3. Deepwater Ports Study

Section 1004(d) of OPA 90 directs the Secretary to conduct a study of the relative operational and environmental risks posed by the marine transportation of oil to deepwater ports versus other ports. If that study finds that the risks are lower at deepwater ports, then the Secretary is to initiate a rulemaking that establishes an appropriate level of liability for deepwater ports (but not less than \$50 million). The Deepwater Ports Study has been completed and forwarded to Congress. A copy of the study is available for reading in the public docket for this rulemaking, and additional copies may be ordered from the National Technical Information Service (publication number PB94-124054; see ADDRESSES section of this notice for more details).

The Deepwater Ports Study examined the four basic modes of delivering crude oil to ports in the United States: (1) Direct vessel deliveries, by tankers small enough to enter U.S. ports directly; (2) lightering, whereby tankers too large to enter port are off-loaded at offshore locations onto smaller tankers or barges that carry the oil cargo into port; (3) offshore mooring stations, whereby tankers moor at a special buoy generally located within two miles of the beach and pump their cargo ashore through seafloor pipelines; and (4) deepwater ports.

The study concluded that crude oil deliveries via deepwater ports represent a lower risk to the environment than the other three delivery modes. This is principally because the delivery tankers remain far offshore, well away from most environmentally-sensitive waters, and because the seafloor pipeline is relatively protected from the kinds of damage that cause large oil spills. Furthermore, the total quantity of oil in the deepwater port's pipeline system is less than the total amount that could be spilled from a single typical tank ship.

4. Liability for Oil Spill Pollution

Section 311 of the Federal Water Pollution Control Act, as amended by section 1002 of OPA 90, establishes that parties responsible for oil pollution are liable for all cleanup costs, third-party compensation claims, and natural resource damages as follows:

(a) A responsible party is totally liable (i.e., its liability is unlimited) for spills resulting from gross negligence, willful misconduct, or violation of certain Federal regulations;

(b) A responsible party's liability is limited if the spill is the result of negligence, other than gross negligence, willful misconduct, or violation of certain Federal regulations; (c) A responsible party is totally absolved from liability for spills caused solely by acts of God, war, unforeseeable acts of third parties (except contractors and so long as the responsible party exercised due care and took precautions against foreseeable acts of third parties), or a combination of the three.

5. Limits of Liability

In general, section 1004 of OPA 90 (33 U.S.C. 2704) allows limited liabilities for parties responsible for oil spills under certain circumstances (essentially spills due to negligence other than gross negligence, willful misconduct, or violation of certain Federal regulations). Section 1004(a) sets specific limits for five categories of vessels and facilities: tank vessels, other vessels, onshore facilities, offshore facilities, and deepwater ports. For deepwater ports, the limit of liability was set at \$350 million. However, section 1004(d) recognizes that \$350 million might be an inappropriately high limit for deepwater ports and requires that, following a study of the relative risks, a rulemaking be initiated for establishing an appropriate liability limit for deepwater ports (but not less than \$50 million).

It should be noted that other provisions in section 1004(d) of OPA 90 may also result in future adjustments of limits of liability for all facilities, including deepwater ports. These adjustments may be made from time to time to reflect significant increases in the Consumer Price Index (CPI) since 1990.

6. Oil Spill Liability Trust Fund

The Oil Spill Liability Trust Fund (hereafter the "Pollution Fund") is a Federally-managed trust fund for several oil pollution-related purposes. It is funded by a 5-cent-per-barrel levy on domestic crude oil and all imported oil (crude and product).

One of the Pollution Fund's more important purposes is to pay cleanup costs, claims, and damages after the responsible party has met its limit of liability for an accidental spill, or in the event that the responsible party is totally absolved from liability (for spills caused by acts of war, God, etc.). This ensures that innocent parties injured by a spill are compensated for their losses, regardless of the responsible party's liability. The Pollution Fund, in turn, is limited in its liability to \$1 billion per incident.

7. Factors for Determining an Appropriate Limit of Lliability

The Department of Transportation has determined that it is appropriate

national policy that the limit of liability for a deepwater port should be sufficiently high enough to cover all costs associated with the maximum credible negligent spill for which the port would be liable. A "credible accident" would be one that was the result of negligence other than gross negligence, willful misconduct, or violation of applicable Federal regulations. A facility experiencing a credible accident would have limited liability. Costs for a negligent spill would be borne by the Pollution Fund once the deepwater port has met its limit of liability.

Setting a limit of liability in accordance with this policy entails two studies: a risk analysis of the deepwater port to determine its maximum credible spill, and an economic analysis to determine the costs (cleanup, third party compensation, and natural resource damages) of such a spill.

The risk analysis should consider the following factors:

- Physical layout and condition of the deepwater port,
- -On-site spill response capability,
- -Spill history of the deepwater port,
- The pipeline leak detection system,
- —Section-by-section pipeline analysis of credible spill scenarios, and
- —Other spills for which the deepwater port might be solely or jointly liable (such as tanker spills).

The economic analysis should consider:

- -Spill trajectories for the maximum credible spill,
- -Potential response (cleanup) costs,
- -Potential third party damage costs, and
- —Potential natural resource damage costs.

8. Risk Analysis of LOOP

LOOP does not have any crude oil storage capacity within its legallydefined boundaries as a deepwater port. Therefore, the two largest sources of potential oil spillage for which LOOP might be solely or jointly responsible are its pipeline system, and a tanker calling at the port. Each of these were analyzed in a risk analysis.

Based upon engineering information provided by LOOP concerning the pipeline system and tanker operations at the port, the Coast Guard has prepared a risk analysis of the LOOP deepwater port in order to determine the credible spillages that could occur under accidental circumstances. This analysis, entitled "Risk Analysis for the Louisiana Offshore Oil Port (LOOP)," is available in the public docket for this rulemaking.