PARADIGM SHIFT IN ENVIRONMENTAL REVIEW OF DEEPWATER PORTS 50 YEARS IN THE MAKING

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By: Mark Ruge, Michael S. Heard Snow

The National Defense Authorization Act of 2026 (NDAA) marked an end to the process used by the Federal government to analyze the impacts deepwater ports have on the environment, shifting a responsibility held by the US Coast Guard (USCG) for 52 years to the Maritime Administration (MARAD), within the US Department of Transportation (DOT).[1]

The Deepwater Ports Act of 1974,[2] sets the legal regime for deepwater ports—a term of art, used to describe structures beyond the territorial sea used for oil and gas imports and exports.[3] Implementation of the Deepwater Ports Act is shared between the USCG and MARAD.[4] Among other things in the 1970's the Secretary of Transportation delegated to the USCG environmental review and coordination, navigation, construction, and operation safety of deepwater ports, while MARAD was delegated review of financial due-diligence, national security concerns, and final authorization.

The NDAA now sets by statue that authority for environmental review under the National Environmental Policy Act (NEPA), the nation's bedrock environmental law, will be transferred to MARAD, while also giving MARAD authority to issue regulations to implement NEPA. Meanwhile, the USCG will maintain authority over design, construction, operations, and navigation.

This overhaul follows years of frustration from Congress and industry over long lag times and lack of transparency from the two agencies over how responsibilities were shared throughout the application process.[5] Even in a permitting world where timelines for all major infrastructure projects regularly extend to years, deepwater ports have stood out. Over the life of the statute only 11 approvals and eight licenses have been issued. And despite a statutorily mandated 330-day approval timeframe, the program went over 15-years without a single project receiving a license until then MARAD Administrator, Rear Admiral Ann C. Phillips, approved the Texas-based, Sea Port Oil Terminal (SPOT) in 2024.[6]

The current Transportation Secretary Sean Duffy has stated that this new change will bring an end to these historic delays and accelerate approvals. He swiftly followed through on his statement with MARAD issuing its first license under the amended statue in February 2026 for the Texas GulfLink deepwater port,[7] less than a month after the changes to the program were enacted into law.

Texas GulfLink is now the third licensee issued since the 2024 revival of the deepwater ports program and the second license issued by the Trump administration.

The news of this announcement, however, was shadowed by a pipeline explosion on the same day at the first and only other deepwater port licensed by the Trump administration, Delfin LNG. Delfin's application was originally denied in the final year of the Biden administration but saw a swift reversal in the first few months of 2025. Delfin's

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denial drew the attention of Senator Ted Cruz, who explicitly asked Secretary Duffy to "expedite review" of Delfin during his confirmation hearing.

Reducing red-tape and consolidation of authorities gives MARAD and DOT the opportunity to reduce wait-times, increase applicant transparency, and help meet increased demand for energy export markets as the United States hits record liquid natural gas export numbers. Although the Deepwater Ports Act requires far more for the issuance of a license than just NEPA compliance, the administration seems set to make good on its promise to make the "Deepwater Port Program [] a key pillar of President Trump's energy dominance strategy."[8]

Our Maritime and Energy, Infrastructure, and Resources practice groups are closely monitoring all developments related to the administration's energy dominance strategy and are ready to provide support on all matters related to energy and deepwater ports.

FOOTNOTES

[1] National Defense Authorization Act for Fiscal Year 2026, S. 1071, 119th Cong. § 7342 (2025).
[2] 33 U.S.C. §§ 1501–1523.
[3] Traditional ports with deep draft capabilities in comparison are commonly referred to a "deep-water" or "deep draft" ports.
[4] For the majority of this time, USCG and MARAD were sister agencies within the DOT until 1 March 2003, when the USCG was separated from DOT and moved to the newly created Department of Homeland Security.
[5] *See* e.g. Letter from Senator Ted Cruz to RDML. Ann C. Phillips, MARAD Administrator (Feb. 13, 2023) https://www.commerce.senate.gov/services/files/311FE4CB-779A-4E59-94B5-E0C0D2260D08.
[6] U.S. Dep't Transp., License To Own, Construct and Operate a Deepwater Port Issued To Spot Terminal Services LLC (2024), https://www.regulations.gov/document/MARAD-2019-0011-8126.

[7] Trump's Transportation Secretary Sean P. Duffy Unleashes American Energy, Awards Texas GulfLink First U.S. Deepwater Port License, U.S. DEP'T TRANSP. (Feb. 3, 2026), https://www.transportation.gov/briefing-room/trumps-transportation-secretary-sean-p-duffy-unleashes-american-energy-awards-texas-0.
[8] Trump's Transportation Secretary Sean P. Duffy Announces Maritime Administration Will Take Over and Streamline Deepwater Port Licensing, U.S. DEP'T TRANSP. (Jan. 5, 2026), https://www.transportation.gov/briefing-room/trumps-transportation-secretary-sean-p-duffy-announces-maritime-administration-will.

KEY CONTACTS



MARK RUGE
PARTNER AND CHAIR OF THE FIRMWIDE PRO BONO COMMITTEE

WASHINGTON, DC
+1.202.661.6231
MARK.RUGE@KLGATES.COM



MICHAEL S. HEARD SNOW
ASSOCIATE

WASHINGTON, DC
+1.202.778.9318
MICHAEL.HEARDSNOW@KLGATES.COM

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