



Texas Ports and Courts Update

March 2021

We have collected and summarized these items to help keep you apprised of the latest news and developments from the ports and courts on the Texas coast.

In this Update:

- 1. COVID-19 Ports Update**
- 2. Recent Port Activity & Development Projects**
- 3. News from the Courts**

1. COVID-19 Ports Update

In response to decreasing COVID-19 infections and hospitalizations, the Governor of Texas recently rescinded statewide public occupancy restrictions and mask mandates. Businesses are free to enforce their own restrictions, and many have kept their previous requirements in place. Texas port/terminal facilities nearly uniformly continue to require the same preventative measures (e.g., masks, temperature checks, physical distancing, etc.) despite the Governor's recent announcement.

U.S. Customs and Border Protection (CBP), Coast Guard, and many vessel agents continue to board vessels and conduct activities in person. Vessels still need to advise CBP and Coast Guard boarding teams of any crew illnesses prior to embarkation. Vessels are also required to notify the Coast Guard Captain of the Port of any crewmember showing symptoms consistent with COVID-19.

Rapid COVID-19 testing is generally available, and test administrations can be scheduled and completed in relatively short timeframes.

Shore leave remains allowed. Crew changes/repatriation requests are permitted on a case-by-case basis.

Off-signing crewmembers are generally required to proceed directly to the airport for their flights, and overnight hotel stays are typically not permitted. CBP is generally requiring the following items in relation to a crewmember's repatriation requests: (1) passport bio page; (2) C1/D visa; (3) I-95 landing permit; and (4) e-tickets with direct flights departing the U.S. airport.

2. Recent Port Activity & Development Projects

Early-2021 weather conditions have been less than ideal. Heavy seasonal fog conditions and Winter Storm Uri in mid-February have been rather disruptive.

Winter Storm Uri and associated power outages caused shutdowns and force majeure declarations at numerous facilities along the Texas coast. The situation was so problematic that the Governor of Texas even temporarily ordered that no natural gas be shipped out of the state before being offered for sale to Texas power generators. Not surprisingly, local shipping activities were significantly delayed for several days. While many of the plant/refinery facilities that were impacted by Winter Storm Uri have resumed operations, backlogs remain significant. For instance, it was recently reported that U.S. resin supply could take the rest of 2021 to catch up to demand.

Given the recent weather conditions, it comes as no surprise that Texas year-to-date vessel callings are down almost 15% versus 2020 totals. We expect that these numbers will improve and return to more normal levels as the year continues.

Below are some highlights regarding the recent port activities and development projects in Brownsville, Corpus Christi, Freeport, Galveston, Houston, and Port Arthur/Beaumont.

Brownsville: The Port of Brownsville continues to be a site of growth and activity. The SpaceX South Texas Launch Site has been a source of immense interest and activity. SpaceX recently announced the acquisition of two former Valaris/EnSCO offshore rigs that the company intends to repurpose for use as floating launch platforms. Indicative of the downturn in the offshore drilling sector, the rigs – which were originally delivered in 2008-09 at respective costs of \$338m and \$312m – were sold to SpaceX for \$3.5m apiece.

As part of efforts to address climate change concerns, NextDecade recently announced that its Rio Grande LNG Project currently under development is expected to incorporate cutting-edge carbon capture and storage (CCS) technology in order to reduce emissions by approximately 90%. If built to capacity, total annual natural gas exports from the facility could be equivalent to around 1.3 trillion cubic feet.

Corpus Christi: The Port of Corpus Christi recently reported that 2020 saw a 65% increase in crude shipments to 96.4m mt, leading to a record tonnage throughput of 159.7m mt.

Additional crude oil export operational and capacity expansions are underway at the Port of Corpus Christi. By the end of this month, Moda Midstream expects to raise the storage capacity at its Ingleside facility by 1m to almost 16m barrels. Mercuria's Pin Oak facility has plans to add 2m barrels of tanks to its 4m-barrel capacity Corpus Christi terminal by April.

In addition to substantial oil export activities, port officials recently reported that 2020 saw a 26% increase in liquefied natural gas (LNG) shipments at 8.7m tons.





Freeport: Amid a rise in utilization forecasts, gas deliveries to Freeport LNG reportedly reached a 3-month high earlier this month. Industry experts anticipate that Freeport LNG and other U.S. Gulf Coast LNG terminals will be running near full capacity through the end of 2021 due to contractual obligations and current netbacks pricing.

Given the current and forecasted market conditions, Freeport LNG is reportedly considering the addition of a fourth liquefaction plant at its facilities.



Galveston: Royal Caribbean has cancelled its Galveston cruises through the end of May. Disney has also suspended cruise operations through the end of May. Carnival will not resume cruise services from Galveston until at least May.

Looking ahead to a better environment for the cruise industry, a public-private partnership between Royal Caribbean and the Port of Galveston is moving forward with development of a new \$100m cruise ship terminal. The partnership will develop the two-story property within an eastern section of the port known as Pier 10 and will harbor one of Royal Caribbean's largest ships, the Allure of the Seas. Construction of the facility, which will span approximately 170,000 square feet and 10 acres, is set to begin in April for completion in fall 2022.



Houston: The Port of Houston continues to focus on increasing its status as a gateway for imports from Asia.

Long delays at U.S. West Coast ports have prompted searches for new supply chains, and the expansion of the Panama Canal and channel widening and deepening efforts along the Houston Ship Channel have made the Port of Houston an attractive option.

For instance, the Port of Houston was most recently identified as Walmart's largest import gateway. Additionally, Yeti has decided to direct U.S. imports of its products through the port. The port's available facilities and its proximity to population centers like San Antonio, Austin, and Dallas make it an attractive supply chain node.



Port Arthur/Beaumont: TPC Group has officially started using its Port Neches site as a terminal after months of demolition work clearing the wreckage from the 2019 industrial blast and fire that caused significant damage. The company recently announced that it had successfully started terminal operations, delivering shipments of butadiene to major customers in the area and using rail and waterway access to move product.

At the Port of Beaumont's Main Street Terminal 1, construction is planned to build a general cargo dock to replace Docks 2, 3 and 4, which are no longer in use. It is anticipated that the project will result in reduced congestion on all major highways between Corpus Christi and Houston and Beaumont, as a significant amount of project tonnage will be able to be handled locally without the need for over-the-road transport from nearby ports.

3. News from the Courts

Current Status of Trials/Court Proceedings in Texas Federal & State Courts

Although Texas federal and state courts continue to be impacted by the COVID-19 pandemic, efforts are underway to reopen.

Earlier this month, the Chief Judge of the federal district courts within the Southern District of Texas announced that the Houston Division is resuming jury trials on May 10, 2021, with a detailed plan in place to provide as safe an environment as possible. The other divisions within the Southern District of Texas are expected to resume jury trials soon thereafter.

The federal courthouses within the Brownsville, Galveston, and Houston Divisions are now all open to the public. The Corpus Christi federal courthouse is expected to fully re-open soon as well. In the Eastern District of Texas, the Beaumont federal courthouse is open to the public, subject to various pandemic-related exclusions/protective measures.

We note that both the Galveston and Beaumont federal courts recently hosted large groups for bench trial proceedings involving significant maritime casualties. Both trials were concluded without any COVID-19 disruptions. Despite these two examples, most local federal court proceedings continue to be handled remotely via videoconference or telephonic means.

Texas state courts continue to utilize telephonic and videoconference means for hearing attendance. Generally speaking, jury trials continue to be postponed in many cases. However, automatic pandemic-related continuances appear to be coming to an end, and courts are attempting to restart jury trials. For instance, Harris County is in the process of resuming jury service with potential jurors assembling at the spacious sports/spectator facilities available at NRG Arena. Not surprisingly, jury trials have yet to return anywhere close to pre-pandemic levels.

From the Fifth Circuit: Some Status Updates

(1) Sanchez v. Smart Fabricators

- As we reported in our September 2020 Update, this is a case that could have a meaningful impact upon the analysis of Jones Act seaman status employed by the courts within the Fifth Circuit, potentially making it more difficult for claimants to qualify as seamen (which, in particular, would be an important development for the offshore and shipyard industries).
- The Fifth Circuit reheard this matter *en banc* in late January. We will continue to look out for the Fifth Circuit's forthcoming opinion.

(2) Knight v. Kirby Offshore Marine Pacific, LLC

- As mentioned in our November 2020 Update, the Fifth Circuit panel in this case found, via a split decision, that a supervisor's general order to perform a dangerous task does not preclude a finding of the seaman's contributory negligence.
- When we last reported, the Fifth Circuit was considering the plaintiff's motion for rehearing *en banc*. The motion was recently denied. Going forward, this will likely be a helpful (while imperfect) authority for the maritime defense bar.

This update was collectively prepared by our offices in Houston, Galveston, Corpus Christi, and Brownsville. Our offices remain open and fully operational, and our lawyers and marine investigators are conveniently located near each of Texas' major ports.

Galveston

The Hunter Building
306 22nd Street, Ste. 301
Galveston, Texas 77550
Tel: 409.763.1623

Houston

1600 Smith Street,
Ste. 5000
Houston, Texas 77002
Tel: 713.224.8380

Corpus Christi

802 North Carancahua
Ste. 1300
Corpus Christi, Texas 78401
Tel: 361.884.8808

Brownsville

55 Cove Circle
Brownsville, Texas 78521
Tel: 956.542.4377