

DEPARTMENT OF TRANSPORTATION
UNITED STATES OF AMERICA
THE SECRETARY'S DECISION ON
THE DEEPWATER PORT LICENSE APPLICATION
OF GULF LANDING, LLC.

Washington, D.C. February 16, 2005

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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 seaward of State territorial waters 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 (DOE),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: Everett, Massachusetts; Cove Point, Maryland; Elba Island, Georgia; and Lake Charles, Louisiana, all which are under the jurisdiction of the Federal Energy Regulatory Commission. I have recently approved the license applications for two deepwater LNG ports.⁵ This application is one of eight currently pending applications under the Act.⁶ To meet the expected demand for LNG imports, which are projected by DOE to increase from 0.4 trillion cubic feet in 2003 to 6.4 trillion cubic feet in 2025, several more import facilities or facility expansions will be necessary. Recognizing the need for new LNG import capacity, the Act was amended to provide American industry with the option of constructing new LNG port facilities seaward of State territorial waters. 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 U.S. Coast Guard (USCG), now part of the Department of Homeland Security,⁷ and to the Maritime Administration (MARAD), made in 1997,⁸ 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).

1 The application (except for certain protected information specified in 33 U.S.C. §1513) 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 Gulf Landing is 16860.

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 2005 with Projections to 2025, Energy Information Administration, Office of Integrated Analysis and Forecasting, U.S. Department of Energy, February 2005.

⁵ The previously approved applications are Port Pelican (ChevronTexaco) and El Paso Energy Bridge Gulf of Mexico, now doing business as Gulf Gateway Energy Bridge (Excelerate)

⁶ The other pending applications are Cabrillo Port (BHP Billiton), Main Pass Energy Hub (Freeport McMoRan), Compass Port (ConocoPhillips), Pearl Crossing (ExxonMobil), Beacon Port (ConocoPhillips), Neptune LNG LLC (Tractabel), and Clearwater Port (Crystal Energy).

⁷ 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.).

⁸ See 62 FR 11382 (March 12, 1997); 49 CFR §1.46(s) and §1.66(aa).

On November 3, 2003, Gulf Landing, LLC (hereinafter Gulf Landing) submitted to the Secretary of Transportation (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. The original submission was deemed incomplete due to insufficient environmental review data. The supplemental information was received on December 12, 2003, and pursuant to the request for additional biological data⁹ for the proposed site, was determined to contain sufficient information to continue processing. On January 22, 2004, USCG and MARAD issued a Notice of Application in the *Federal Register* summarizing the application.¹⁰ Under procedures set forth in the Deepwater Port Act and its implementing regulations,¹¹ USCG and MARAD have, absent a “stop clock,”¹² 240 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 Gulf Landing, 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.¹³ This document sets forth my decision on the application submitted by Gulf Landing one of seven currently pending applications under the Act (two applications have been approved). 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 November 18, 2004.

In reaching this decision, I am compelled to evaluate and consider a broad range of expert advice and information from other Federal agencies, adjacent State, 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 perspectives.

The Gulf Landing deepwater port and its associated anchorage will be located in the Gulf of Mexico off the Louisiana coast in 55 feet of water. The port area is situated in the Gulf of Mexico approximately 38 miles south of Cameron, Louisiana, in West Cameron Block 213, and adjacent to an existing shipping fairway servicing the Calcasieu river and area ports. Gulf Landing will deliver natural gas to up to 5 existing offshore pipelines which supply 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. Gulf Landing consists of the Gulf Landing Terminal (the Terminal), an LNG receiving, storage and regasification facility and up to 5 offshore pipeline tie-ins.

The Terminal will consist of two gravity based structures (GBS) with internal storage tanks and facilities for LNG offloading and vaporization capability to deliver at peak utilization of 1.2 billion standard cubic feet per day (SCFD) of natural gas to the pipeline system. The total capital expenditures during the construction phases are expected to be approximately \$700,000,000.

Gulf Landing will operate much like any other LNG port facility. The Terminal will be able to receive the largest LNG carriers in service and currently on order. 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 125,000 m³ to 200,000 m³ will berth and unload on the side of the terminal. Loading arm packages are provided on the side of the terminal. The 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 10,000 m³ per hour of LNG through the liquid loading and dual use arms and store the LNG in

⁹ December 2, 2003. http://dmses.dot.gov/docimages/pdf89/270361_web.pdf

¹⁰ 69 FR 3165 (Thursday, January 22, 2004).

¹¹ 69 FR 723-787 (January 6, 2004); On-line at

<http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2004/03-32204.htm>

¹² 33 CFR §§148.107, 148.283.

¹³ 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. §1503.

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. Gulf Landing will have two integral LNG storage tanks both with a nominal storage capacity of 90,000 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 open rack vaporizers with a peak capacity of 1.2 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 convert the LNG back into natural gas.

Once regassed, no gas conditioning at the deepwater port is required since the incoming LNG will be pipeline quality for offshore pipelines. The Terminal will include pipeline interconnections with up to five (5) existing offshore natural gas pipelines that will receive the regasified LNG and transport the gas onshore for delivery into the existing onshore natural gas pipeline grid for provision to consumers.

Gulf Landing LLC is a Delaware limited liability company, created by name change from Tejas Midstream Enterprises, LLC on March 18, 2003, with the corporate purpose of the engaging in any lawful business activity as determined by the Board of Directors. Gulf Landing has met all citizenship requirements necessary to receive a license under section 4(g) (33 U.S.C. §1503(g)). Gulf Landing LLC is a wholly owned subsidiary of Shell U.S. Gas & Power LLC, which in turn is a wholly-owned subsidiary of Shell Oil Company, a major entity within the Royal Dutch/Shell Group.

II. DECISION

For the reasons set forth in this document, I have decided to issue a license to Gulf Landing 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 process¹⁴, 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 United States Environmental Protection Agency (USEPA), 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. While I have not accepted all of these recommendations, most were accepted and will be incorporating them in license conditions, or the operations manual that will govern the operation of the port complex.

¹⁴ 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.

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 USCG, 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.

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 delegee, 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."¹⁵ These conditions create special obligations with which the applicant must agree to comply. For this reason, Gulf Landing may decide not to accept the license and undertake the project. If not, then I hope other potential applicants will step forward. If Gulf Landing 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),¹⁶ and further amended by Section 106 of the Maritime Transportation Security Act of 2002, (Public Law No.107-295, 116

¹⁵ Section 4(e) (1), 33 U.S.C. §1503(e) (1).

¹⁶ 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)

STAT. 2063 at 2086)¹⁷ which extended the Deepwater Port Act to natural gas, the statutes covers a range of activities for deepwater natural gas ports by:

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))¹⁸
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))

¹⁷ 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).

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).

¹⁸ "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.

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))
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 regulations that were 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. The revised implementing regulations were promulgated as a Temporary Interim Rule with Request for Comments (69 FR 724, Tuesday, January 6, 2004).¹⁹ The application has been processed and this decision is made in conformance with these regulations.

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).²⁰

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.

Gulf Landing filed its application on November 3, 2003. On or about November 10, the application was also distributed to all Federal departments and agencies and States having duties and responsibilities under the Act. After preliminary analysis of completeness on December 12, 2003, a notice was published in the Federal Register

¹⁹ On-line at <http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2004/03-32204.htm>

²⁰ 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.

announcing the availability of the application for public inspection.²¹ This notice was posted on the Docket Management System on January 22, 2004.²²

On January 22, 2004, pursuant to 33 U.S.C. §1508, Louisiana was designated as an "adjacent coastal State",²³ 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.²⁴ No other State applied for consideration as an "adjacent coastal State."

On February 27 2004, the USCG and MARAD published a Notice of Intent to prepare an Environmental Impact Statement (EIS) and requested public comments. On March 16, 2004, the USCG and MARAD held an informational open house in Lafayette, Louisiana. Twenty-seven individuals attended, all of whom had some relationship to industry. No public comments were received during the open house. NOAA submitted written comments.

Gulf Landing submitted the documentation to the Louisiana Department of Natural Resources necessary to determine if the project is consistent with the Louisiana Coastal Zone Management Act. On September 9, 2004, the Louisiana Department of Natural Resources made a consistency determination approving the applicant's Federal Coastal Zone Consistency Certification, as required by Section 307 of the Coastal Zone Management Act of 1972, as amended.²⁵

On June 18, 2004, the draft Environmental Impact Statement, titled "Draft Environmental Impact Statement for Gulf Landing LLC Deepwater Port License Application", was submitted to the USEPA,²⁶ and, a Notice of Availability and Request for Public Comments was published on June 25, 2004. A public meeting on the Draft EIS was held on July 15, 2004 in Lafayette, Louisiana, to receive views of interested persons on the Gulf Landing Draft EIS. Commenters also had the opportunity to make comments on the application. Twenty-two individuals, including eight members of the public, attended the public meeting. One oral comment was made on the Draft EIS during the informational open house and public meeting. Twelve written comments were received during the 45-day public comment period, including comments from USEPA; Department of Interior – U.S. Fish and Wildlife & Minerals Management Services; U.S. Department of Defense; NOAA; and, Louisiana Department of Wildlife and Fisheries. These comments were also considered during the development of the Final EIS. USEPA's comments were available as of August 6 2004.²⁷

In accordance with 33 CFR §148.107, on August 27, 2004, the USCG and MARAD suspended the statutory timeline to process the license application in order to allow time to address issues raised by NOAA concerning impact on essential fish habitat. Gulf Landing provided supplemental information and USCG, MARAD, and NOAA conducted additional reviews for inclusion in the final EIS. The suspension was terminated on November 8, 2004, and a final public hearing announced.

In accordance with the Act, a final public hearing on Gulf Landing LLC license application was held in New Orleans, Louisiana, on November 18, 2004. 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. Six members of the public attended. One person made oral comments, and one person who did not attend submitted written comments.

In accordance with 40 C.F.R. §1506.9 a copy of the Final EIS was submitted to USEPA on November 26, 2004. On December 3, 2004, the Notice of Availability and request for comments was published,²⁸ with a comment deadline of January 3, 2005 (45 days after the last public hearing).

²¹ 69 FR 3165 (Thursday, January 22, 2004).

²² <http://dmses.dot.gov/docimages/p77/266230.pdf>

²³ 69 FR 3167 (Thursday, January 22, 2004).

²⁴ See sections 9 (33 U.S.C. § 1508) and 4(c) (10) (33 U.S.C. § 1503).

²⁵ http://dmses.dot.gov/docimages/pdf90/300667_web.pdf

²⁶ http://dmses.dot.gov/docimages/pdf89/286049_web.pdf

²⁷ http://dmses.dot.gov/docimages/pdf89/295182_web.pdf, http://dmses.dot.gov/docimages/pdf90/296645_web.pdf

²⁸ http://dmses.dot.gov/docimages/pdf90/307001_web.pdf

By January 3, 2005, the first business day following the end of the 45 day comment period after the last public hearing, we had received comments from a number of interested Federal agencies and other interested parties. As later discussed, these comments have been addressed in this Record of Decision.

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.

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.

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, 33 U.S.C. §1503(c)(1), the first condition I must determine for issuing a license is that Gulf Landing, the applicant, "is financially responsible and will meet the requirements of the section 1016 of this title [33 U.S.C. §2716 of Oil Pollution Act of 1990 (OPA '90)]". An additional financial requirement is the Secretary establishes 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 Louisiana Off-shore Oil Port (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.²⁹

I agree with this assessment, the construction and start-up of Gulf Landing will require a significant capital investment of approximately \$700 million. We must be assured that the applicant has the resources necessary to complete the project with the best available technology and have safe and environmentally friendly facility available to meet the energy needs of the people of the United States.

Oil spill financial responsibility. 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. §2716. - Financial responsibility]". The Department of Homeland Security's USCG administers the requirements of section 2716, enacted by OPA '90. The USCG issues financial responsibility determinations to entities that demonstrate the financial ability or insurance sufficient to meet the maximum oil pollution liabilities indicated in the statute. Although Gulf Landing does not transport oil, the deepwater port plans an 850-m³ (224,500 gal) capacity diesel fuel storage tank for back-up generators and other 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 Gulf Landing 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 USCG is operating (in this case the Department of Homeland Security) to lower that limit to no less than \$50,000,000. Since a study of the relative operational and environmental risks of deepwater LNG ports that could result in lowering the limit of liability has not as yet been undertaken, I must consider whether the applicant has the financial capability to demonstrate responsibility 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 termination or revocation of the license. There is a broad range of use and decommissioning options that may be available to Gulf Landing at the end of the License. Many of these possible options could significantly impact decommissioning costs. Gulf Landing believes that the alternatives may provide value to both the Government and private interests and also have the least amount of environmental impact. However, it cannot at this time be determined if any option, short of full removal of the deepwater port, will be acceptable. The applicant has provided an estimate for full decommissioning of the deepwater port of \$195 million.

Financial Resources. Against these requirements for financial responsibility, we have analyzed the financial resources of the applicant. Without assistance, the applicant does not possess the financial resources to meet these requirements. The application indicates that capital for the construction of Gulf Landing will be supplied from internal sources of the applicant's parent companies. The application indicates that Gulf Landing's owner is Shell Oil US Gas & Power LLC (SUSGP), an affiliate of Shell Oil Company (Shell Oil). Since SUSGP, as owner of Gulf Landing, is an affiliate of Shell Oil, Shell Oil has agreed to make capital contributions to fund Gulf Landing should it accept the License and when the construction phase begins. The fees under the terminal use agreement will be structured to include a usage or throughput fee to cover all capital and operating cost components. At this time, no terminal agreements have been concluded. As such, we look to Shell Oil as the source of Gulf Landing's funding to demonstrate that it has the financial resources necessary to perform this obligation.

Shell Oil, incorporated in 1922 in the State of Delaware, is wholly owned by Shell Petroleum Inc. In turn, Shell Petroleum Inc., a Delaware corporation, shares are directly or indirectly owned 60 percent by Royal Dutch

²⁹ The Secretary's Record of Decision on the Deepwater Port License Application of LOOP Inc. (December 17, 1976), p. 14.

Petroleum Company, The Hague, The Netherlands, and 40 percent by The “Shell” Transport and Trading Company, p.l.c., London, England. Royal Dutch Petroleum Company and The “Shell” Transport and Trading Company, p.l.c., are holding companies which together directly or indirectly own securities of companies of the Royal Dutch/Shell Group of Companies, the members of which are severally engaged worldwide in the principal aspects of the oil and natural gas industry. They also have interests in chemicals and additional interests in power generation, renewable energy, and other businesses. The Royal Dutch/Shell Group of Companies operate in more than 145 countries and territories around the world and employ approximately 119,000 people.

Shell Oil, including its equity companies, is engaged in a full range of energy activities including the exploration for, and development, production, purchase, transportation, and marketing and trading of crude oil and natural gas. Shell Oil’s operations are segregated into four primary business segments: Oil and Gas Exploration and Production, Gas and Power, Oil Products and Chemicals. Gulf Landing will operate within the Gas and Power segment. Key financial statistics for Shell Oil are summarized below:

Key Financial Statistics
Shell Oil Company
(\$ In Millions)

	<u>2001</u>	<u>2002</u> <u>As Restated</u>	<u>2003</u>
Operating Revenue	\$26,943	\$48,252	\$41,468
Net Income	2,184	1,844	3,421
Shareholders’ Equity	10,279	11,055	11,553
Total Assets	30,690	41,618	47,933
Total Debt	5,196	11,117	15,007

Current Credit Rating
Standard & Poor’s – AA+
Moody’s – Aa2

Shell Oil is a substantial corporation on its own rights and is strengthened by being part of the much larger Royal Dutch/Shell Group of Companies. Carrying the investment grade credit ratings of AA+ issued by Standard and Poor’s and Aa2 by Moody’s, Shell Oil, displays substantial earnings and corporate assets. These resources are more than adequate to ensure that Gulf Landing has the resources necessary to meet its obligations.

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, that the applicant can meet its financial responsibility obligations. Specifically, Shell Oil must assure or guarantee that the capital contributions proposed in the application are, to the extent required, indeed made to Gulf Landing. 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 Gulf Landing will be financially successful over the long-term, I note that the terminal use agreement is intended to provide Gulf Landing with the cash flow necessary to meet its future obligations.

While the capital contributions and the revenue from terminal use may provide Gulf Landing 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 Gulf Landing is unable to obtain such a determination with the financial responsibility requirements on its own accord, then

SUSGP, as the owner of Gulf Landing, or Shell Oil 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 all structures associated with the port. Gulf Landing will have a sound 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 in the very distant future. As such, I find that the Gulf Landing must provide a bond in the amount of \$195 million to cover the port's full decommissioning costs. Such a bond must increase over time to compensate for inflation. In the alternative, the licensee may provide a guarantee in lieu of bonding, subject to the requirements that the guarantor or guarantors shall have investment grade credit ratings. Therefore, Shell Oil, as parent of the applicant, may provide a guarantee stipulating that upon termination of the License and in the event that Gulf Landing is unable to fully fund decommissioning of the port, 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 Gulf Landing, SUSGP, or Shell Oil to meet the financial responsibility provisions of the Act.

2. Compliance with Applicable Laws, Regulations and License Conditions

While the Gulf Landing 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 Shell Oil, which has been in the energy business since 1922 and operating in offshore locations for more than 60 years. Shell Oil is part of the Royal Dutch/Shell Group of Companies (Shell Group), one of the world's largest integrated energy companies. Shell Oil is involved, primarily in the United States, in nearly every aspect of the energy industry. In the U.S. during 2003, Shell Oil had average daily production rates of 414,000 barrels of crude oil and 1.6 billion cubic feet of natural gas. In regards to LNG, Shell Oil has contracted for one-third of the capacity at the Cove Point Maryland LNG facility and 45 percent of the capacity of the Elba Island LNG facility. Shell Oil also has access to extensive experience in LNG operations through its affiliates in the Shell Group. The Shell Group is the world's leading private provider of LNG with operating LNG projects in over 25 countries. The group also staffs and manages 22 LNG vessels, some of which will undoubtedly be calling at Gulf Landing when completed. With substantial expertise in all relevant fields, we conclude that Shell Oil 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 Gulf Landing 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".³⁰

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 Gulf Landing agreeing to comply with the license. Similar assurances by the parent company for those license conditions, which it alone can satisfy, must be delivered within 90 days of issuance of the license.

³⁰ The license conditions reflect the obligations hereinabove examined.

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 Gulf Landing 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.³¹ The Department of Energy’s Energy Information Administration projects that demand for natural gas in the U.S. could reach 30.7 trillion cubic ft (tcf) annually by 2025. This compares to an annual consumption of 21.95 tcf in 2003. 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 6.4 tcf per year in 2025, equal to over 20 percent of total U.S. gas supply.³² 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.

Failure by the Nation to build the required natural gas infrastructure required to respond to demand for natural gas will cause higher energy prices and reduced economic growth. As part of the “Annual Energy Outlook 2005”, the Energy Information Agency included an analysis of constrained natural gas supply³³. This analysis clearly shows that if new natural gas infrastructure is not approved, natural gas prices will be higher than would otherwise be expected. A 2004 study commissioned by the INGAA Foundation, Inc. assessed the consequences of delays in natural gas infrastructure development³⁴. This study also forecast higher natural prices, job losses and impacts on U.S. industrial competitiveness, even if infrastructure development is merely delayed.

Federal Reserve Chairman Alan Greenspan has called for a “major expansion” of U.S. LNG facilities as a way to help keep gas prices stable³⁵. Greenspan said, “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.” Additionally, Chairman Greenspan reiterated this message in remarks before the Center for Strategic & International Studies³⁶. Adding at that time, “Access to world natural gas supplies will require a major expansion of LNG terminal import capacity and the development of the newer offshore re-gasification technologies.”

Intrinsic to the general purpose of Gulf Landing 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. Currently, the growth of natural gas imports into the United States is limited by a lack of sufficient port facilities capable of receiving and regasifying LNG. Gulf Landing would provide needed port facilities and meet the growing gas supply need by enabling regasified LNG to be delivered into the existing pipeline infrastructure in the Gulf of Mexico. This gas would then be delivered by shippers into the onshore national gas pipeline grid through connections with other major interstate and intrastate pipelines for delivery to any consumption market east of the Rocky Mountains. Gulf Landing will provide a significant volume of natural gas, 1.0 Bcf/d, to the nation's gas distribution market, improving the efficiency and flexibility of the existing pipeline infrastructure and providing supply diversification.

³¹ National energy policy - www.whitehouse.gov/energy/National-Energy-Policy.pdf

³² Annual Energy Outlook 2005 - <http://www.eia.doe.gov/oiia/aeo/>

³³ Annual Energy Outlook 2005 – Restricted Natural Gas Supply Case <http://www.eia.doe.gov/oiia/aeo/>

³⁴ An Updated Assessment of Pipeline and Storage Infrastructure for the North American Gas market: Adverse Consequences of Delays in the Construction of natural Gas Infrastructure, The INGAA Foundation, Inc., July 2004, on-line at [online.ingaa.org/library/download/PUBLIC/Final+Capacity+Update+with+INGAA+cover+\(EEA\).pdf](http://online.ingaa.org/library/download/PUBLIC/Final+Capacity+Update+with+INGAA+cover+(EEA).pdf)

³⁵ www.federalreserve.gov/boarddocs/testimony/2003/20030710/default.htm and

www.federalreserve.gov/BoardDocs/testimony/2003/20030610/default.htm

³⁶ www.federalreserve.gov/boarddocs/speeches/2004/20040427/default.htm

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.

Based on the above, it is abundantly clear to me that Gulf Landing will fill a vital role in meeting our national energy requirements for many years to come. However, I must also consider whether Gulf Landing 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 Gulf Landing Project and deepwater natural gas ports fill a vital role in this energy network.

As discussed above, Gulf Landing is generally in the interest of national security by providing diversity in the energy mix. In addition, all energy facilities, while small, carry a certain level of risk from terrorist attacks and industrial accidents. By locating Gulf Landing in deepwater 38 miles offshore, this import facility and the vessels serving it are more difficult targets for unscrupulous persons interested in disrupting our energy infrastructure or using the facility to harm the American public. As the Final EIS points out, should the most extreme incident occur, Gulf Landing's location assures the public is far from any danger. 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. A large and substantial effort has been made to evaluate the environmental impact of Gulf Landing and some localized negative impacts have been identified. In its comments to Final EIS the Department of Commerce, NOAA Fisheries expressed concern that the proposed use by Gulf Landing of an open-rack vaporization (ORV) system would have a greater or more significant cumulative impact on the nation's marine fishery than reflected in the Final EIS. NOAA suggested that a closed loop alternative would be the better alternative. I have carefully considered NOAA's concerns. As reflected in the Final EIS, I do not believe the ORV alternative produces significant negative impacts, nor do I believe a closed loop vaporizing system is a better alternative for this port.

I do not believe a closed loop vaporization alternative is the best alternative for Gulf Landing because the costs to the environment, the applicant and the economy associated with imposing this alternative exceed the benefits. As more fully discussed in the Final EIS, a closed loop system using submerged combustion vaporizers (SCV) was evaluated and the ORV found the best alternative. A SCV system uses regasified natural gas to heat water which in turn is used to vaporize LNG into gas. When compared to ORVs in the Gulf, SVCs are energy inefficient, consuming large amounts of natural gas and increasing the applicants operating expenses by an estimated \$20.8 – \$43.4 million per year, depending on the value of the natural gas consumed in the process. In addition, the burning of natural gas will add pollutants to the air far beyond what an ORV would produce. However, these costs would

³⁷ The Department of Energy Strategic Plan, September 30, 2003, on-line at http://rfplbnl.sc.doe.gov/docs/pdf/doe_strategic_plan_9_03.pdf

³⁸ 66 FR 28357, May 22, 2001 (on-line at ceq.eh.doe.gov/nepa/regs/eos/eo13212.html), as amended by Executive Order 13302 of May 15, 2003, 68 FR 27429, May 20, 2003 (on-line at www.ofee.gov/eo/13302.pdf).

pale in comparison to the impact on the U.S. consumer and our economy should the imposition of this burden cause this and other applicants to delay or abandon the construction of natural gas infrastructure. Due to the high construction costs and difficult operating environment of constructing and operating ports in deepwater locations, I believe there is a strong likelihood that, at a minimum, delays would occur. As a result, natural gas prices for all consumers would be higher than otherwise expected with rippling effect throughout the economy. I do not find that acceptable.

The one area that ORV is not environmentally preferable is in its effects on water quality and marine life. The Final EIS found minor, long-term adverse impacts on essential fish habitat, including red drum. NOAA points out that the science in this area is weak but has nonetheless contended that in some very unlikely cases a larger impact could occur. But I have not been presented with any scientific evidence that Gulf Landing would have a major, long-term adverse impact on fish catches or on fish stocks. Nevertheless, I am sensitive to the concerns expressed NOAA and other similar commenters and share their desire to see thriving fisheries in the Gulf ecosystem. MARAD, the USCG, NOAA, our parent organizations, and other interest Government Agencies have engaged in lengthy discussions under the sponsorship of the White House Council on Environmental Quality (CEQ) in order to assure both minimal impact on essential fish habitat and the development of a successful deepwater port. With positive proposals from the applicant, a strong plan of prevention, monitoring and mitigation was developed to minimize the impact, fully evaluate impacts of the deepwater port to the nation's fisheries and mitigate negative impacts. This agreement is part of the conditions listed in the ROD. These conditions reflect the fact we were successful in developing a strong prevention, monitoring and mitigation plan that will assure a minimal adverse environmental impact to the nation's fisheries.

With only minor negative long-term impacts of the deepwater port facility revealed by the Final EIS and a prevention, monitoring and mitigation plan required of the applicant, I have concluded that Gulf Landing will contribute to an overall improvement in our economy and 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 nearly double from 630 billion kilowatthours in 2003 to 1,406 billion kilowatthours in 2025.³⁹ Without a source of natural gas that Gulf Landing and like deepwater natural gas ports will supply, fewer gas-fueled power plants would be built or operated in U.S. The Energy Information Agency's restricted supply analysis projects such a consequence should the supply of natural gas be restricted. In addition, Gulf Landing 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 Gulf Landing will be closely monitored, a number of permits and license conditions placed on Gulf Landing, 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."

The United Nations Convention on the Law of the Sea (UNCLOS)⁴⁰ article 60 grants coastal States the exclusive right to construct and to authorize and regulate installations and structures in its Exclusive Economic Zone,

³⁹ Annual Energy Outlook 2005 -<http://www.eia.doe.gov/oiaf/aeo/electricity.html>

⁴⁰ 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

including deepwater ports.⁴¹ 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.⁴² Prior to the United States adopting the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) concept of the Exclusive Economic Zone (EEZ), under the Act a distinction was 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

In accordance with the Section 10(d) of the Act (33 U.S.C. §1509(d)), Gulf Landing has requested a safety zone. The USCG 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

* * *

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.

* * *

⁴¹ 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.

⁴² 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.

⁴³ Section 19(c), 33 U.S.C. §1518(c).

⁴⁴ *Id.*

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 September 30, 2004 letter from Margaret F. Hayes, Deputy Assistant Secretary for Oceans and Fisheries, Acting, to Margaret D. Blum, Associate Administrator for Port, Intermodal, and Environmental Activities; on-line at http://dmses.dot.gov/docimages/pdf91/314156_web.pdf

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 Calcasieu 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 Gulf Landing is required by regulations to develop for the USCG 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.⁵¹

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 Gulf Landing 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.⁵²

Based on the above, I am confident and have determined that Gulf Landing 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.

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 meters 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 September 30, 2004 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.).

⁵¹ September 30, 2004 letter from Margaret F. Hayes, op. cit.

⁵² Id.

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 USEPA, the Minerals Management Service, and NOAA, among others. Gulf Landing also provided much useful data. We have received comments and suggestions in response to the draft EIS from many State, Federal and local governments and agencies, in addition to interested persons and groups. The Final EIS contains our evaluation and disposition of all such comments received.

The EIS review performed by MARAD and the USCG, in coordination with the other Federal, State and local participants, 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. Project Changes: Gulf Landing LLC will not commence with any construction until supplemental NEPA analysis in the form of a ROD is issued for the potential environmental impacts associated with the construction of the gravity-based structures. It is expected that this supplemental NEPA document and ROD will also include, but not be limited to, the requirement for Gulf Landing to obtain various permits and mitigations, as appropriate,

2. National Pollution Discharge Elimination System (NPDES) Permit: Gulf Landing will obtain an NPDES permit and will comply with all conditions and mitigation measures identified as conditions to the permit. No pollutant will be discharged from the port until Gulf Landing receives its final NPDES permit. Gulf Landing will provide to the USCG a copy of the permit, including all conditions and requirements.

- Gulf Landing is prohibited from receiving at, or shipment to the port of any material for purposes of dumping in the ocean.

3. Deepwater Port Operations Manual: Provide for review and receive approval from the USCG prior to commencing operations. The Operations Manual will describe other measures to be implemented by Gulf Landing personnel and their contractors to prevent, and if necessary, control any potential for adverse impacts to the environment during the operation of the 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 Operations Manual will be updated with site-specific information prior to the construction of and prior to the transport and installation of the gravity based structures, and prior to commencement of operations. The Operations Manual will be updated as changes occur or on a specific time line as identified by the USCG, in coordination with the Secretary.

4. Industrial Process Water Intake Location, Velocity: The initial centerline of the intake screens will be sited at 11 m (36 ft) below mean sea level. The intake structures would be designed to allow the depth of an individual screen to be modified by the insertion or removal of a length of pipe. This alternative would allow modification of the system over time to select a range or ranges from which to draw water in the column based on the results of the ichthyoplankton monitoring program. Adaptive management procedures to facilitate appropriate modifications in the depth of seawater intakes to further minimize potential ichthyoplankton impacts will be required. The baseline intake screen mesh size would be 6.35 mm (0.25 in). Periodic evaluation of screen effectiveness and modifications might be appropriate based on results from ichthyoplankton monitoring.

- A maximum seawater through-screen intake velocity of 0.15 meters per second (0.5 feet per second) would be maintained. A daily ORV warming water intake volume averaged over a 1-year operating period would not exceed 136 MGD (514,668 m³/day).

- Baseline injections and discharge concentrations of sodium hypochlorite will be maintained between 500 to 2,000 ppb (0.5 to 2 ppm) equivalent chlorine for biofouling control and a shock dose of 5 ppm equivalent chlorine for 1 hour per 8 hours of operation might be required. Regular monitoring of this system is required. If the system were found to be effective with a dosing of 0.5 to 2 ppm equivalent chlorine, Gulf Landing will be required to use operational experience to reduce injection concentrations further until a minimum effective dose is reached.

5. Seafloor Impacts: Gulf Landing will collect cooled seawater in a trough and send by gravity to the water outfall, which is approximately 2 m above the seafloor. The outfall diffusers will discharge vertically to minimize scouring of the seafloor.

6. Pipelines: The pipelines will be constructed, tested, and installed according to applicable existing procedures as defined by the Mineral Management Service in coordination with the Department of Transportation, RSPA, Office of Pipeline Safety and tested to the satisfaction of the Office of Pipeline Safety. The discharge of hydrostatic test water will be made in accordance with the terms of the general discharge permit governing operations of this type in the Gulf of Mexico.

7. Prevention, monitoring and mitigation plan(s): In consultation with NOAA Fisheries and other cooperating agencies as appropriate, Gulf Landing, at their own cost, will develop and implement plans, as discussed below, to assess, minimize and mitigate impacts to marine fisheries species (including ichthyoplankton) associated with the operation of the ORV seawater intake. The plans will be subject to approval by the Maritime Administrator. These plans shall include:

- Plan to develop baseline information - Gulf Landing will develop and implement a monitoring plan to establish baseline information on fish eggs and larvae in the area in and around the deepwater port site. This plan will commence at least thirty-six (36) months prior to installation of the GBS. This plan will specify techniques and frequencies of sampling and the type(s) of analysis and, at the Maritime Administrator's request, will be reviewed for scientific adequacy and completeness by the National Research Council. A qualified third party approved by the Maritime Administrator will manage and implement this plan. This information will be furnished on a quarterly basis to the Maritime Administrator and NOAA Fisheries. This plan will be consistent with the monitoring plans for other off-shore LNG facilities.
- Monitoring Plan: Gulf Landing will develop and implement a plan to assess impacts of the deepwater port on fish eggs and larvae in and around the deepwater port. This plan will focus on marine fisheries species of concern as identified from the baseline information gathered prior to installation, and, at the Maritime Administrator's request, will be reviewed for scientific adequacy and completeness by the National Research Council. A qualified third party approved by the Maritime Administrator will manage and implement this plan. This plan will also be consistent with the monitoring plans for other off-shore LNG facilities. This information will be reported on a quarterly basis to the Maritime Administrator and NOAA Fisheries. This plan will commence upon operations of Gulf Landing. The plan will be part of the USCG-approved Operations Plan.
 - This monitoring plan will also include monitoring for sodium hypochlorite. The warming water system will be maintained between 0.5 to 2 ppm equivalent chlorine and shock dose of 5 ppm equivalent chlorine for 1 hour per 8 hours of operation, if required. If the system was found to be effective with a dosing of 0.5 to 2 ppm, Gulf Landing will be required to use operational experience to reduce injection concentrations further until a minimum effective dose is reached.
- Prevention – Gulf Landing shall pursue and implement practical and reasonable ways to minimize water utilization and ichthyoplankton entrainment. These methods may include heat-recovery from turbine-generate exhaust, different in-take screens, changes in location of intakes or other-agreed initiatives. Gulf Landing will provide an annual report to the Maritime Administrator outlining the previous year's change(s) to design and/or operations and the results.
- Environmental Stewardship - It is recognized that Gulf Landing's affiliated companies have a number of environmental stewardship programs in the Gulf of Mexico. These ongoing efforts would be expected to be

meaningful and may directly or indirectly correspond to the activities at Gulf Landing. Further, it is recognized that the Gulf Landing project will have significant positive environmental and commercial impacts such as providing a diverse and reliable source of clean-burning natural gas (displacement of oil and coal) and providing an artificial reef structure in an area with little hard-bottom structures. In addition to these programs, Gulf Landing shall develop and implement upon commencement of the regas operations at the deepwater port a mitigation program, to be approved by Maritime Administrator in consultation with NOAA Fisheries, designed to offset the base-case impacts of the facility on Species of Concern as stated in the Final EIS for the deepwater port.. These efforts shall be reasonable, timely and practical, and designed to specifically counter the base-case impacts associated with the operation of Gulf Landing.

- Mitigation –After every three (3) years of operation, the licensee shall provide to the Maritime Administrator, NOAA Fisheries, and other cooperating agencies, a detailed report of the impact of ORV on marine fisheries species (including ichthyoplankton), relative to the baseline information gathered prior to installation of the GBS. If at that time the impacts of the deepwater port on Species of Concern exceed the base-case impacts as stated in the Final EIS, Gulf Landing shall develop and implement a plan to mitigate these additional impacts. Mitigation efforts would also extend to other marine fisheries species where monitoring identifies significant adverse impacts in the judgment of the Maritime Administrator after consultation with NOAA Fisheries. The mitigation efforts shall be reasonable, timely and practical, and designed to specifically counter the impacts associated with the operation of Gulf Landing. Depending upon the impacts, mitigation measures could include changes to the operation of the facility, aquaculture projects, wetland restoration or other habitat projects, additional artificial reefs projects, modification of the warming water inlet exclusion devises, research and education programs..

8. Incidental Take and Reporting Requirements: NOAA’s letter of December 30, 2004, concluded that listed species are not likely to be adversely affected by Gulf Landing. If an incidental take does occur, or new information reveals effects of the action not previously considered, or the identified action is subsequently modified in a manner or to an extent not previously considered, or if a new species is listed or a critical habitat designated that may be affected by Gulf Landing, an additional Endangered Species Act section 7 consultation with NOAA Fisheries’ Protected Resources Division will be required. Gulf Landing LLC is required to follow vessel strike avoidance requirements (MMS NTL No. 2003-G10) for sea turtles and marine mammals. This information will be included in the Operations Manual.

- Gulf Landing is required to minimize the risk of accidental discharges of marine debris into the marine environment to the greatest extent practical.

- Gulf Landing is required to minimize the risk of injury and mortality to sea turtles and marine mammals resulting from the use of explosives during decommissioning.

- Gulf Landing is required to notify the USCG within 24 hours of all potential vessel strikes.

9. Impacts to Cultural Resources: During the construction and installation of the project’s facilities, Gulf Landing must properly avoid or further investigate certain anomalies discovered in the geohazard surveys as described in the final Environmental Impact Statement.

10. Avoidance of Geologic Hazards: Any significant geological hazard encountered during installation of the pipelines, buoy and metering platform will be avoided. Additional geophysical surveys will be conducted for pipeline routes selected for licensing. Gulf Landing will make the results of such surveys known to appropriate personnel in Minerals Management Service and the USCG.

11. U.S. Army Corps of Engineers (USACE) Section 404 Permit, if required: Gulf Landing will coordinate with the appropriate Corps of Engineers District Office to obtain a Section 404 permit. Gulf Landing will obtain the permit and adhere to all conditions. Gulf Landing will provide to the USCG a copy of the permit, including all conditions and requirements.

12. USACE Section 10 Permit, if required: Gulf Landing will coordinate with the appropriate USACE District Office to obtain a Section 10 permit and adhere to all conditions, including, an approved anchoring plan.. Gulf Landing will provide to the USCG a copy of the permit, including all conditions and requirements.

13. Prevention of Significant Deterioration (PSD) and Title V Air Quality Permit: Gulf Landing will obtain a PSD and Title V Air Quality Permit from the USEPA. Gulf Landing will obtain any other air permits, if required by USEPA, prior to operations. Gulf Landing will provide to the USCG a copy of the permit(s), including all conditions and requirements.

14. Title I Air Quality Permit: Gulf Landing under new source review rules will obtain a Title I preconstruction permit prior to installation of the GBS and pipelines.

15. Decommissioning: Gulf Landing 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 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, Gulf Landing 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. Gulf Landing will coordinate with these agencies to develop a mutually agreeable decommissioning plan.

- Gulf Landing will provide to the USCG a copy of the plan, including all agreements, a timetable, and any other pertinent information.

- Gulf Landing 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.

6. Advice of the Administrator of USEPA

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 United States 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 USEPA 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, USEPA has recommended that the Gulf Landing license be subject to certain conditions. I concur with the USEPA 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 USACE 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)]

The Department of State was consulted frequently 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 the United Nations' Convention on the Law of the Sea, 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.⁵³

By letter dated September 3, 2004, the Deputy Assistant Secretary For Oceans and Fisheries, Acting, indicated that the United States Department of State had no objection to granting a license for the ownership, construction and operation of the Gulf Landing deepwater port.

On August 6, 2004, at the Council of Environmental Quality (CEQ), MARAD and the USCG called and jointly hosted, along with the White Energy Task Force on Energy Streamlining, an interagency meeting attended by representatives of the White House Council on Environmental Quality, the Department of the Interior, the Department of Commerce, the USEPA, the Federal Energy Regulatory Commission (FERC), the USACE, and RSPA of the Department of Transportation. Other agencies were contacted by phone. This was followed by on-going consultations between the involved agencies.

In response to consultations with the Office of the Secretary of the Army, by letter dated July 16, 2004, the Office of the Secretary of Defense, on behalf of himself and the Secretary of the Army, stated the application had been reviewed and there were no preliminary objections either to the EIS or to the application represented by the documents.⁵⁴

As to the USACE, while it is intended that the Section 10 permit⁵⁵ for the Gulf Landing 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:

⁵³ See The Secretary's Decision on the Deepwater Port License Application of LOOP, Inc., dated December 17, 1976, page 23.

⁵⁴ http://dmses.dot.gov/docimages/pdf90/296360_web.pdf

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).

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 Gulf Landing 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 without comment from the Governor of Louisiana and therefore the adjacent State is presumed to have granted its approval of the Gulf Landing 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 Gulf Landing 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 September 9, 2004, incorporated by reference herein).

VI. CONCLUSION

In determining that the deepwater port, proposed by Gulf Landing, subject to certain license conditions, is acceptable I have reached the following conclusions:

Gulf Landing 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. Deepwater port operations will be closely monitored and many impacts mitigated. 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

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.

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 Gulf Landing deepwater port will have a positive impact on the employment in the region creating a significant number of construction jobs. The port is also expected to create over 100 permanent jobs for several local Parishes in Louisiana 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 Gulf Landing 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.



John E. Jamian
Acting Maritime Administrator
Washington, D.C.

February 16, 2005