of the deepwater port as well as any facilities to the landward side of the high water mark.

The CEQ was established within the Executive Office of the President in 1969 by NEPA. Its purpose is to formulate and recommend national policies to promote the improvement of the quality of the environment. CEQ has issued regulations (40 C.F.R. Parts 1500 through 1508) applicable to Federal agencies implementing NEPA.

IV. Responsibilities of Participating Agencies:

The Participating Agencies hereby agree to work with each other, and with other entities as appropriate, to ensure that timely decisions are made and that the responsibilities of each agency are met. Specifically, each Participating Agency agrees to:

A. Commit to Early Involvement by:

1. Assessing its potential role in the environmental review of deepwater port licenses, as soon as practicable, after a prospective applicant, an applicant, or a Participating Agency makes a request for involvement in connection with a project under development. If a Participating Agency determines it has a role, it will:

a. Identify agency contacts for the proposed project. If a prospective applicant, an applicant, or Participating Agency needs assistance in determining regional, local or project specific contacts, the initial agency contacts will assist in identifying those contacts. The initial agency contacts for each Participating Agency for the purposes of this MOU are identified in Attachment A.

b. Meet with prospective applicants, applicants, other Participating Agencies, or the lead agencies when requested by the prospective applicant, applicant, a Participating Agency, or the lead agencies, or at its own initiative, to identify areas of potential concern and to assess the need for and availability of agency resources to address issues related to the proposed project.

c. Identify environmental issues and concerns related to the proposed project that need to be addressed in order for the lead agency to meet its obligations.

2. Conducting an early initial review of the deepwater port applications for completeness and accuracy and providing the USCG and MARAD with findings to assist in their "completeness" determination process, keeping in mind that the USCG and MARAD have 21 days from receipt of an application to determine whether or not it is complete. USCG and MARAD will notify all Participating Agencies immediately upon receipt of an application for a deepwater port license and require applicants to provide appropriate Participating Agencies (currently MMS, EPA, RSPA and NOAA Fisheries) with either a hard copy or access to an electronic copy of each application as soon as possible (see section IV(A)(3)(c) of this MOU). The appropriate Participating Agencies will be allowed at least five working days from the receipt of the appropriate number of copies of the application in order to complete requisite reviews and to provide the USCG and MARAD with recommendations as to the need for any additional information necessary for the agency to evaluate the application's impacts upon the agency's programs and areas of responsibility.

3. Conferring with the USCG and MARAD in establishing schedules. The USCG and MARAD will notify the other Participating Agencies as early as possible of actions in pending license application proceedings, including meetings with potential applicants.

The USCG and MARAD will then establish a schedule for the project review process, including key times for consultation. Such schedule will be as expeditious as possible and consistent with the periods for analysis and response that are required by the statutes and regulations applicable to the proposed project. The Participating Agencies will strive to ensure that individual permitting processes and related permit review activities occur on a concurrent, rather than sequential, basis with the objective of avoiding unnecessary delays in the process and the schedule established by USCG and MARAD. If at any point during the consultation process a Participating Agency anticipates an inability to comply with the agreed-upon schedule, it will communicate the reason for this inability as soon as possible to USCG and MARAD. USCG and MARAD will then work with that agency to minimize the anticipated delay.

a. In light of their DPA application processing and licensing responsibilities, USCG and MARAD will be the lead agencies for NEPA compliance for deepwater port applications. Participating Agencies may use this MOU as a cooperating agency agreement (CAA) with the lead agencies for the purpose of NEPA compliance or may enter into a supplemental CAA, which would augment this MOU.

b. Under the DPA the USCG and MARAD will require prospective applicants to establish and maintain an electronic web-based repository in which all filings by the applicants for authorizations, including filings with local, state and Federal agencies, are made available to all Participating Agencies involved in their project. Some equivalent means of ensuring access to documents by Participating Agencies, such as the current Docket Management System used by DOT, may be used as a repository. The USCG and MARAD will use best efforts to ensure that the prospective applicants make each document available in the repository within 3 days after the document is filed. The repository also should include orders, requests and other pertinent documents. The applicant(s) will pay the cost of the repository.

c. Under the DPA the USCG and MARAD will require applicants to submit hard copies of all application materials including detailed drawings and maps of the proposed facility and surrounding area, and, where possible, copies on a compact disk (CD), to agencies participating in the review process, ensuring that sufficient copies are distributed to both headquarters and field offices. All hard and CD copies will be at the expense of the applicant. Once deemed complete, the USCG and MARAD will use best efforts to ensure that the applicants provide copies to the Participating Agencies within 3 days of such determination.

d. Through their contracts, the USCG and MARAD will require NEPA contractors to submit all interim and draft NEPA documents in hard copy and on CD to both headquarters and field offices of appropriate Participating Agencies to assist in expeditious review of materials. All hard and CD copies of the NEPA documents will be at the expense of the applicant.

e. The USCG and MARAD will include in any Notice of Intent to Prepare an EIS or EA an announcement to the public regarding the process set forth in this MOU.

f. To facilitate participation, the USCG and MARAD will notify Participating Agencies of scoping meetings and public hearings as soon as possible after the meeting or hearing is scheduled and provide copies of scoping reports to the Participating Agencies as soon as possible.

B. Share Data. Subject to the laws governing access to information classified for purposes of national security, the Participating Agencies will share the information gathered, considered and relied upon by each of them. Specifically, the Participating Agencies agree to:

1. Subject to confidentiality requirements and exemptions from disclosure under the Freedom of Information Act, provide to the prospective applicant, applicant, and/or lead agencies, relevant studies, data (such as maps showing features over which the agency may have jurisdiction), and any other information concerning the status of matters the agency considers relevant (including matters that may be under consideration, such as proposing a species for listing as endangered or threatened, or proposing an area as a National Marine Sanctuary).
2. Cooperate in the preparation of requests for additional studies or data, avoid duplicative requests, and compile a consistent set of information on which all Participating Agencies will rely.
3. Cooperate in identifying and developing information at the level of detail required to complete environmental and cultural resources project review.
4. Cooperate in developing alternative pipeline routes, safety zones, anchorage areas, vessel recommended routes, port locations, and/or other actions.
5. Cooperate in developing mitigation measures that will be conditions of approval of the project. MARAD will make every effort to ensure that conditions of approval and/or project mitigations developed by Participating Agencies and provided to the Coast Guard and MARAD during NEPA proceedings and application engineering and operations reviews are considered in the development of the licensing document prepared by MARAD.

C. Communicate Informally. The Participating Agencies agree to communicate informally with the lead agencies early and throughout the process to ensure that issues are raised as soon as possible and shared among all agencies. The lead agencies will coordinate and share information with and among other Participating Agencies.

D. Resolve Disputes. Disputes regarding existing statutory requirements will be resolved by the relevant Participating Agencies using existing dispute resolution methods and in accordance with existing statutory authorities. With respect to disputes regarding the procedures set forth in this MOU, the Participating Agencies will confer informally with the CEQ, or its designee. If a Participating Agency identifies such a dispute with the

procedures of the MOU, it will notify all other Participating Agencies and make every attempt to resolve the issue.

If the dispute is not resolved within thirty (30) days of the notification of the dispute:

1. Any of the Participating Agencies involved in the dispute may forward the matter to the CEQ, or its designee.
2. The CEQ, or its designee, will make a written recommendation on resolution of the dispute within thirty (30) days of receiving the documentation from Participating Agencies, unless there is an agreement among all relevant Participating Agencies that the period should be extended for a particular reason.
3. Recommendations received from the CEQ, or its designee, will be taken into account by the lead agency in consultation with the relevant Participating Agencies, in a manner consistent with applicable law, when determining further actions regarding the subject of the dispute. Any recommendation not accepted by the lead or Participating Agencies will have to be fully explained in writing to the Chairman of the CEQ.
4. This opportunity to consult with the CEQ, or its designee, will be separate and apart from the opportunity to do so provided for in the CEQ's regulations at 40 C.F.R. Part 1504.

V. General Provisions:

- A. This MOU cannot be used to obligate or commit funds or as the basis for the transfer of funds. All provisions in this MOU are subject to the availability of funds.
- B. This MOU does not supersede existing agreements among any of the signatories.
- C. This MOU may be modified or amended upon written request of any Participating Agency hereto and the subsequent written concurrence of all of the Participating Agencies. Participation in this MOU may be terminated sixty (60) days after a Participating Agency provides written notice of such termination to the other Participating Agencies.
- D. This MOU is intended only to improve the cooperation among the Participating Agencies to expedite decisions on deepwater ports. It is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person. This MOU is not intended to direct or bind any person outside the Participating Agencies.
- E. This MOU neither expands nor is in derogation of those powers and authorities vested in the Participating Agencies by applicable law.

F. This MOU does not affect any guidelines related to information quality issued by the Participating Agencies in connection with section 515 of the Treasury and General Government Appropriations Act for FY 2001 (P.L. 106-554). Information disseminated pursuant to this MOU will be subject to the information quality guidelines of the Participating Agency that disseminates the information and the process by which requests for correction of such information will be addressed will be that established by the agency that disseminated the information.

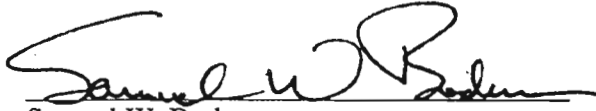
G. This MOU is solely for the purpose of establishing internal procedures for Federal agencies to consider and deal with the various environmental responsibilities in the context of applications submitted pursuant the DPA, and nothing in this MOU shall be construed to create a cause of action.

VI. Principal Contacts:

The Participating Agencies designate agency contacts identified in Attachment A. These contacts may be changed at the Participating Agency's discretion upon notice to the other Participating Agencies. Attachment A will be updated as needed and verified on an annual basis.

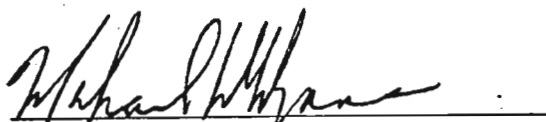
VII. Effective Date and Duration:

This MOU is effective upon the date of the last signatory and will expire five years from that date unless extended or terminated earlier by mutual agreement of the Participating Agencies.



Samuel W. Bodman
Deputy Secretary
Department of Commerce


3 Feb '04
Date




Michael W. Wynne
Acting Under Secretary of Defense (AT&L)
Department of Defense

3/15/04
Date

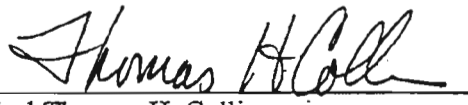
MOU: Licensing of Deepwater Ports


John Paul Woodley, Jr.
Assistant Secretary of the Army (Civil Works)
Department of Defense

18 December 2003
Date

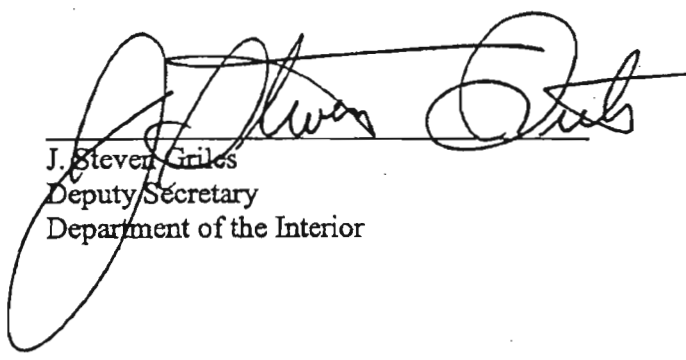

Robert Card
Under Secretary
Department of Energy

1/23/04
Date


Admiral Thomas H. Collins
Commandant, United States Coast Guard
Department of Homeland Security

JAN 13 2004

Date


J. Steven Griles
Deputy Secretary
Department of the Interior

Dec 15, 2003
Date

MOU: Licensing of Deepwater Ports

Paula Dobriansky
Paula Dobriansky
Under Secretary for Global Affairs
Department of State

3/1/04
Date

Kirk E. Van Tine
Kirk E. Van Tine
Acting Deputy Secretary
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5/12/04
Date

Stephen L. Johnson
Stephen L. Johnson
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JAN 14 2004
Date

Pat Wood, III
Pat Wood, III
Chairman
Federal Energy Regulatory Commission

12 Jan 04
Date

James L. Connaughton
James L. Connaughton
Chair
Council on Environmental Quality

2/23/04
Date

Attachment A: Participating Agency Contacts

The following are the principle initial contacts for each agency:

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Department of Defense

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MOU: Licensing of Deepwater Ports, Attachment A

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MOU: Licensing of Deepwater Ports, Attachment A

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Council on Environmental Quality

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