

Nautical Oversight Safety and Protection of Inflammable Liquids by Law in the Sea (NO SPILLS) Act Section-by-Section

Senator Edward J. Markey

Background:

Under the *Deepwater Port Act of 1974*, the Maritime Administration (MARAD) is required to evaluate whether proposed deepwater ports—offshore ports or terminals used for transportation of oil or natural gas—are in the “national interest” before determining if it will approve a license for the construction or maintenance of that deepwater port. This national interest determination requires consistency with national policy goals and objectives, including for environmental quality and energy efficiency.

Despite this directive, MARAD has never denied an oil export license. There is [currently](#) one operating oil import and export facility, one recently approved oil export facility, and three more oil export facilities currently awaiting licensing decisions. Between the recently approved and pending offshore oil export facilities, the crude oil from these facilities would generate 24 billion metric tons of greenhouse gas over 30 years, equivalent to the annual output of nearly 6,170 coal plants, in addition to creating local air pollution and oil spill risks. This number does not include the one recently approved and two pending deepwater liquefied natural gas (LNG) export facilities.

To address the significant risks to communities and climate posed by deepwater ports, this bill increases the financial assurances and caps on liability required for offshore facilities, expands outreach and notice for proposed projects, includes public opinion and impacts to communities as factors that must be considered in the national interest determination test, adds additional environmental review criteria to the national interest determination test, requires a programmatic Environmental Impact Statement for projects in the Gulf of Mexico so that projects can be assessed together, and prohibits LNG research in MARAD’s Maritime Environmental and Technical Assistance program.

Section 2: DEFINITIONS

This section amends Section 3 of the Deepwater Port Act to include new definitions for environment, environmental justice community, environmental protection, impacted community, and low-income community.

Section 3: CONDITIONS FOR ISSUANCE OF A LICENSE FOR THE OWNERSHIP, CONSTRUCTION, AND OPERATION OF A DEEPWATER PORT.

This section increases the amount required to ensure financial responsibility for offshore facilities. Additional financial assurances would reflect the increased risk associated with these facilities caused by climate change and extreme weather events as well as costs of decommissioning and removal. This better protects taxpayer dollars from the cost of clean-up when spills inevitably occur. The numbers were last amended in 2006, when they were reduced.

This section increases the amount necessary to maintain evidence of financial responsibility (33 U.S. Code § 2716) from:

- \$35m to \$105m for an offshore facility located seaward of the seaward boundary of a State
- \$10m to \$70m for an offshore facility located landward of the seaward boundary of a State
- \$150m to \$300m for the cap on financial responsibility

It also increases the cap on the total liability of a responsible party (33 U.S. Code § 2704), with respect to each incident, from:

- \$22m to \$70m for a single-hull vessel over 3000 gross tons
- \$16m to \$60m for another vessel over 3000 gross tons
- \$6m to \$32m for a single-hull vessel under 3000 gross ton
- \$4m to \$26m for other vessels under 3000 gross tons
- \$950 to \$4000 for any other vessel, and increase the max from \$800,000 to \$2m

Section 4: OUTREACH TO IMPACTED COMMUNITIES, PUBLIC COMMENT, AND PUBLIC HEARINGS.

This section improves the procedure for public notice and hearings. By expanding outreach and lengthening the comment period, community members have increased opportunity to seek assistance with comment and strategy to best advocate for their interests.

Section 5: NATIONAL INTEREST DETERMINATION.

This section adds the requirement that public opinion and the impact on communities, as determined by improved processes established in Section 4, be taken into consideration in the existing national interest determination test that is necessary to determine if a project moves forward.

Section 6: ENVIRONMENTAL REVIEW CRITERIA.

This section adds additional environmental criteria to consider in the national interest determination test, including air quality, safety, greenhouse gas emissions, environmental justice, clean energy transmission, endangered species, and compliance with National Environmental

Policy Act (NEPA), Endangered Species Act (ESA), Clean Water Act (CWA), and Clean Air Act (CAA).

Section 7: PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT.

This section requires that MARAD prepare a programmatic EIS for proposed and approved projects in the Gulf of Mexico to assess their cumulative and additive impacts under NEPA and the Deepwater Port Act. The current practice of project specific EIS' fail to assess aggregate impact, as most proposed deepwater ports are in the same general area and at risk of impacting the same species habitat, communities, and natural resources.

Section 8: PROHIBITION OF LIQUEFIED NATURAL GAS RESEARCH IN MARITIME ENVIRONMENTAL AND TECHNICAL ASSISTANCE PROGRAM.

This section prohibits the META program from funding LNG research projects. MARAD has completed multiple LNG studies and demonstration projects through META over the years.