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Striking Before the Well Goes Dry: Exploring If and How the United States Ban on Crude Oil Exports Should Be Lifted to Exploit the American Oil Boom

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Note

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*Sam Andre**

On December 22, 1975, with the 1973 Arab oil embargo's painful images of high energy prices and seemingly endless gas station lines still lingering in the minds of the U.S. population, President Gerald Ford proclaimed the passing of the Energy Policy and Conservation Act (EPCA).[1] Congress and the President enacted the EPCA to alleviate fears of a future energy crisis by promoting American energy independence through the conservation of domestic resources,[2] the design of the Strategic Petroleum Reserve,[3] and the banning of American crude oil exports.[4] To police the export ban, the President delegated authority through the Export Administration Regulation (EAR) to the Bureau of Industry and Security (BIS), a part of the Department of Commerce (DOC). This agency was tasked with a duty to rule on any oil export applications.[5] As domestic oil

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1. President Gerald R. Ford, Statement on the Energy Policy and Conservation Act (Dec. 22, 1975), http://www.presidency.ucsb.edu/ws/?pid=5452 ("The single most important energy objective for the United States today is to resolve our internal differences and put ourselves on the road toward energy independence. It is in that spirit that I have decided to sign the Energy Policy and Conservation Act.").

2. Energy Policy and Conservation Act, 42 U.S.C. § 6201(4) (2012) (stating the purpose of the EPCA).

3. *Id.* § 6201(2) (creating the Strategic Petroleum Reserve to reduce the effects of energy supply interruptions).

4. *Id.* § 6212(a)(1) (allowing the President to restrict exports of oil as deemed appropriate and necessary).

5. Export Administration Regulation, 15 C.F.R. § 754.2(b)(1) (2015) ("BIS will approve applications to export crude oil for the following kinds of transactions if BIS determines that the export is consistent with the specific requirements pertinent to that export.").

production declined after 1975, these provisions shielded American energy interests by fulfilling President Ford's goal of providing a "foundation upon which we can build. [sic] together toward our goal of energy independence."[6]

New technologies, such as hydraulic fracturing, recently caused a substantial boom in oil production, raising production by one million barrels per day in 2012.[7] This growth in production directly prompted the need for a timely solution to the growing issue of whether and how the EPCA's oil export ban can be lifted to capitalize on this newly found resource before production or foreign demand for American oil sours. Supporters of terminating the ban point to potential profits from exporting light crude oil to foreign markets and decreased gas prices.[8] In opposition, environmentalists and isolationists warn of risks to the environment and energy independence.[9] Moreover, disagreement continues on how the federal government could legally lift the ban, whether through executive branch interpretation of the ECPA and the EAR or congressional action.[10] This issue particularly necessitates a swift solution due to growing uncertainty after the DOC resurrected the issue by

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6. Ford, *supra* note 1.

7. *See* Mark J. Perry, *Growing Oil Output Means US Should End Export Ban*, AM. ENTERPRISE INST. (June 18, 2013), http://www.aei.org/publication/growing-oil-output-means-us-should-end-export-ban ("In 2012, U.S. oil production grew by 1 million barrels a day—faster than in any other country in the world."). *See generally* Sean T. Dixon & Jonathan Panico, *Extraction for Exportation: Is There Such a Thing as "Net Energy Independence"?*, 27 NAT. RESOURCES & ENV'T 38, 38 (2013) (chronicling the rise in crude oil production through onshore and offshore programs).

8. *See* Perry, *supra* note 7 ("This surge in energy production has created hundreds of thousands of jobs, pumped tens of billions of dollars into the economy and given new life to American manufacturing . . . ."); Jim Snyder, *Lifting Oil Export Ban Would Cut Gas Price, Columbia Study Shows*, BLOOMBERG (Jan. 15, 2015), http://www.bloomberg.com/news/articles/2015-01-16/lifting-oil-export-ban-would-cut-gas-price-columbia-study-shows (stating that U.S. gas prices would fall as much as twelve cents per gallon by lifting the ban).

9. *See* Letter from Robert Menendez, U.S. Senator, to Barack Obama, U.S. President (Dec. 13, 2013), http://www.menendez.senate.gov/news-and-events/press/menendez-to-obama-expanding-crude-exports-only-enhances-big-oil-profits (arguing that domestic oil should not be exported).

10. *Compare* Elana Schor, *End of Crude Export Ban Rockets from Inconceivable to Possible*, E & E PUB. (Jan. 7, 2014), http://www.eenews.net/stories/1059992476 (exploring how to legally lift the ban), *with* Letter from Edward Markey, U.S. Senator, and Robert Menendez, U.S. Senator, to Barack Obama, U.S. President (Jan. 30, 2014), http://www.markey.senate.gov/imo/media/doc/2014-1-30_Obama_oil_exports.pdf (arguing against proposed avenues for lifting the ban).

granting limited exportation rights to Pioneer Natural Resources and Enterprise Products Partners in 2014.[11]

This Note proposes that, due to the recent rise in domestic oil production, the federal government should lift the EPCA's oil export ban. Part I describes the passage and provisions of the EPCA and other relevant regulatory measures, how these standards regulate the exportation of crude oil, and how this export issue arose. Part II compares and contrasts previously proposed arguments for and against lifting the ban. Part II also analyzes the available government actions to resolve this export issue. Part III proposes a President-initiated solution that includes multiple countermeasures to combat the negative effects of increased oil exports. This Note concludes that the President should set new licensing rules approving crude oil exports, so long as exporters provide fixed funding levels for renewable energy projects and meet environmental sustainability regulations. Such a system allows American oil producers to utilize excess domestic crude oil while protecting the global environment and U.S. energy independence. Also, the federal government should promote the modification or creation of refineries to better utilize domestically produced light crude oil. These changes allow for increased American use of light crude that present refinery capacities do not permit, fulfilling the EPCA's policy of promoting U.S. energy independence.

I. REGULATING THE EXPORT OF DOMESTIC CRUDE OIL

This Part describes the current legal framework for determining when American crude oil producers may export crude oil. Section A presents the pertinent provisions of the EPCA and the EAR controlling the exportation of oil. Section B illustrates how the issue of changing these export regulations surfaced due to increases in light crude oil production from the advent of hydraulic fracturing. Section B also cites recent allowances of significant oil exports and previously suggested ways for the federal government to address this export issue.

11. Christian Berthelsen & Lynn Cook, *U.S. Ruling Loosens Four-Decade Ban on Oil Exports*, WALL ST. J. (June 24, 2014), http://online.wsj.com/articles/u-s-ruling-would-allow-first-shipments-of-unrefined-oil-overseas-1403644494 (discussing the most recent granting of export powers by the Department of Commerce).

A. CRUDE OIL EXPORT REGULATIONS

After OPEC's 1973 oil embargo halted essential U.S. oil imports and caused the price of a barrel of oil to skyrocket from $18 to over $40,[12] Congress enacted the EPCA to protect the U.S. economy from foreign oil volatility.[13] This legislation intended

> to strengthen national energy security by reducing dependence on imported oil . . . to reduce the air, water, and other environmental impacts . . . of energy production, distribution, transportation, and utilization, through the development of an environmentally sustainable energy system . . . [and] to consider the comparative environmental and public health impacts of the energy to be produced or saved by the specific activities.[14]

Of particular importance, Congress planned to use the EPCA "to conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses."[15] This regulation of energy uses included the restriction of American crude oil exports, allowing the President to "by rule, under such terms and conditions as he determines to be appropriate and necessary to carry out the purposes of this chapter, restrict exports of . . . petroleum products . . . ."[16]

Although the EPCA effectively prohibits unlicensed exports of crude oil through this presidential restriction power, the President may exempt exports from the restriction that he determines to be within "the national interest and the purposes of this chapter."[17] Any exemptions granted will be subsequently included in the rule or provided in an amendment to the EPCA.[18] The EPCA authorizes the President to grant exemptions based on the purpose for export, the country of destination, or any other reasonable basis deemed consistent with the national

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12. *See* Ian McCabe, *Achieving U.S. Energy Autonomy: The Problems, Solutions and Side Effects of Weaning the American Economy Off Foreign Oil*, 3 APPALACHIAN NAT. RESOURCES L.J. 169, 171 (2009) (discussing the vulnerability of the American economy caused by reliance on volatile foreign oil exports, specifically citing the 1973 OPEC oil embargo as an example).

13. *Id.* at 182 ("During the subsequent Ford Administration, in 1975, Congress enacted the Energy Conservation and Production Act and the Energy Policy and Conservation Act." (footnote omitted)).

14. Energy Policy Act of 1992, Pub. L. No. 102-486, § 2001, 106 Stat. 2776, 3057 (1992).

15. Energy Policy and Conservation Act, 42 U.S.C. § 6201(4) (2012).

16. *Id.* § 6212(a).

17. *Id.* § 6212(b)(1).

18. *Id.* § 6212(b)(2) (describing how the President decides to provide an exemption to the oil exportation prohibition).

interest.[19] When taking into account the national interest for exempting exports, the President considers, at a minimum, whether exporting oil would diminish the quality and quantity of oil available to the U.S., any existing environmental reviews on the effects of this oil on the environment, or whether exporting oil would cause oil supply shortages or sustained oil prices significantly higher than world market levels.[20]

In 1981, the D.C. Circuit interpreted various EPCA presidential powers in *American Federation of Government Employees v. Carmen*. In that case, the court found that the EPCA empowers the President to respond to energy crises through such tools as the Strategic Petroleum Reserve, but this authority is subject to limits.[21] Specifically, any contingency plans created by the President in response to energy crises may not run longer than nine months, must gain approval from both houses of Congress, cannot include any rationing or taxes, nor propose any provisions on the price of petroleum products.[22] Also, any new law regarding American energy, even in the short term, must be generated through the traditional legislative process.[23] The court concluded the EPCA provisions augment existing presidential power, leaving unaltered any previous congressionally accorded executive authority.[24]

To implement presidential regulatory power granted under the EPCA, the EAR delegated oil export license determinations to BIS.[25] Under these regulations, a license is required for ex-

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19. *Id.*

20. 15 C.F.R. § 754 (2015) (providing minimum review requirements for the President on when exportation of oil is within the national interest).

21. Am. Fed'n of Gov't Emps. v. Carmen, 669 F.2d 815, 823–24 (D.C. Cir. 1981) (analyzing and interpreting the EPCA's grant of presidential powers).

22. *Id.* at 824 (providing limits to the President's EPCA contingency powers).

23. *Id.* ("New law in these areas, even for a short term, must be made through the regular legislative process.").

24. *Id.* at 825 ("Signalling [sic] that the EPCA does not repeal other laws by sweeping within its governance all federal attempts to curtail prodigal use of energy, the Act calls upon the President to exercise his authority 'under other law' to develop standards with respect to energy efficiency in Government procurement policies and decisions.").

25. Export Administration Regulation, 15 C.F.R. § 730.1 (2015) ("The EAR are issued by the United States Department of Commerce, Bureau of Industry and Security (BIS) under laws relating to the control of certain exports, reexports, and activities."). For information on BIS and its underlying goals and responsibilities, see *Mission Statement*, BUREAU OF INDUSTRY AND SECURITY, http://www.bis.doc.gov/index.php/about-bis/mission-statement (last visited Nov. 2, 2015).

porting crude oil to any foreign destination, defining crude oil "as a mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and which has not been processed through a crude oil distillation tower."[26] BIS approves export applications if it determines that the export is in line with the President's findings under an applicable statute,[27] or if it determines that the export is "consistent with the national interest and the purposes of the Energy Policy and Conservation Act."[28]

Under this second prong of consideration, BIS reviews applications on a case-by-case basis and assumes the following transactions to be within the national interest and the EPCA's purposes: transactions directly resulting in equal or greater levels of oil imports of equal or better quality; transactions through contracts able to be terminated if U.S. petroleum supplies are interrupted or seriously threatened; or transactions for which the applicant demonstrates that, "for compelling economic or technological reasons that are beyond the control of the applicant, the crude oil cannot reasonably be marketed in the United States."[29] In practice, the BIS used this process to approve limited amounts of oil exports to China, Costa Rica, France, South Korea, and Mexico, while also allowing substantial exports to Canada.[30]

In addition to these BIS determinations, regulations require export license applicants to meet multiple procedural conditions. For instance, only a U.S. exporter may apply for an

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26. 15 C.F.R. § 754.2(a) (2015).

27. *Id.* § 754.2(b)(1) (listing exports that are consistent with presidential findings under an applicable statute, including exports to Canada, or exports from Alaska's Cook Inlet).

28. *Id.* § 754.2(b)(2).

29. *Id.* §§ 754.2(b)(2)(i)(A)–(C). For a brief overview of the export licensing process, see CTR. FOR ENERGY ECON., EXPORT REGULATIONS: WHAT YOU NEED TO KNOW 1 (2013), http://www.beg.utexas.edu/energyecon/CEE_Exploring%20Export%20Controls.pdf.

30. *See January 2013 Crude Oil Export to China Was a Rare Event*, U.S. ENERGY INFO. ADMIN. (Apr. 16, 2013), http://www.eia.gov/todayinenergy/detail.cfm?id=10851 (exploring BIS approved oil export levels in 2013); *see also* Memorandum from the Cong. Research Serv. to the Senate Energy and Nat. Res. Comm. 1 (Oct. 28, 2013) [hereinafter Memorandum on Export Licenses], http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=73e6832f-9670-445b-b8c5-9b254d9f5bca ("[B]etween fiscal year 2008 (10/2007–9/2008) and August 2013, 338 export license applications have been received by BIS of which 304 have been approved. All export licenses aside from those for Canada were for foreign-origin crude oil.").

export license.[31] Also, an entity files a license application electronically, registering the application on the BIS Simplified Network Application Process Redesign (SNAP-R).[32] When registered, the applicant lists the "exporter, consignee, the volume of the export and its monetary value, a description of the product, its end-use, and a certification of origin for the product."[33] BIS follows license application procedures promulgated under Executive Order 12,981, requiring BIS to determine the status of an application within 30 days.[34] A license expires after one year and is non-transferable by the receiver.[35] If an export application meets these procedural requirements, along with fulfilling the above-mentioned EPCA and EAR substantive conditions, the applicant receives an export license.

In essence, the EPCA bans exports of domestically produced oil in response to previous oil market volatility. The statute allows limited exceptions to the ban if the requesting party passes BIS procedures. When granting a license, BIS must find the purpose of the requested license to be within the national interest, the purposes of the EPCA, or other reasonable bases. In addition, applicants must complete other procedural requirements such as application registration to be considered for an exception. If an applicant meets these administrative requirements, the President may grant the party an export license. Overall, this process promotes the purposes of the EPCA by stockpiling domestic oil through limitations on its sale to foreign entities.

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31. *See* PHILLIP BROWN ET AL., CONG. RESEARCH SERV., R43442, U.S. CRUDE OIL EXPORT POLICY: BACKGROUND AND CONSIDERATIONS 9 (2014), http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=dfe108c9-cef6-43d0-9f01-dc16e6ded6b4 (discussing the role of BIS in export licensing and regulation).

32. *Id.* For detailed background information on SNAP-R access and registration, see *Simplified Network Application Process - Redesign (SNAP-R)*, BUREAU OF INDUSTRY AND SECURITY, https://www.bis.doc.gov/index.php/licensing/simplified-network-application-process-redesign-snap-r (last visited Nov. 2, 2015).

33. BROWN ET AL., *supra* note 31.

34. Exec. Order No. 12,981, 60 Fed. Reg. 62,983 (1995) ("Within 30 days of receipt of a referral and all required information, a department or agency shall provide the Secretary with a recommendation either to approve or deny the license application.").

35. BROWN ET AL., *supra* note 31.

B. OCCURRENCES GIVING RISE TO THE EPCA EXPORT REGULATION REVISION ISSUE

Although the EPCA succeeded in alleviating fears of foreign oil uncertainty immediately after its enactment, recent developments in American oil exploration and production raise questions regarding this law's continued need. In 1970, U.S. oil production reached its peak, producing approximately 9.6 million barrels per day.[36] After this climax, U.S. oil production continuously declined due to the drying-up of domestic wells, reaching a new low of 5 million barrels produced per day in 2005.[37] However, recent technological advances, such as hydraulic fracturing, increased onshore and offshore oil production and subsequently resurrected domestic production to 7.44 million barrels per day in 2013.[38] With new pockets of oil coming under production, potentially including 58 billion barrels of recoverable shale oil,[39] over the next five years American crude oil production could grow by another three million barrels per day.[40]

The type of oil being produced raises additional concerns pertinent to the export issue. Specifically, increased production consists mainly of ultra-light oil largely unfit for domestic use.[41] Crude oil is produced through the combination of many

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36. *See U.S. Field Production of Crude Oil*, U.S. ENERGY INFO. ADMIN. (Oct. 30, 2015), http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=MCRFPUS2&f=A (providing an interactive graph showing the levels of U.S. crude oil production since 1859).

37. *Id.*

38. *See* Dixon & Panico, *supra* note 7 ("The years 2009 and 2010 saw highest ever offshore production levels of offshore crude, even with the temporary moratorium put in place after the *Deepwater Horizon* disaster. The percentage of offshore crude oil leases in water deeper than 200 meters has risen from just over 17 percent in 1992 to 76 percent in 2007, a huge increase in just fifteen years.").

39. For general information on shale oil, see *Oil Shale*, INST. FOR ENERGY RES., http://instituteforenergyresearch.org/topics/encyclopedia/oil-shale (last visited Nov. 2, 2015).

40. *See* Perry, *supra* note 7.

41. *See Increases in U.S. Crude Oil Production Come from Light, Sweet Crude from Tight Formations*, U.S. ENERGY INFO. ADMIN. (June 6, 2014), http://www.eia.gov/todayinenergy/detail.cfm?id=16591 (overviewing the outpacing of light crude oil production over medium and heavy crude oil production); *see also* Blake Clayton, *The Case for Allowing U.S. Crude Oil Exports*, COUNCIL ON FOREIGN REL. (July 8, 2013), http://www.cfr.org/oil/case-allowing-us-crude-oil-exports/p31005 (analyzing the viability of domestically-produced light crude oil accessed through fracturing). For a discussion on the differences between types of crude oil and information on their production, see U.S. ENERGY INFO. ADMIN., U.S. CRUDE OIL PRODUCTION FORECAST-ANALYSIS OF

different compounds, including hydrogen and carbon, with each site of production using different combinations of compounds that influence the produced oil's characteristics.[42] Oil density, the substance's density relative to water, is one such characteristic, with light crude having a light density and heavy crude having a heavy density.[43] Simple refineries process light crude into such products as gasoline and jet fuel, while denser crude tends to be refined for more premium products sold for different purposes and requiring more complex refineries and equipment.[44] Due to these significant differences in light and heavy crude, producers must decide whether to pump the currently abundant light crude or leave it in the ground since it tends to come "from either areas where refiners are not interested in or able to process it . . . or in parts of the country with inadequate transportation infrastructure."[45] With conversion of U.S. refineries from primarily heavy crude capabilities to light crude capabilities being cost prohibitive,[46] and light crude production projected to outpace heavier crude,[47] producers are calling for increased oil exports to take economic advantage of growing light crude reserves otherwise going unused.

In addition to the rise in light crude oil production, significant previous export grants question the export system's continued legitimacy. In 1996, President Bill Clinton lifted the ban on exporting Alaskan North Slope crude oil after determining that it would "contribute to economic growth, reduce dependence on imported oil, and create new jobs for American work-

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CRUDE TYPES 2 (May 29, 2014).

42. JASON BORDOFF & TREVOR HOUSER, COLUMBIA CTR. ON GLOB. ENERGY POLICY, NAVIGATING THE U.S. OIL EXPORT DEBATE 22–23 (2015), http://energypolicy.columbia.edu/sites/default/files/energy/Navigating%20the%20US%20Oil%20Export%20Debate_January%202015.pdf (explaining the chemical make-up of light crude oil and why it is different from heavy crude).

43. *Id.*

44. *Id.* at 23.

45. Clayton, *supra* note 41. Light crude oil has different quality characteristics from medium or heavy crude oil, leading to different uses. *See Crude Oils Have Different Quality Characteristics*, U.S. ENERGY INFO. ADMIN. (July 16, 2012), http://www.eia.gov/todayinenergy/detail.cfm?id=7110 (providing an overview of the differences in types of crude oil and how those differences affect their uses).

46. BORDOFF & HOUSER, *supra* note 42, at 8 ("Processing LTO in a refinery optimized for heavy crudes changes the mix of products produced (e.g., gasoline, diesel, kerosene, and fuel oil) and can reduce overall refinery sales revenue. Building new refineries to process domestic LTO takes both time and money.").

47. U.S. ENERGY INFO. ADMIN., U.S. CRUDE OIL PRODUCTION FORECAST, *supra* note 41.

ers."[48] President Clinton ruled this lifting to be within the national interest, as these oil exports would not diminish the amount of oil available to the United States, cause sustained oil supply shortages or oil price increases, nor pose a significant risk to the environment.[49] In 2008, President George W. Bush lifted a presidential moratorium on drilling for oil on the Outer Continental Shelf, after concluding that such drilling could lead to "a decade's worth of oil for the United States, and that exploiting it could be done unobtrusively, without damaging coral reefs or creating spills."[50] Also, the U.S. annually allows substantial light crude exports to Canada,[51] fulfilling trade agreements between both nations.[52] The DOC continues to follow this trend of granting exceptions and export licenses, granting 304 such licenses between fiscal year 2008 and August 2013.[53]

In light of these trends in oil production and exportation, advocates and detractors of modifying the EPCA suggest various federal actions to solve the export issue. First, the President could act through EPCA granted powers by interpreting

48. President Bill Clinton, Statement on Exports of Alaska North Slope Crude Oil (Apr. 28, 1996), http://www.gpo.gov/fdsys/pkg/WCPD-1996-05-06/pdf/WCPD-1996-05-06-Pg747.pdf; *see also Clinton Lifts Ban on Alaskan Oil Exports*, N.Y. TIMES (Apr. 29, 1996), http://www.nytimes.com/1996/04/29/us/clinton-lifts-ban-on-alaskan-oil-exports.html (summarizing President Clinton's lifting of the Alaskan crude oil export ban).

49. Clinton, *supra* note 48 (offering President Clinton's reasoning for allowing the exportation of Alaskan North Slope Oil). In addition to lifting the ban on Alaskan oil exports, President Clinton also increased the export of oil to Canada through the North American Free Trade Agreement (NAFTA). *See* North American Free Trade Agreement, 19 U.S.C. § 3311 (2012) (approving U.S. entrance into NAFTA); Sarah Bridges, *American Trade News Highlights for Spring, 2013, the Keystone XL: To Choose Economic Triumph, or Environmental Disaster?*, 19 LAW & BUS. REV. AM. 263, 264 (2013) (discussing the trade of oil between Canada and the U.S. under NAFTA); Alastair R. Lucas, *Canada's Role in the United States' Oil and Gas Supply Security: Oil Sands, Arctic Gas, NAFTA, and Canadian Kyoto Protocol Impacts*, 25 ENERGY L.J. 403, 421 (2004) (analyzing NAFTA provisions on the energy trade).

50. Steven Lee Myers & Carl Hulse, *Bush Lifts Drilling Moratorium, Prodding Congress*, N.Y. TIMES (July 14, 2008), http://www.nytimes.com/2008/07/14/washington/14drillcnd.html?; *see also* McCabe, *supra* note 12, at 187. Any oil exported from the Outer Continental Shelf must follow the requirements of the Export Administration Act. To view these restrictions, see Export Administration Act, 43 U.S.C. § 1354 (2012).

51. *See January 2013 Crude Oil Export to China Was a Rare Event*, *supra* note 30 ("From 2003 to 2012, the United States exported an average of 35,000 bbl/d of crude oil—98% of those exports were delivered to Canada.").

52. *See, e.g.*, North American Free Trade Agreement § 3312 (describing the relationship of the agreement to U.S. and state law); Lucas, *supra* note 49 (discussing energy import and export regulations under NAFTA).

53. Memorandum on Export Licenses, *supra* note 30.

exports to be or not be in the national interest.[54] Second, the U.S. Congress could amend or pass a new law taking into account the nation's recent energy developments.[55] Third, the BIS can approve additional exports by using the EAR loophole of finding there to be compelling economic or technological reasons why the oil cannot be marketed in the U.S.[56] With such options, the federal government could simply stick with the status quo.[57] As Part II demonstrates, each of these alternatives provides various benefits and detriments that ultimately decide their potential effectiveness in solving the EPCA oil export ban issue.

Overall, the EPCA and EAR create a comprehensive system of oil export restrictions and exceptions. Unless the executive branch concludes an export is within the national interest, or falls within a predetermined category of allowed exports, a proposed license or exception will be denied. Specifically, an applicant must prove to the BIS, by following proper administrative procedures, that its application fits within the agency's definition of a national interest in order to be an accepted exportation. Such stringent regulations promote the EPCA's goals of protecting American energy independence, conserving domestic resources, and preventing additional risks to the environment. Yet, due to increases in oil production and past export license grants, the issue arises regarding whether the export ban should be lifted, a topic explored fully in Part II.

II. RELEVANT ARGUMENTS FOR AND AGAINST REVISING THE EXPORT BAN

This Part presents existing arguments for and against revising the EPCA's export ban. Section A examines previously promoted economic, procedural, and trade reasons for undoing the EPCA oil export prohibition. Section B provides contrary bases provided by export detractors for why the federal gov-

54. *See* Brad Plumer, *U.S. Oil Exports Have Been Banned for 40 Years. Is It Time for That To Change?*, WASH. POST (Jan. 8, 2014), http://www.washingtonpost.com/news/wonkblog/wp/2014/01/08/u-s-oil-exports-have-been-banned-for-40-years-is-it-time-for-that-to-change (analyzing proposals for modifying or lifting the EPCA export ban).

55. *Id.*

56. 15 C.F.R. §§ 754.2(b)(2)(i)(A)–(C) (2015).

57. *See* Sarah O. Ladislaw, *The Molecule Laws: History and Future of the Crude Export Ban*, CTR. FOR STRATEGIC & INT'L STUD. (Jan. 2, 2014), http://csis.org/publication/molecule-laws-history-and-future-crude-export-ban (analyzing various options of addressing the EPCA export ban issue).

ernment should not modify the export ban. Such bases include negative economic, environmental, and security reasons why the federal government should not allow increased oil exports. Section C analyzes available and previously submitted executive and legislative solutions to the export issue. Overall, these positions and potential solutions present valid grounds for the federal government to consider when making its final oil export decision.

A. ARGUMENTS FOR LIFTING THE EPCA EXPORT BAN

According to oil export supporters, lifting the EPCA export ban presents numerous potential benefits to the United States. First, allowing greater amounts of exports could provide economic gains such as a decline in gas prices and increased job growth. Second, escalating exports now follows recent trends in allowing U.S. producers to sell oil abroad. Third, allowing exports of the light crude oil being produced utilizes an otherwise domestically unusable resource. Fourth, increasing sales of U.S. oil abroad grows the nation's influence within foreign oil markets, thus strengthening its global influence. Overall, these benefits provide authoritative support for lifting the EPCA export ban.

1. Increasing Exports Provides Oil Price, Job, and Investment Benefits

Various economic advantages constitute one category of reasons supporting EPCA modifications. For instance, allowing American oil producers to sell light crude oil abroad could lead to a decline in domestic gas prices of "as much as 12 cents a gallon."[58] Such effects begin with drops in crude oil prices, as seen in 2014 when crude oil prices decreased from $96.54 in August to $59.29 in December.[59] These advantageous effects of increased exports stem from American light crude exports saturating the global oil market and consequently decreasing oil and gas prices.[60] Increasing oil exports could also strengthen

58. Snyder, *supra* note 8.

59. *Cushing, OK WTI Spot Price FOB*, U.S. ENERGY INFO. ADMIN., http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=RWTC&f=M (last visited Nov. 2, 2015).

60. Clayton, *supra* note 41 ("Prices at the pump will continue to be determined by the global market, regardless of whether the United States exports crude oil. Were the ban overturned today, crude exports would immediately rise by several billion dollars a year . . . ."). But see *infra* Part II.B.1 for a discussion regarding the potential increase in domestic oil and gas prices due to

domestic oil manufacturing and consequently boost American job growth.[61] As access to foreign markets likely motivates U.S. companies to invest in oil and gas production in order to increase supply, these producers expect to hire more workers to generate larger quotas.[62] Due to such market reactions, proponents of exports project that "every $1 billion drop in the U.S. trade imbalance thanks to stronger energy sales could create as many as 5,000 jobs."[63]

2. Increasing Exports Follows Recent Trend in American Oil Sales Abroad

Along with these economic benefits, current EPCA exceptions demonstrate a substantial trend towards allowing increased sales of U.S. oil abroad and could suggest that further exports would follow this development. Although the U.S. exported only 20,000 to 40,000 barrels of oil per day in the early 2000s, in 2013 exports skyrocketed to between 100,000 and 130,000 barrels per day.[64] Export levels were projected to increase further to approximately 200,000 barrels per day.[65] Canada imports a majority of this American oil under the North American Free Trade Agreement (NAFTA), which provides various incentives and regulations for energy trading between the United States, Canada, and Mexico.[66] These exports include 25,000 barrels per day of California heavy oil, 50,000 barrels per day of Alaskan North Slope oil, and significant

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increased export levels.

61. *See* Schor, *supra* note 10 ("One theory is that the U.S. should use it as a competitive advantage, to revive our manufacturing sector . . . .").

62. Clayton, *supra* note 41 ("Letting drillers reap extra profits from selling crude oil overseas . . . would also encourage investment in oil and gas production in the United States rather than abroad. In oil-producing regions, more workers would be hired for oil exploration and production."); Schor, *supra* note 10 ("[C]ompanies likely would have a greater incentive to increase production . . . .").

63. Schor, *supra* note 10.

64. LORNE STOCKMAN, SHOULD IT STAY OR SHOULD IT GO?: THE CASE AGAINST U.S. CRUDE OIL EXPORTS 22 (2013), http://priceofoil.org/content/uploads/2013/10/OCI_Stay_or_Go_FINAL.pdf ("[I]n February 2013, crude oil exports suddenly doubled and have hovered between 100,000 and 130,000 b/d since."); Clayton, *supra* note 41 ("Crude oil exports have grown from next to nothing in 2007 to around one hundred thousand barrels per day in March 2013, all of which went to Canada.").

65. STOCKMAN, *supra* note 64.

66. For information on NAFTA and energy trading under its provisions, see North American Free Trade Agreement, 19 U.S.C. § 3312 (2012) (describing the relationship of the agreement to U.S. and state law); Lucas, *supra* note 49 (discussing energy import and export regulations under NAFTA).

amounts of Alaskan Cook Inlet oil.[67] BIS supported this selling of oil by increasing its issuance of export licenses to 66 in 2012, after issuing only 45 in 2011 and 22 in 2007.[68] Overall, this evidence could suggest that lifting EPCA's export ban may be an acceptable evolution of the recent trend in oil exports. Also, these substantial exports may imply that any negative effects of escalating energy sales would be insignificant, as current export levels do not threaten American society or oil security.

3. Increasing Exports Utilizes Otherwise Unusable Light Crude Oil

As discussed earlier,[69] allowing producers to export the light crude now being produced takes advantage of this plentiful yet domestically unusable resource.[70] With an oil-refining infrastructure currently incapable of using light crude, producers of this oil remain unable to sell most of their product within the U.S.[71] When producers can actually sell light crude within the U.S., they do so at depressed prices, potentially making it more profitable to leave the oil unused in the ground.[72] In place of this lack of profits, allowing light crude sales in foreign markets could enable producers to generate $15 billion per year by 2017.[73] Also, selling the oil abroad to be refined likely proves cheaper for domestic consumers than retooling U.S. refineries originally made to refine heavier crude.[74] Finally, allowing ex-

67. STOCKMAN, *supra* note 64, at 21 (listing acceptable U.S. oil exports under current executive and administrative regulations).

68. *Id.* at 23.

69. *See supra* Part I.B.

70. *See* Conway Irwin, *Without Exports, US Could Face Oil Supply Glut in 2015*, BREAKING ENERGY (Dec. 17, 2013, 12:00 PM), http://breakingenergy.com/2013/12/17/without-exports-us-could-face-oil-supply-glut-in-2015 ("A lot of what is coming out of the Eagle Ford shale—maybe a third of the incremental growth of around 1MM bbl/d over the last couple years—has been in the form of lease condensate . . . .").

71. *See* Clayton, *supra* note 41 (discussing the sale of light crude oil within the U.S.).

72. *Id.*

73. *Id.* ("Crude oil exports could generate upward of $15 billion a year in revenue by 2017 at today's prices, according to industry estimates.").

74. Emily Pickrell, *ConocoPhillips Chief Pushes for U.S. Oil Exports*, HOUS. CHRON. (Nov. 19, 2013, 7:53 PM), http://www.mysanantonio.com/business/eagle-ford-energy/article/ConocoPhillips-chief-pushes-for-U-S-oil-exports-4994572.php. Asian, European, Latin American, and Canadian markets already serve as outlets for American light crude. These markets have the capacity to import more American oil resulting from increased U.S. production. Irwin, *supra* note 70 ("All of those outlets have room to grow, to take this glut, to not have to see acute constraints for the next year . . . .").

ports probably does not threaten U.S. oil supplies due to light crude being domestically unusable and increased sales likely leading to greater production and supplies.[75] If an energy emergency arises, the federal government could suspend exports and use these increased oil stores,[76] but otherwise producers make profits by producing substantial oil for domestic needs and then selling excess product abroad.

4. Increasing Exports Strengthens American Influence Abroad

In addition to each of these benefits, allowing increased oil exports could enhance American influence in the global energy market due to its growing status as an oil seller. Consequently, this position could bolster American negotiation positions on other trade issues, as the U.S. would be a more powerful party due to its oil sales and its proven willingness to deal with foreign entities on the politically sensitive issue of oil.[77] Also, by promoting the sale of American oil to foreign countries or entities, the federal government may demonstrate a commitment to free trade.[78] This commitment could additionally improve or maintain positive relationships with foreign allies by trading American oil to those wanting to fulfill their energy needs with American oil.[79]

Overall, many reasons exist for lifting or modifying the EPCA export ban. Permitting increased exports may lead to economic benefits for the American public such as lower gas prices due to oil market saturation, or job growth from entities increasing oil production. As previous EPCA exceptions and allowances led to significant oil exports, increasing export levels now likely follows that trend while not exacerbating potential

75. *See* Clayton, *supra* note 41 ("Letting drillers reap extra profits from selling crude oil overseas, if the market dictates, would provide greater incentives for drilling, stimulating new supply. It would also encourage investment in oil and gas production in the United States rather than abroad.").

76. *See id.* (discussing U.S. reliance on foreign oil and potential international emergencies threatening U.S. oil levels).

77. *See id.* ("It would demonstrate Washington's commitment to free and fair trade, even in a politically sensitive sector, bolstering its negotiating position on other trade issues."). Yet, such influence relies heavily on the price of oil. With low oil prices, international power and influence based on the sale of oil drastically decreases. *See, e.g.*, Tim Bowler, *Falling Oil Prices: Who Are the Winners and Losers?*, BBC NEWS (Jan. 19, 2015), http://www.bbc.com/news/business-29643612 (analyzing how the recent fall in global oil prices led to significant revenue problems in oil-exporting nations).

78. *See* Clayton, *supra* note 41.

79. *See id.* ("It would also avoid putting Washington at odds with allies that would like to source their oil from the United States.").

negative effects such as loss of strategic oil reserves. In addition, with much of the oil boom's production being light crude and thus domestically unusable, the U.S. needs foreign oil sales in order to take advantage of this newfound and non-essential resource. Finally, increasing American oil exports could improve American trade influence amongst foreign entities and allies by making it a significant oil seller. With such benefits in hand, the federal government should consider lifting or modifying the EPCA export ban.

B. ARGUMENTS AGAINST LIFTING THE EPCA EXPORT BAN

Although lifting the EPCA export ban could substantially benefit Americans, export detractors highlight multiple arguments that oppose amending the EPCA's current provisions to permit more oil exports. Increasing exports may lead to negative economic effects such as increased domestic oil and gas prices, enhanced production reliance on unstable and unreliable fracking technology, elevated water and air pollution concerns, and augmented threats to U.S. energy security. Additionally, it could be argued that the recent oil boom does not necessitate a revision of the EPCA because American producers export a sufficient amount through current exceptions. Due to such concerns and arguments, the federal government holds multiple valid reasons for continuing the export ban and limiting the sale of domestically produced oil abroad.

1. Increasing Exports Potentially Raises Domestic Oil and Gas Prices

Increasing U.S. oil exports could create negative implications for the nation as a whole. Most importantly, allowing increased oil exports may raise domestic oil and gasoline prices instead of lowering them.[80] Contrary to the economic advantage arguments highlighted in Part II.A.1, this negative side effect could arise due to the fact that U.S. oil producers must raise currently low domestic oil prices (kept artificially lower than global prices due to significant domestic caches of oil from the oil boom) to global market prices in order to sell this oil abroad.[81] With domestic oil prices at global levels, U.S. gasoline

80. *See* Schor, *supra* note 10 ("With all of the increased production coming from controversial fracking techniques, lifting the ban not only would raise gasoline prices for U.S. families, but would create bigger environmental headaches.").

81. *See* Letter from Robert Menendez to Barack Obama, *supra* note 9

prices would likely rise due to the higher cost of gasoline's main ingredient, oil.[82] Due to the likely rise in domestic oil and gasoline prices, parties against increasing exports argue that keeping domestically produced oil within the U.S. saves Americans' money by reducing gas pump prices and the cost of other oil-based products made in the U.S.[83]

2. The Unreliability of Hydraulic Fracturing Threatens the Viability of Increased Exports

Also, long-term estimates of American oil production remain uncertain because of the world's lack of knowledge regarding hydraulic fracturing.[84] With the U.S. holding only a few years of fracking experience, analysts such as British Petroleum's chief economist Christopher Ruhl warn of the overstatement of American oil reserve projections.[85] Even though initial flows from fracking may be great, as witnessed in the oil boom, such flows quickly dissipate and lead producers to continue producing at decreased levels or abandon the well to drill another.[86] California presents an irksome example of such fracking uncertainty after the U.S. Energy Information Administration's recent cutting of its estimate of recoverable oil in California's Monterey shale by 96%.[87] Due to this oil production

("[T]he world price of oil (otherwise known as the Brent crude price) is currently about $110 per barrel, while the American price is about $97 per barrel. The threshold question then, is why would we want to export oil and raise American oil prices to match the world's oil price?"). *But see Energy & Oil*, BLOOMBERG, http://www.bloomberg.com/energy (last visited Nov. 2, 2015) (showing the Brent crude oil price to be $48.98).

82. *See* Schor, *supra* note 10 ("[O]pponents argue that . . . allowing overseas crude sales . . . would drive up costs for consumers at the pump.").

83. *See id.*

84. *See* STOCKMAN, *supra* note 64, at 9 ("[T]he vast majority of tight oil wells have only been producing for one or two years, so there is little data upon which to base estimates of their ultimate performance.").

85. *See id.* ("BP's chief economist Christopher Ruhl told delegates that among some tight oil proponents there is a lot of '. . . irrational exuberance or hype, these are the same consultants that three years ago were running around saying that we are running out of oil. Now they are saying that we are drowning in it because they have something to sell.'").

86. *See id.* at 10 ("Initial flows of oil can be very strong at tight oil wells but this does not last and after several rounds of fracturing, wells are then left to produce at low levels and the drilling and fracking crews move on. This means that to maintain production at high levels drilling and fracking has to be maintained at a frenzied pace.").

87. *See* Eric McAllister, *U.S. EIA Cuts Recoverable Monterey Shale Oil Estimate by 96 Pct*, REUTERS (May 21, 2014, 4:47 PM), http://www.reuters.com/article/2014/05/21/eia-monterey-shale-idUSL1N0O713N20140521 ("The reserves were downgraded by 96 percent, from 13.7 billion barrels estimated

uncertainty, allowing exports could cause negative effects such as producers' inability to meet domestic demands through depleted or unproductive wells or job loss from decreased production.[88]

3. Increasing Exports Presents Water and Air Pollution Risks

Multiple environmental effects of enlarged oil production raise concerns regarding the soundness of lifting the EPCA ban and increasing exports. First, escalating exports, and consequently increasing production, may impose significant stress on domestic water supplies required for hydraulic fracturing.[89] In Texas alone, fracking accounts for more than 20% of state water consumption, producing 290 million barrels of non-recyclable wastewater per month.[90] Second, the process could negatively affect underground and surface water supplies through oil spills, faulty well construction, and the discharge of wastewater into clean water sources.[91] Although states such as North Dakota require companies to report oil spills, reported numbers tend to be inaccurate, while states fail to monitor and regulate these reports.[92] Due to enhanced oil production via fracking, the U.S. risks turning even more significant shares of American water into unusable wastewater by committing it to

by a government-funded report in 2011, to just 600 million barrels . . . .").

88. *See* STOCKMAN, *supra* note 64, at 10.

89. *See id.* at 19.

90. *Id.* (discussing Texas water use in hydraulic fracturing); *see also* Kate Galbraith, *In Texas, Recycling Oilfield Water Has Far To Go*, STATEIMPACT (Mar. 19, 2013, 8:58 AM), https://stateimpact.npr.org/texas/2013/03/19/in-texas-recycling-oilfield-water-has-far-to-go (discussing Texas procedures for fracking water recycling and disposal).

91. *See* STOCKMAN, *supra* note 64, at 19; Nicholas Kusnetz, *North Dakota's Oil Boom Brings Damage Along with Prosperity*, PROPUBLICA (June 7, 2012, 10:47 AM), http://www.propublica.org/article/the-other-fracking-north-dakotas-oil-boom-brings-damage-along-with-prosperi ("[O]il companies in North Dakota reported more than 1,000 accidental releases of oil, drilling wastewater or other fluids in 2011, about as many as in the previous two years combined. Many more illicit releases went unreported, state regulators acknowledge, when companies dumped truckloads of toxic fluid along the road or drained waste pits illegally.").

92. *See* Kusnetz, *supra* note 91 ("Companies are supposed to report spill volumes, but officials acknowledge the numbers are often inexact or flat-out wrong. In 40 cases last year, the company responsible didn't know how much had spilled so it simply listed the volume of fluid as zero."); *id.* ("Under North Dakota regulations, the agencies that oversee drilling and water safety can sanction companies that dump or spill waste, but they seldom do: They have issued fewer than 50 disciplinary actions for all types of drilling violations, including spills, over the past three years.").

production or through polluting discharges or spills.

In addition to water issues, raising oil production may contribute to climate change and increased pollution emissions. Some research shows that fracturing practices of injecting water into the ground for disposal and to crack open rocks may induce earthquakes by increasing pressure on geological faults.[93] Although it remains uncertain how these injections of water into underground reservoirs increase the chances of earthquakes, amplified fluid pressure could "critically load[]" nearby faults and make them vulnerable to even weak seismic activity.[94] Due to such potentially critical effects of producing oil through fracking, the U.S. must seriously consider whether the benefits of enlarged oil supplies outweigh such climate concerns.

Raising production may additionally impair U.S. efforts to limit greenhouse gas emissions. Some researchers conclude that, between now and 2050, "only 20 to 25 percent of global proven oil reserves can be consumed . . . to have an 80 percent chance of avoiding devastating climatic changes."[95] Methane gas emitted through the flaring of oil wells and other parts of the oil production, refinement, transportation, and storage process constitutes the largest source of emissions.[96] With fracking-produced oil not included within these proven oil reserves, the exploitation of that oil may exacerbate current plans for limiting negative oil use effects like emissions.[97] Also, as fracking and other technologies present a completely new source of oil, no effective national or international system exists to regulate this oil or its environmental effects.[98] Finally, raising production also could create less of an incentive for the American

93. *See* Ker Than, *Fracking Wastewater Disposal Linked to Remotely Triggered Quakes*, NAT'L GEOGRAPHIC (July 12, 2013), http://news.nationalgeographic.com/news/energy/2013/07/130711-fracking-wastewater-injection-earthquakes (exploring the role of fracking water use and disposal in triggering earthquakes).

94. *Id.* (discussing possible ways in which increased fluid pressure from fracking causes earthquakes).

95. STOCKMAN, *supra* note 64, at 4.

96. *See Overview of Greenhouse Gases*, EPA, http://www3.epa.gov/climatechange/ghgemissions/gases/ch4.html (last updated Sept. 11, 2015) (providing statistics on methane emissions within the United States); *see also* Joby Warrick, *Methane Plume over Western US Illustrates Climate Cost of Gas Leaks*, GUARDIAN (Jan. 4, 2015), http://www.theguardian.com/environment/2015/jan/04/leaking-methane-gas-plume-us ("Methane accounts for about 9% of US greenhouse gas emissions, and the biggest single source of it—nearly 30%—is the oil and gas industry . . . .").

97. *See* STOCKMAN, *supra* note 64, at 4.

98. *See id.* at 17.

public to limit oil consumption in favor of renewable fuels and clean energy uses.[99] Without a system monitoring these effects, allowing more U.S. exports could aggravate current or future climate issues.[100]

4. Increasing Exports Endangers American Oil Security

Building upon these environmental reasons for not lifting the EPCA export ban, detractors argue that domestically produced oil should be utilized to fulfill the statute's goal of American energy security.[101] For one, it remains unclear whether light crude production will actually exceed American refining capacity.[102] If domestic refineries adequately accommodate U.S. light crude production, no need exists to send that oil abroad in place of fulfilling American purposes. Even if U.S. refineries cannot presently utilize all domestically produced light crude, detractors contend that refineries could be inexpensively modified and thus keep the oil within the U.S.[103]

Secondly, keeping domestically produced oil for American purposes may allow the U.S. to reduce its reliance on foreign oil imports.[104] As of 2012, Persian Gulf nations supplied approxi-

99. *See* CONG. BUDGET OFFICE, FEDERAL FINANCIAL SUPPORT FOR THE DEVELOPMENT AND PRODUCTION OF FUELS AND ENERGY TECHNOLOGIES 8 (Mar. 2012), https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/reports/03-06-FuelsandEnergy_Brief.pdf ("Without government intervention, environmental costs are not reflected in the prices charged for various fuels and energy services, so firms and households lack an incentive to take them into account when deciding what types and quantity of energy to produce and consume.").

100. *See* STOCKMAN, *supra* note 64, at 17 ("Exporting tight oil would help producers pull more of the resource out of the ground, making it even more difficult to keep within climate limits. Without an effective international regime to keep global greenhouse gas emissions below recognized thresholds, deregulating U.S. crude oil exports can only exacerbate the impending climate crisis."). Proponents of hydraulic fracturing and lifting the EPCA ban counter these environmental arguments by claiming present and prudent regulations capably manage these environmental side effects. *See* Clayton, *supra* note 41.

101. *See* Ford, *supra* note 1 (describing the EPCA's purposes); Letter from Robert Menendez to Barack Obama, *supra* note 9 ("When Congress first enacted limits on crude exports in the 1970s following the oil embargo, these laws were designed to enhance American energy security and protect U.S. consumers from volatility and price spikes.").

102. *See* STOCKMAN, *supra* note 64, at 31.

103. *See id.* ("Refiners and producers can invest in relatively inexpensive 'splitters' that parse condensates into products that can be exported without a license."). *But see id.* (discussing how exports to Canada or exploitation of loopholes in the export license process could be viable options to get rid of excess American oil).

104. *See How Dependent Are We on Foreign Oil?*, U.S. ENERGY INFO. AD-

mately 29% of U.S. petroleum products, while Canada and Saudi Arabia constituted the largest sources of imported crude oil.[105] With many of these trade partners experiencing periods of instability, the federal government decreases the probability of repeating the 1973 oil crisis by cutting oil imports.[106] Overall, the U.S. imports approximately 8 million barrels per day while producing just 7 million barrels per day.[107] Due to this potential American ability to reduce foreign oil reliance through growing domestic production, this argument presents a valid reason against lifting the export ban and going against its goal of protecting American interests from overseas market volatility.

5. Current EPCA Export Exceptions May Provide for Sufficient Oil Exports

The ability of American oil producers to utilize current EPCA export exceptions provides an additional ground for maintaining the status quo. Currently, the BIS approves export applications for limited transactions from Alaska's Cook Inlet and up to 25,000 barrels per day from California oil fields.[108] With an average export level of 35,000 barrels per day from 2003 to 2012, it appears that American producers already hold substantial amounts of export capabilities.[109] When combined with the fact that the U.S. still maintains an oil import-export deficit,[110] the argument can be made that the federal government should not allow American oil producers any greater exceptions to the EPCA in order to utilize newly produced reserves at home.

Within the EPCA export ban issue, multiple arguments exist undermining the position of allowing greater levels of American oil exports. First, sending more oil abroad may actually lead to higher oil and gas prices by raising low U.S. oil prices to higher global rates. Second, the volatile nature of the light

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MIN. (May 10, 2013), http://www.eia.gov/energy_in_brief/article/foreign_oil_dependence.cfm ("[I]ncreased use of domestic biofuels (ethanol and biodiesel), and strong gains in domestic production of crude oil and natural gas plant liquids expanded domestic supplies and reduced the need for imports.").

105. *Id.*

106. *See id.* (identifying Persian Gulf countries exporting oil to the U.S.).

107. *January 2013 Crude Oil Export to China Was a Rare Event*, *supra* note 30.

108. *Id.*

109. *Id.*

110. *See supra* Part II.B.4.

crude that constitutes most of the oil boom's production questions that production's longevity and consequent job creation. Third, increased exports place great stress on the environment and climate through emissions, water discharges, and geological faults, questioning export practicality. Fourth, increasing exports may put U.S. energy security at risk by not modifying U.S. refineries to utilize domestic oil and maintaining American dependence on oil from potentially unstable nations. Finally, with export exceptions already allowing significant amounts of oil exports, the federal government does not need to grant additional exceptions. Due to these arguments, the federal government finds legitimate grounds for not lifting or modifying the EPCA export ban.

C. POTENTIAL EPCA EXPORT ISSUE SOLUTIONS

The federal government may pursue multiple avenues to resolve the EPCA export issue. These avenues include executive-agency action, congressional action, or simply staying with the status quo of EPCA regulations and exceptions. Under the EPCA, the executive branch could find compelling economic or technological reasons why new stores of light crude cannot reasonably be marketed in the U.S., consequently approving more exports in response to increased U.S. oil production.[111] The arguments mentioned in Part II.A present examples of such an agency interpretation, such as decreasing global oil and gas prices or profiting from domestically unusable oil.[112] As such findings would technically fall under the present provisions of the EPCA, this agency interpretation simply expands previous elucidations like Alaskan or Californian oil exports to foreign countries.[113] After this expansion, U.S. oil producers need to follow administrative procedures and stay within the parameters of the new executive branch interpretation before exporting newly produced oil.[114]

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111. 15 C.F.R. § 754.2(b)(2)(i)(C) (2015); Plumer, *supra* note 54 ("First, the Obama administration could act on its own. The law allows the Commerce Department to approve exports if there are 'compelling economic or technological reasons . . . .'"). *But see* Letter from Edward Markey and Robert Menendez to Barack Obama, *supra* note 10 (claiming that "compelling economic or technological reasons" applies to swaps of oil or technology, not actual exports).

112. For more detailed analyses of these compelling arguments for allowing exports, see *supra* Part II.A.

113. For further information on U.S. oil exports to Canada and other foreign nations, see *supra* Part II.A.

114. *See, e.g.*, Schor, *supra* note 10 ("An administration could set up licensing rules for the Commerce Department to approve exports so long as the re-

In place of the President reinterpreting EPCA provisions, the BIS could change export license criteria and allow for more or fewer exports.[115] Under the EPCA the President and the rest of the Executive Branch establish criteria for exports, similar to the finding of compelling economic or technological reasons.[116] By adopting this solution, the BIS would consider other factors in addition to previously mentioned procedural requirements before granting a license to a producer.[117] Such factors could include the availability of crude oil for domestic purposes, the quality and characteristics of produced crude, the design of American refineries, and the abilities of the U.S. oil production, transportation, and trade infrastructures.[118] These additional guidelines further scrutinize potential exports, allowing them if they follow these substantial regulations or preventing them altogether by making it too difficult for producers to trade oil abroad.[119]

In lieu of executive action, the U.S. Congress could repeal or amend the EPCA to allow for more oil exports or to reduce export levels.[120] As Congress enacted the EPCA, it holds the power to alter it in any way it sees fit.[121] If wishing to increase

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cipients of domestic crude held free trade agreements with the United States, similar to the standard currently in place for DOE approval of LNG export applications . . . .").

115. *See* Ladislaw, *supra* note 57 (exploring how the executive branch could change administrative licensing practices to modify the EPCA export ban).

116. *Id.*; *see also* Export Administration Regulation, 15 C.F.R. § 730.1 (2015) (delegating authority to the BIS to control export activities).

117. *See* Ladislaw, *supra* note 57 ("Mechanically, given the president's authority, guidelines or criteria for exports could be established . . . ."). For analysis of BIS export license determinations, see *supra* Part I.A.

118. *See* Ladislaw, *supra* note 57 (exploring potential executive guidelines or criteria for changing oil export levels).

119. For a brief overview of executive avenues for changing export restrictions, see JASON BORDOFF, U.S. CRUDE OIL EXPORT POLICY 19 (2014), http://www.eia.gov/conference/2014/pdf/presentations/bordoff.pdf.

120. *See, e.g.*, LISA MURKOWSKI, A SIGNAL TO THE WORLD: RENOVATING THE ARCHITECTURE OF U.S. ENERGY EXPORTS 14–15 (2014) ("If the White House disagrees with this interpretation of its authority and/or chooses to maintain the prohibition on exports, then the Senate should update the law to reflect 21[st]-century conditions."); *see also* Ladislaw, *supra* note 57 (describing possible congressional actions regarding the EPCA export ban); Schor, *supra* note 10 ("Sen. Mary Landrieu . . . did not rule out eventual congressional involvement.").

121. Energy Policy and Conservation Act, 42 U.S.C. § 6201 (2012); WILLIAM C. LANE, JR., THE MANDATORY PETROLEUM PRICE AND ALLOCATION REGULATIONS A HISTORY AND ANALYSIS 57 (1981) ("[N]early all of these changes were in response to pleas for relief from particular industry groups, or political pressures from the Congress."); McCabe, *supra* note 12, at 182 ("Dur-

exports, Congress could partially or fully repeal export restrictions.[122] A limited repeal permits selected exports from U.S. producers in the Outer Continental Shelf or Alaska,[123] relaxes BIS export license criteria and consequently simplifies export procedures,[124] or authorizes exports up to congressionally set amounts.[125] Such limited EPCA changes fall within executive branch and congressional intentions of easing export restrictions if they do not hurt EPCA purposes.[126] In contrast, a full repeal completely negates the EPCA export ban and allows for any oil exports fulfilling other relevant regulations.[127]

These executive and congressional options for solving the EPCA export issue hold some benefits over other alternatives, as well as certain detriments. For instance, a BIS finding of compelling economic or technological reasons, or changing BIS license criteria, present more expedient and easily completed options than congressional action.[128] Such expediency occurs due to the circumvention of the potentially cumbersome legislative process by using administrative practices.[129] Yet, any changes stemming from administrative instead of legislative methods may prove less substantial than congressional action

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ing the subsequent Ford Administration, in 1975, Congress enacted the Energy Conservation and Production Act and the Energy Policy and Conservation Act.").

122. *See* Ladislaw, *supra* note 57 ("Possible congressional action ranges from partial, selective repeals of some of the molecule laws—perhaps allowing unrestricted exports of U.S. crude produced on the Outer Continental Shelf, or revising the Mineral Leasing Act . . . .").

123. *See* Ford, *supra* note 1 ("But over time, this legislation removes controls and should give industry sufficient incentive to explore, develop, and produce new fields in the Outer Continental Shelf, Alaska, and potential new reserves in the lower 48 States.").

124. For information on current BIS export regulations, see *supra* Part I.A.

125. These export allowances would resemble recent executive rulings permitting ultralight oil sales to foreign entities. *See* Berthelsen & Cook, *supra* note 11 (describing rulings); Ladislaw, *supra* note 57 (noting possibility of congressional re-examination).

126. *See* Ford, *supra* note 1 ("[T]his legislation removes controls . . . . I do not expect the Congress to stand in the way of such actions.").

127. *See* Ladislaw, *supra* note 57.

128. *See, e.g.*, Am. Fed'n of Gov't Emps. v. Carmen, 669 F.2d 815, 824 (D.C. Cir. 1981) (discussing the quick character of executive action within EPCA regulations). For an example of an executive action, see McCabe, *supra* note 12, at 187–88 (discussing executive moratoriums on oil production in the Outer Continental Shelf).

129. *See Carmen*, 669 F.2d at 823 ("[T]he EPCA empowers the President 'to respond quickly to energy supply interruptions or other energy crises.'" (quoting Brief for Appellee at 28, *id.* (No. 81-2144))).

due to administrative methods' lack of democratic process.[130] Also, an incoming President can more easily reverse a BIS action than congressional action.[131] However, although congressional modification of the EPCA may prove more substantial and harder to reverse, its prospects remain unlikely due to the political obstacles inherent within the legislative process.[132]

Instead of executive or legislative action, the federal government could simply stick with the status quo to solve the export issue.[133] As of now, current EPCA regulations present a compromise between export supporters and detractors. Following recent energy trends leading to nearly historic export levels, by doing nothing the federal government would allow American producers and society to profit from light crude while not increasing environmental or security issues.[134] To maintain such oil sales, Congress need only preserve current levels of export licensing and exceptions for oil trading between the U.S. and countries like Canada.[135] In addition, domestic crude prices would probably continue at depressed levels, as exports would be restricted and thus not need to be sold at foreign market prices.[136]

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130. *See* BROWN ET AL., *supra* note 31, at 27 ("The most determinative means by which to accomplish this would arguably be the amendment or repeal of the current language in EPCA . . . ."); *see also id.* ("[I]t appears that BIS could not repeal the regulations entirely. As with all agencies, BIS cannot take any action beyond the scope of the statutory authority granted to it by Congress.").

131. *See id.* ("The President could reverse those directives via another executive order, or opt to not issue a new order when the current one expires."); Plumer, *supra* note 54 ("[T]he American Petroleum Institute would prefer a legislative fix than 'ad hoc' tweaks by the Commerce Department that could be easily reversed.").

132. *See* BORDOFF, *supra* note 119, at 20. *But cf.* Plumer, *supra* note 54 ("[A] re-examination is steadily getting more and more support in Congress.").

133. *See* Ladislaw, *supra* note 57 (listing the status quo as a possibility for solving the export ban issue).

134. *See U.S. Exports of Crude Oil (Thousand Barrels per Day)*, U.S. ENERGY INFO. ADMIN. (Oct. 30, 2015), http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=MCREXUS2&f=M (showing the variations in U.S. crude oil exports from 1920–2015).

135. *See* Ladislaw, *supra* note 57. For information on current licensing levels, see Memorandum on Export Licenses, *supra* note 30, at 1 ("According to BIS data supplied to your office, between fiscal year 2008 (10/2007–9/2008) and August 2013, 338 export license applications have been received by BIS of which 304 have been approved."); *see also supra* Part I.B (exploring multiple EPCA exceptions providing for the sale of U.S. oil abroad).

136. *See* Ladislaw, *supra* note 57 ("In the near term, U.S. crude prices will likely stay depressed . . . ."); *see also* Letter from Robert Menendez to Barack Obama, *supra* note 9 ("[W]hy would we want to export oil and raise American

Although the status quo does not exacerbate environmental or security issues and allows for some oil exports, this solution does not truly solve the export issue. Maintaining present export levels and regulations cultivates the export issue instead of ending it by neither favoring a debating side nor creating a definite compromise. As illustrated earlier, increased oil production causes interested parties to clamor for limiting or expanding the use of this now abundant resource, not preserving the status quo.[137] Therefore, in place of inaction that provides no clear answer for how to deal with increased American oil supplies, the federal government should definitively act to solve this export issue.

III. PROPOSING A SOLUTION TO THE EXPORT ISSUE

The continuance and gravity of the problems associated with the EPCA export ban generate the need for a considered solution. Part III provides such a resolution, balancing both the desires of American oil producers and other export advocates with the concerns of export detractors such as environmentalists or isolationists. Section A presents a solution advocating for the President to designate light crude oil exports to be within the national interest and thus allowed. Section B highlights the benefits of a presidential national interest determination. Section C provides countermeasures against negative environmental and technological effects of increasing exports by requiring exporters to meet fixed funding levels for renewable energy projects and environmental sustainability standards.

A. PROPOSED EPCA EXPORT ISSUE SOLUTION

In order to effectively end the export issue, this Note proposes an executive-based solution providing for increased oil exports coupled with improved guidelines counteracting negative export effects. Specifically, the President should declare that the EPCA export ban runs counter to the national interest. As this declaration would increase exports, the President should correspondingly set further licensing rules requiring exporters to supply fixed funding levels for renewable energy projects and meet environmental sustainability standards. Additionally, to minimize U.S. security risks, the federal government should support the modification or creation of American refineries to process light crude for domestic benefit.

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oil prices to match the world's oil price?").

137. For analysis of the debating sides' arguments, see *supra* Part II.

Overall, this solution exploits increased and domestically unusable American oil supplies through flexible and timely executive action. Yet, this resolution also fulfills the EPCA's security goals while ensuring the development of sustainable energy resources and practices needed for fuel and industry once U.S. oil sources dwindle.

B. THE BENEFITS OF AN EXECUTIVE NATIONAL INTEREST DETERMINATION

An executive determination finding that exports fall within the national interest proves to be the best solution to the EPCA export ban issue for multiple reasons. First, the EPCA and other U.S. laws explicitly recognize that the President may exempt oil exports from the ban with few limits. Second, a national interest determination offers distinct advantages over other solutions, including expediency and past successes. Third, this determination readily meets EPCA requirements and purposes. With these advantages in hand, an executive national interest determination presents the best option for putting the EPCA export issue to rest.

As previously mentioned, under the EPCA the President holds the power to exempt certain oil exports from prohibition if he determines them "to be consistent with the national interest."[138] Within the EPCA and subsequent U.S. law, few restrictions apply to this determinative power. For instance, the EPCA states only that the President must "take into account" the need to maintain current trade levels and foreign relations before changing export amounts.[139] Other laws require a national interest determination to consider whether exports diminish the quantity or quality of oil available for domestic uses, affect oil prices, or result in adverse environmental effects.[140] Fulfilling these minimal and accommodating standards, executives previously used national interest determinations to authorize EPCA exports from Alaska and California.[141]

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138. Energy Policy and Conservation Act, 42 U.S.C. § 6212(b)(1) (2012).

139. *Id.* §§ 6212(d)(1)–(3).

140. *E.g.*, 30 U.S.C. §§ 185(s)(1)(A)–(C) (2012) (listing factors the President must consider).

141. BORDOFF, *supra* note 119, at 23 (briefly discussing presidential power to lift the export ban); *Clinton Lifts Ban on Alaskan Oil Exports*, *supra* note 48 (chronicling President Clinton's lifting of the Alaskan oil ban in 1996); Irwin, *supra* note 70 ("A national interest determination has been made in the past for certain exceptions, including exports from Alaska's Cook Inlet, and to Canada, or exports of Alaska North Slope and California heavy crude . . . .").

Presidential action presents many benefits that congressional avenues do not for changing the EPCA. The greatest advantage that an executive determination of national interest has over congressional action remains that it presents a quicker and more focused way to change the law than the burdensome legislative process.[142] Such expedient process fits within the purposes of the EPCA, which allows the President to update export regulations in quick response to any situation that arises.[143] The advantage of a national interest determination in place of another form of executive action lies in its previously proven viability. Previous national interest determinations allowed for greater amounts of exports from production areas such as the Outer Continental Shelf.[144] Finally, EPCA and export regulation goals promote the changing of the regulations to reflect transformations in national and global realities.[145] In response to the recent oil boom,[146] an executive interpretation of the national interest favoring increased exports reflects new energy realities within the U.S. and thus fulfills the rationale behind the EPCA.[147]

Due to the determinative flexibility infused within EPCA export regulations, the executive easily meets the requirements

142. *See supra* Part III.A. BIS determinations also offer case-by-case review in order to provide focused export decisions. Export Administration Regulation, 15 C.F.R. § 754.2(b)(2) (2015); BROWN ET AL., *supra* note 31, at 27 ("BIS could approve more applications to export crude oil pursuant to the 'case by case' review authorized by 15 C.F.R. §754.2(b)(2).").

143. 42 U.S.C. § 6212(b) (authorizing presidential determination power); Am. Fed'n of Gov't Emps. v. Carmen, 669 F.2d 815, 823 (D.C. Cir. 1981) (discussing the response powers of the President under the EPCA).

144. *See, e.g.*, Outer Continental Shelf Lands Act, 43 U.S.C. § 1354(b) (2012) ("[T]he President shall make and publish an express finding that such exports . . . are in the national interest."); Irwin, *supra* note 70 ("A national interest determination has been made in the past for certain exceptions, including exports from Alaska's Cook Inlet, and to Canada, or exports of Alaska North Slope and California heavy crude.").

145. *Mission Statement*, *supra* note 25 ("Bureau activities and regulations can only be justified, and should only be maintained, to the extent they reflect current global realities. Laws, regulations, or practices that do not take into account these realities—and that do not have sufficient flexibility to allow for adaptation in response to future changes—ultimately harm national security . . . ."); *see also* Ford, *supra* note 1 (discussing the intentions of the EPCA to eventually deregulate oil exports).

146. For information on the energy situation facing the U.S., see *supra* Part I.B.

147. *See Mission Statement*, *supra* note 25; *see also* 121 CONG. REC. 9692 (1975) (statement of Sen. Bellmon) ("The President does not need power extending over 2 years in the future to control prices and allocate petroleum products, allocate material and prohibit exports.").

of this standard when opening American exports in response to the oil boom.[148] Such ease consequently makes this solution a better option for allowing more exports than previously mentioned alternatives. First, raising present export levels in order to utilize domestically unusable crude oil does not affect current trade levels.[149] As the oil boom raises domestic supplies, substantial oil supplies for both foreign relation purposes and increased exports remain.[150]

Second, as previously mentioned, light crude constitutes much of the extra oil being produced.[151] With light crude being largely unusable for domestic purposes,[152] allowing this product to be exported would not diminish the quality or quantity of domestically needed oil. Finally, even though increased exports affect oil prices, these effects likely lead to lower oil prices by causing a saturation of the global oil market.[153] Exporting oil boom products does necessitate raising depreciated domestic oil prices, initially costing American society.[154] Yet, as the U.S. imports considerable amounts of foreign oil, the savings from saturating the market may outweigh initial costs over time.[155]

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148. *See* Ford, *supra* note 1 ("I fully intend to use the flexibility which is granted to me by this legislation to expedite the decontrol of crude oil in order to increase domestic production."); Schor, *supra* note 10.

149. For the text of that regulation, see 42 U.S.C §§ 6212(d)(1)–(3) (2012).

150. *Compare Crude Oil Production*, U.S. ENERGY INFO. ADMIN. (Oct. 30, 2015), http://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbblpd_a.htm (8.713 million barrels of oil produced per day in the U.S. in 2014), *with Exports by Destination*, U.S. ENERGY INFO. ADMIN. (Oct. 30, 2015), http://www.eia.gov/dnav/pet/pet_move_expc_a_EPC0_EEX_mbblpd_a.htm (331,000 barrels of oil exported to Canada per day in 2014).

151. *See supra* Part I.B (analyzing the type of oil produced during the recent oil boom).

152. *See* Clayton, *supra* note 41 ("Much of the country's rapidly growing production of light crude oil, including lease condensates (i.e., ultra-light oil), comes from either areas where refiners are not interested in or able to process it . . . .").

153. For a discussion of oil price changes, see Snyder, *supra* note 8; *see also* Clayton, *supra* note 41.

154. *See* Schor, *supra* note 10 ("[L]ifting the ban . . . would raise gasoline prices for U.S. families . . . ."); Snyder, *supra* note 8 ("Keeping more oil in the U.S. would inevitably lower gasoline costs . . . .").

155. *See U.S. Imports by Country of Origin*, U.S. ENERGY INFO. ADMIN. (Oct. 30, 2015), http://www.eia.gov/dnav/pet/pet_move_impcus_a2_nus_ep00_im0_mbblpd_a.htm (showing the U.S. imported 9.859 million barrels of oil per day in 2013). The loss of investment in oil production due to artificially low oil prices making production unprofitable presents an additional argument against such practices. Clayton, *supra* note 41 ("These artificially low prices slow additional U.S. crude oil production."); Ladislaw, *supra* note 57 ("[T]he export ban risks jeopardizing production by artificially lowering prices in the

A presidential national interest determination includes the same disadvantages of executive branch action as previously discussed with BIS determinations. A presidential act likely holds less weight than congressional action due to its lack of democratic process.[156] Also, presidential actions tend to be limited in length and easily overturned by a subsequent President.[157] However, with oil production reaching near historical heights, producers need immediate action in order to capitalize on this oil boom instead of lengthy legislative action or government inaction.[158] Thus, the expediency, legality, and proven effectiveness of a presidential determination provide a more immediate benefit than waiting for congressional action.[159] Also, such a determination's straightforward ability to meet EPCA exception requirements makes it an ideal choice for increasing oil exports.[160] Finally, the EPCA explicitly gives the President power to act, distinguishing this avenue from simple executive orders.[161] Ultimately, a final legislative solution should be sought due to its more substantial and irreversible nature, but an executive determination fills the determination void until such a solution is reached.[162]

C. ADDRESSING INCREASED EXPORT SHORTFALLS

Unlike previously submitted answers to the EPCA export issue, this proposed solution recognizes and mitigates the negative side effects of increasing U.S. oil exports. For instance, raising export levels due to the oil boom, no matter the amount,

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United States. Lower prices will reduce the investment in new wells and reduce the growth . . . of future production . . . .").

156. *See supra* Part III.A (comparing executive to legislative action).

157. *Supra* Part III.A.

158. *See supra* Part I.B (analyzing the call for action by oil producers after the rise in oil production).

159. *See* Am. Fed'n of Gov't Emps. v. Carmen, 669 F.2d 815, 823 (D.C. Cir. 1981) ("[T]he EPCA empowers the President 'to respond quickly to energy supply interruptions or other energy crises.'" (quoting Brief for Appellee at 28, *id.* (No. 81-1244))).

160. *See* Ford, *supra* note 1; Schor, *supra* note 10.

161. *See* 42 U.S.C. § 6212(a)(1) (2012) (allowing the President to restrict exports of oil as deemed appropriate and necessary).

162. A national interest determination must also follow procedural requirements. BROWN ET AL., *supra* note 31, at 27 ("In order to change the pertinent regulations, BIS would have to follow the rulemaking procedures under the Administrative Procedure Act."); *id.* ("As with all agencies, BIS cannot take any action beyond the scope of the statutory authority granted to it by Congress.").

increases the chances of environmental risks.[163] Yet, this solution proves unique as it recognizes and addresses these environmental issues. The federal government ensures that increased oil production does not stunt renewable energy development by requiring exporters to fund renewable energy technologies, with funding levels based on the amount of oil the producer exported (the proportion to be set by Congress).[164]

Renewable energy funding requirements support the creation of a parallel renewable energy industry growing each time that a producer desires to begin or increase oil exports. Although increased oil supplies may fulfill U.S. energy needs for the immediate future, the unpredictable and polluted nature of fracking necessitates a clean energy alternative.[165] The U.S. gains the opportunity to provide such an alternative, and thus aid the environment, through substantial funding requirements for the exporters making increased export profits at global market prices.[166] Such requirements may lead to backlash from both export supporters and detractors for being too restrictive or too weak of a limitation on exports, but they present a compromising position within the EPCA issue by changing both exports and renewable energy levels from the status quo. Also, congressional participation in the setting of funding levels allows for the debating sides to present their cases for higher or lower funding amounts.

Along with support for renewable energies, under this solution exporters must also meet federally set environmental sustainability standards. Monitored by the executive branch, violations of these standards will result in significant sanctions

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163. *See, e.g.*, Jillian L. Genaw, *Offshore Oil Drilling in the United States and the Expansion of Cuba's Oil Program: A Discussion of Environmental Policy*, 20 IND. INT'L & COMP. L. REV. 47, 60 (2010) ("Environmentalists argue that we cannot allow offshore drilling near our coastlines because it would be detrimental to coastal ecosystems and tourism."); Schor, *supra* note 10 ("[A]ll of the increased production coming from controversial fracking techniques . . . would create bigger environmental headaches.").

164. Members of the U.S. Congress attempted to balance increased offshore oil production with environmental provisions such as tax credits for renewable energy. This attempt died in the House of Representatives. Comprehensive American Energy Security and Consumer Protection Act, H.R. 6899, 110th Cong. (2008).

165. *See* STOCKMAN, *supra* note 64, at 10.

166. *See* Genaw, *supra* note 163, at 71 ("[T]he ban can be lifted and offshore drilling can be coupled with aggressive renewable energy policies or specific types of drilling technology can be required. For example, the OMB recommends that Congress extend and improve existing renewable energy tax credits in addition to lifting the OCS Moratorium." (footnote omitted)).

for the producers.[167] In order to ensure the effectiveness of these fines, the penalty amount must be substantial to the producer.[168] Also, with weak sanctions previously proving to be a feeble deterrent, combining extensive penalties with renewable energy funding likely constitutes a larger portion of producer profits and thus may instigate better environmental practices.[169] Other, more environmentally friendly nations successfully produce significant oil without great issue by utilizing similarly strong standards.[170] Through the growth of renewable energy and strong sustainability standards, this solution counteracts the negative effects of enlarged oil production and thus supports increasing exports.

Building upon these environmental assurances, requiring federal support for the modification or creation of U.S. refineries fulfills the EPCA's energy security goal by increasing American light crude refining capacity while allowing increased exports.[171] This refining capacity reallocates previously unusable light crude for domestic purposes, solving the issue of exporting oil capable of fulfilling U.S. needs.[172] Nevertheless, with light crude production continuing to rise and refinery modification or building needing time for completion,[173] producers presently

167. *See, e.g.*, *id.* at 53 ("[I]n August of 2008, the EPA slapped Exxon Mobil with a 2.64 million dollar penalty after Exxon ignored a polychlorinated biphenyl ("PCB") leak for two years.").

168. *Id.* at 54 (discussing how experts find small sanction amounts, such as one percent of the producer's quarterly profits, to be too low).

169. *Id.* at 73 ("[B]ecause oil companies often turn such great profits, imposing a fine on the companies may not serve as a strong enough deterrent.").

170. For an outline of the Norwegian environmental regulatory regime, see generally DAG ERLEND HENRIKSEN, MANAGING ENVIRONMENTAL RISKS IN THE NORWEGIAN OFFSHORE OIL AND GAS BUSINESS 13–24 (2012), http://www.riela.org/pdfs/rio_2012/10-Dag%20Henriksen.pdf. *See* Genaw, *supra* note 163, at 70 ("Other nations, such as Canada and Norway, known for being far more environmentally friendly in comparison to the United States, allow offshore drilling."); Frank T. Manheim, *U.S. Offshore Oil Industry: New Perspectives on an Old Conflict*, GEOTIMES (Dec. 2004), http://www.geotimes.org/dec04/feature_Norway.html ("Norway has evolved toward integrated systems that foster continuously increasing standards and efficiency and an environmentally aware public.").

171. *See* Ford, *supra* note 1; *see also* S. 622, 94th Cong. § 201(c) (as passed by Senate, Apr. 10, 1975) ("The Congress hereby declares that it is in the national interest for . . . the Federal Government to foster and promote comprehensive national fuels and energy conservation programs . . . to better assure adequate supplies of energy to consumers . . . .").

172. For analysis of this issue, see *supra* Part II.B.

173. *See supra* Part I.B (discussing the rise in U.S. light crude oil production); *supra* Part II.A (analyzing the potential for exports of currently unusable light crude).

hold the opportunity to capitalize on increased exports before the diversion of oil to American refining. Ultimately, due to the prospect of greater oil sales to foreign and U.S. refineries, enlarging both exports and domestic refining capacity likely leads to increased oil production.[174] Consequently, this oil boom may provide sufficient product for additional exports and for U.S. needs, fulfilling the desires of producers to increase profits and the government's need to ensure oil security.

Overall, this executive-based solution presents a reasonable compromise between the arguments in favor of lifting the EPCA export ban and the fears of such an action's consequences. By determining extra exports to be within the national interest, the executive utilizes an expedient and proven option for increasing U.S. export levels that also successfully passes regulatory requirements. However, with required renewable energy funding and strict adherence to sustainability standards, the federal government counteracts many of the increased environmental effects from increases in oil exports and oil production. Also, through support for increased American refining capacity, this solution both ensures American oil security by utilizing previously unusable oil while still allowing for exports from these new oil supplies. Therefore, although executive action poses some drawbacks, the federal government should utilize this solution, as it expediently solves the export issue and presents an evenhanded approach.

CONCLUSION

After the 1973 Arab oil embargo significantly threatened U.S. energy security, the federal government passed the Energy Policy and Conservation Act. This law, seen as a necessary defense of American oil supplies, effectively banned U.S. oil exports without specific approval from the executive or legislative branches. Due to the recent and substantial rise in domestic production of light crude oil via technological innovations, the issue arose whether the federal government should lift this ex-

174. *See* Ford, *supra* note 1 (stating that the deregulation of oil leads to increased production); Schor, *supra* note 10 ("Because lifting the ban would cause U.S. benchmark oil prices to rise, companies likely would have a greater incentive to increase production . . . ." (quoting Press Release, Public Citizen, Retaining Ban on Crude Exports Good for Consumers, Climate (Jan. 6, 2014), https://www.citizen.org/pressroom/pressroomredirect.cfm?ID=4052)). *But see* STOCKMAN, *supra* note 64, at 9 (arguing that oil boom production may not be sustainable).

port ban. Export proponents argue in favor of lifting the ban due to the amount of oil produced, its domestically unusable nature, and the amount of previously allowed exports. EPCA export ban supporters point to U.S. energy security, potential domestic uses, and environmental issues as reasons to maintain the ban's boundaries. Such differences in positions necessitate a balanced solution appeasing both oil producers and export detractors.

This Note proposes that the President determine new oil exports to be within the national interest, legally allowing increased exports as they would not adversely affect the quality, quantity, or price of U.S. oil. However, this solution requires exporters to meet fixed funding levels for renewable energy projects and environmental sustainability requirements to counteract any negative ecological effects of increased oil production and trade. Also, requiring federal support for the extension of U.S. refining capacity improves the utilization of oil for national purposes. While other executive or congressional alternatives may provide more significant and permanent effects on export capabilities, the flexibility, expediency, and prior effectiveness of this national interest determination make it a more reasonable solution. Consequently, with continued growth in U.S. oil production necessitating federal action, an executive determination increasing exports (if meeting additional environmental standards) proves to be the most effective resolution to the EPCA export ban issue.