

§ 148.700

(b) Requests to adjust the limit of liability for a deepwater port must be submitted to the Commandant (G-P). Adjustments are established by a rule-making with public notice and comment that may take place concurrently with the processing of the deepwater port license application.

Subpart G—Environmental Review Criteria for Deepwater Ports

§ 148.700 How does the Deepwater Port Act interact with other Federal and State laws?

(a) Nothing in this subpart supersedes any Federal, tribal, or State requirements for the protection of the environment.

(b) The applicant must prepare and submit applications to each respective agency that requires a permit or license to operate the port.

(c) A list of Federal and State agencies that require certification includes, but is not limited to:

(1) The Environmental Protection Agency, for Clean Air Act and Clean Water Act permits;

(2) The Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety; and

(3) The Mineral Management Service (MMS); or

(4) Both the Office of Pipeline Safety and MMS for pipeline approvals, and the appropriate State environmental agency or permitting agency.

§ 148.702 How were the environmental review criteria developed?

Under 33 U.S.C. 1505, the Commandant (G-P) must establish environmental review criteria for use in evaluating a proposed deepwater port. In developing these criteria, the Coast Guard considers the requirements for compliance with Federal and State mandates for the protection of the environment contained in, but not limited to, such guidance as published by:

(a) The Council on Environmental Quality in 40 CFR parts 1500–1508;

(b) Department of Homeland Security Directive 5100.1, Environmental Planning Program; and

(c) The Coast Guard in Commandant Instruction M16475.1D, National Environmental Policy Act Implementing

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Procedures and Policy for Considering Environmental Impacts.

§ 148.705 What is determined by the environmental evaluation?

(a) The environmental criteria to be used in evaluating a license application are established by general consensus of expertise, scientific opinion, public interest, and institutional requirements, such as laws and regulations established for the protection of the environment. Criteria that may be established in future environmental regulations or other requirements to protect the environment will also be used.

(b) The environmental criteria to be used in evaluating a license application are applied to all relevant aspects of:

(1) The fabrication, construction, operation, and decommissioning phases of a deepwater port;

(2) The operations of the vessels that serve the port;

(3) The port's servicing and support activities;

(4) Shore-based construction and fabrication sites;

(5) Shoreside supporting facilities, if appropriate, for the proposed location; and

(6) The No Action alternative and other reasonable alternatives.

(c) The criteria are also applied in a manner that takes into account the cumulative effects of other reasonably foreseeable actions as outlined in § 148.707.

§ 148.707 What type of criteria will be used in an environmental review and how will they be applied?

(a) The license application will be reviewed for the deepwater port's effects on the environment and for the environment's effects on the port and any of its shoreside support facilities.

(b) The environmental evaluation will be applied to the phases of construction, operation, and decommissioning of the proposed location, and at least one alternative site. The evaluation will determine:

(1) The effect on the environment, including but not limited to:

(i) Impacts on endangered species;

(ii) Essential fish habitat;

(iii) Marine sanctuaries;

(iv) Archaeological, cultural and historic sites;

(v) Water and air;

(vi) Coastal zone management;

(vii) Coastal barrier resources; and

(viii) Wetlands and flood plains.

(2) The effect on oceanographic currents and wave patterns;

(3) The potential risks to a deepwater port from waves, winds, weather, and geological conditions, and the steps that can be taken to protect against or minimize these dangers; and

(4) The effect on human health and welfare, including socioeconomic impacts, environmental justice and protection of children from environmental health and safety risks.

§ 148.708 Must the applicant's proposal reflect potential regulations?

Although a regulation is of no effect until it has been officially promulgated, to minimize the subsequent impact that potential regulations may have on a licensee, an applicant can and should reflect reasonably foreseeable environmental regulations in planning, operating, and decommissioning a deepwater port.

§ 148.709 How are these criteria reviewed and revised?

The Commandant (G-P) periodically reviews and may revise these criteria. Reviews and revisions are conducted in accordance with §148.700 of this subpart. The criteria established are consistent with the National Environmental Policy Act.

§ 148.710 What environmental conditions must be satisfied?

(a) MARAD may issue a license to construct a deepwater port under the Act, with or without conditions, if certain specified conditions are met. The relevant environmental considerations include, but are not limited to, the following:

(1) Construction and operation of the deepwater port that will be in the national interest and consistent with national security and other national policy goals and objectives, including energy sufficiency, environmental quality, protection from the threat of terrorist attack and other subversive activity against persons and property on

the port and the vessels and crews calling at the port; and

(2) Under the environmental review criteria in §148.707 of this subpart, the applicant has demonstrated that the deepwater port will be fabricated, constructed, operated, and decommissioned using the best available technology to prevent or minimize adverse impacts on the marine environment (33 U.S.C. 1503(c)(3), 1504(f) and 1505(a)(1)).

(b) Under 33 U.S.C. 1504(f), these criteria must be considered in the preparation of a single detailed environmental impact statement or environmental assessment for all timely applications covering a single application area. Additionally, 33 U.S.C. 1504(i)(3) specifies that if more than one application is submitted for an "application area," as defined in 33 U.S.C. 1504(d)(2), the criteria must be used, among other factors, in determining whether any one proposed deepwater port for oil clearly best serves the national interest.

(c) In accordance with 40 CFR 1502.9, the Commandant (G-P) will prepare a supplement to a final environmental impact statement if there is significant new information or circumstances relevant to environmental concerns and bearing on the deepwater port and related activities affecting its location site, construction, operation or decommissioning.

§ 148.715 How is an environmental review conducted?

The environmental review of a proposed deepwater port and reasonable alternatives consists of Federal, tribal, State, and public review of the following two parts:

(a) An evaluation of the proposal's completeness of environmental information and quality of assessment, probable environmental impacts, and identification of procedures or technology that might mitigate probable adverse environmental impacts through avoiding, minimizing, rectifying, reducing, eliminating, or compensating for those impacts; and

(b) An evaluation of the effort made under the proposal to mitigate its probable environmental impacts. This evaluation will assess the applicant's consideration of the criteria in