

June 27, 2006

Commanding Officer
U.S. Coast Guard Sector Southeastern New England
20 Risho Avenue
East Providence, RI 02914-1208

Re: Comments of The Coalition for Buzzards Bay to the United States Coast Guard in Response to the March 29, 2006 Notice of Proposed Rulemaking: Regulated Navigation Area; Buzzards Bay, MA; Navigable Waterways with the First Coast Guard District Docket No. CGD01-04-133

Please accept the following as The Coalition for Buzzards Bay's ("Coalition's") comments to the United States Coast Guard's ("Coast Guard's") Notice of Proposed Rulemaking in Buzzards Bay. Named the official volunteer coordinator for oil spill response in 2001 by the Commonwealth of Massachusetts, the Coalition became intimately familiar with the requirements and responsibility of that role on April 27, 2003, when the Bouchard-120 emptied an estimated 98,000 gallons of No. 6 oil into Buzzards Bay. It is in the wake of this environmental and economic damage that the Coalition comments in consternation at the Coast Guard's failed attempt to provide further protections to this vulnerable Bay. It is our view that the Coast Guard must reconsider their proposal and formulate strong and meaningful protections which will actually reduce the risk of oil spills in the future.

The Coalition for Buzzards Bay is a nonprofit membership organization dedicated to the restoration and protection of Buzzards Bay. We represent more than 4,700 individuals, families, organizations, and businesses in Southeastern Massachusetts. The Coalition possesses unique knowledge and expertise with respect to the geographic, navigational, natural resource, economic and other characteristics of Buzzards Bay, including oil spill response training. Unfortunately, after April 27, 2003, we understand now more than ever the necessity of oil spill prevention rather than accepting the significant negative effects after a spill occurs. Beyond the environmental devastation, the economic damage, and the challenges of the cleanup operation, which are ongoing more than three years later, the Bouchard-120 Oil Spill has clarified how threatened this

Congressionally-designated Estuary of National Significance is by oil transport in the Bay.

As discussed in our comments to you on December 23, 2004 in response to the Advanced Notice of Proposed Rulemaking, in the aftermath of the Bouchard-120 spill, the Coalition successfully undertook to expand our base of knowledge with respect to all aspects of oil transport through the Bay. This included a review of the history of spills in the Bay, substantial research regarding oil tug/barge safety measures that have proven successful elsewhere, and active communication with individuals and companies who are involved in, or affected by, the transport of oil through Buzzards Bay. Among other things, our staff conferred with government officials and environmental groups in other states to better understand state-level vessel safety requirements (including escort tug requirements for certain waterways), and we met with local marine pilots, tug operators, local first-responders, government officials, shellfishermen, maritime law specialists and scientists. We also extensively reviewed scientific papers regarding the persistence of oil compounds in the environment, federal and state laws and regulations pertaining to vessel safety, and papers pertaining to vessel safety statistics and regulation. The Coalition refers you to our December 23, 2004, comments for a more extensive discussion of those findings.

It is against this qualified background that we offer the following comments in response to the above-referenced Notice of Proposed Rulemaking (NPRM). Meaningful rulemaking in Buzzards Bay will adopt the following safety requirements: (1) an escort tug requirement for **all** barges carrying oil in bulk as cargo (including both single and double hull barges); (2) a formally-designated mandatory vessel route; (3) pilotage requirements, conforming to the standards adopted by Massachusetts state pilots; and (4) increased manning requirements for all vessels. Both historical and current events have proven that special protections are needed for Buzzards Bay.

Redundant Layers of Special Protections Are Required For Buzzards Bay.

Only redundant layers of safety and protection will reduce the likelihood of another accident resulting in the discharge or release of oil or hazardous material into Buzzards Bay. No one safety measure exists to provide significant risk reduction for the Bay.

If any area of our nation's waters has demonstrated that it needs multiple special protections, it is Buzzards Bay. Buzzards Bay was designated by the United States Congress in 1985 as an "Estuary of National Significance". The Bay was further designated by the United States Environmental Protection Agency as a "No Discharge Area" in 2000, and is a state-designated Ocean Sanctuary as well as an Area of Special Interest.

The Bay's shoreline is characterized by a diverse variety of estuarine environments, including ecologically sensitive salt marshes, tidal flats, sandy recreational beaches, and rocky shoals with high-energy wave action. The Bay is also home to a diverse community of wildlife, including approximately half of the remaining global population of

the federally endangered roseate tern (a species that has been, and continues to be, the subject of extensive state and federal restoration efforts at a cost in the millions of dollars), and several other threatened and endangered species including the piping plover and tiger beetle. Additionally, the Bay's extensive shellfish beds collectively comprise a significant ecological, recreational and economic resource.

The Bay is 28 miles long, averages only 8 miles in width, and has a mean depth of only 36 feet. Both ends of the bay are marked with dangerous ledges, reefs and currents – the Cape Cod Canal and Cleveland Ledge at the northeast corner and the dangerous 'Sow and Pigs' and 'Hens and Chickens' reefs flanking the southwest entrance near Rhode Island. The Coast Guard and others have long cautioned that Buzzards Bay is too small, too shallow, and too narrow to effectively contain a spill at sea. As we were reminded by the 2003 Bouchard-120 incident, an oil spill in Buzzards Bay is going to hit shore and inflict environmental and economic damage.

Despite its extraordinary environmental sensitivity, Buzzards Bay has become a major thoroughfare for oil-laden barges due to its location adjacent to the Cape Cod Canal and the fact that its waters are far more protected than the exposed open-ocean route off Cape Cod. The Bay therefore hosts a significant volume of oil transported through its waters each year. For example, in 2002, there were 1,237 tanker barge trips through the Cape Cod Canal carrying approximately 2 *billion* gallons of petroleum products, with additional deliveries made to New Bedford.

Given this large volume of oil being transported in barges through its waters, the presence of myriad navigational hazards, and the relatively minimal regulation applicable to tug/barge units (as compared to oil tankers, for example), it is perhaps not surprising that Buzzards Bay has been the site of several catastrophic oil spills and many, many more near-miss groundings. By its own admission in the Coast Guard's notice of proposed rulemaking, more than 400,000 gallons of oil have been released in Buzzards Bay over the last thirty years. The Coalition challenges the Coast Guard to identify a similarly regulated Estuary of National Significance that shares Buzzards Bay's geographic, ecological, and economic significance while at the same time plays host to more than 2 billion gallons of oil a year. Simply put, Buzzards Bay bears a risk of significant loss and thus requires multiple and extensive safety measures.

The Buzzards Bay PAWSA Proceedings Reflect the Consensus for Reform and Redundancy.

Recognition of the need for multiple vessel safety regulations in Buzzards Bay is consistent with the findings of the Ports and Waterways Safety Assessment (PAWSA) for Buzzards Bay that was conducted in 2003 after the Bouchard-120 spill. The report resulting from the PAWSA proceedings indicated that "the risk for oil or hazardous material discharge in Buzzards Bay is relatively high," and that one viable method of reducing this risk would be to establish an escort tug requirement. See Ports and Waterways Safety Assessment Workshop Report for Buzzards Bay, MA (BB PAWSA Report), 9-10 September 2003, at p. 12. It is of significant importance that the

recommendation of an escort tug was **not** limited to single hull barges. Another recommendation was for the establishment of a Recommended Vessel Route for the Bay. BB PAWSA Report at pp. 19, 26. The PAWSA proceedings also brought forth recommendations – from sources including the Coast Guard and industry – that pilotage requirements should be enhanced, and that larger crew manning levels should be set. BB PAWSA Report at pp. 12, 29. It is worth noting that these recommendations came from proceedings where environmental, recreational, and fishing interests were *under-*represented.

The PAWSA recommendations must all be implemented together in order to achieve meaningful regulations.

Massachusetts Appropriately Undertook Expeditious Oil Spill Prevention Reforms.

The Commonwealth of Massachusetts immediately recognized the need to implement a comprehensive law in 2004, after the Bouchard-120 incident in order to prevent future oil spills. The law included significant reforms, including an escort tug requirement and enhanced pilotage and manning requirements. These reforms also notably have enjoyed – and continue to enjoy – widespread support from a broad coalition of supporters, including local, state and federal government officials, environmental groups, owners and operators of commercial and recreational marine vessels, fishermen, chambers of commerce, scientists, and coastal residents. We encourage the Coast Guard to look closely at the provisions of that law as it is those that will effect meaningful regulation for Buzzards Bay.

The Coast Guard Fails to Provide Meaningful Risk Reduction in Buzzards Bay by Requiring Only Single Hull Barges to Obtain an Escort Tug.

The Coast Guard proposes that single hull barges carrying 5,000 or more barrels of oil shall be accompanied by an escort tug, implying that double hulls without an escort tug provide the necessary safety assurances. However, reality dictates this is false and sadly, this proposed rule does little to improve the safety of oil movement throughout the Bay. While double hulls may reduce the risk of a release of cargo, they do not alone provide the level of protection needed to protect this nationally recognized natural resource. A double hull together with an escort tug, local pilot, sufficient manning and mandatory vessel route requirement provides the protection the Bay needs and communities deserve.

The Coast Guard states in its notice of proposed rulemaking that the root cause of many maritime accidents are attributed to human error and identify tug escorts, not double hulls, as a method to reduce the risk associated with this cause. In fact, regardless if the barge is equipped with a single or a double hull, the amount of incidents due to human error do not change. A primary tug boat with inadequate manning and training, without an escort, is just as likely to make an error with a double

hull as a single hull, although the chance of release of product may be reduced in a double hull. However, the Coast Guard rules should be formulated in such a way as to reduce incidents of human error in addition to reducing the risk of a spill. An escort tug, local pilot, mandatory vessel route and increased manning for all barges reduce the incidence of human error.

It is important to report a recent incident where a new double hull failed to provide any protection from a substantial collision and resulted in a significant spill. On November 11, 2005, the double hull barge DBL152, owned and operated by K-Sea Transportation, traveled outside an established traffic route, and struck a submerged oil platform in the Gulf of Mexico, 30 miles off of Port Arthur, Texas. Three million gallons of heavy fuel oil was spilled into the water and little recovered. The barge later capsized further hampering recovery efforts. Arguably, if an escort tug and pilot had been present, the double hull would not have left the channel thereby avoiding this ecological disaster. This tragedy clearly exemplifies the need for redundant layers of protections. Furthermore, no evidence has ever been presented indicating that the significant breach sustained by the Bouchard-120 on April 27, 2003 would have been prevented if it had been a double hull. However, we do know that if a tug escort had been on hand, and additional qualified crew had been present, the barge would not have left the navigation channel and the grounding would have been avoided.

Currently, sufficient tugs are available to meet the demand for escort services for both single and double hull barge traffic through the Bay. The Commonwealth of Massachusetts has required as of January 1, 2005, that all barges, both double and single hulls, carrying more than 6,000 barrels of oil through the Bay must employ an escort tug. The Coalition is unaware of any tug escort shortage where transportation companies couldn't meet this requirement.

Clearly, escort tugs for single hull barges alone will not provide meaningful spill risk reduction in Buzzards Bay. Given the navigational risks, the extraordinary sensitivity of the resident natural resources, and the Bay's history of oil spills, there is a compelling and obvious need for escort tugs to accompany every vessel transporting oil in bulk as cargo through the Bay.

The United States Coast Guard's Refusal to Mandate Vessel Routes for Buzzards Bay Lacks Common Sense.

The Coast Guard states in its NPRM, in order to allow maximum operating flexibility to meet differing conditions and situations, they will not make the recommended vessel routes depicted on the National Oceanic and Atmospheric Administration navigational charts mandatory. However, mandating a navigation route through Buzzards Bay is an easy yet significant regulation which yields extensive environmental safety benefits.

As mentioned previously, Buzzards Bay is littered with navigational hazards. An identified navigation route already exists on the NOAA charts and was developed through the thoughtful work of area pilots and the Coast Guard. This route properly

identifies the deepest and safest parts of the Bay, avoiding dangerous obstructions and clearly indicating to other vessels in Buzzards Bay where they can expect to encounter deeper draft vessels. However, even now the Coast Guard fails to take even this small easy step.

Barge owners frequently deviate from a recommended vessel route in order to cut transportation corners and save time. Such gambles cannot be allowed in an estuary with so much to lose. For this reason, in addition to the Bay's extensive history of oil spills due to navigation outside the marked channel, the Coast Guard cannot leave such blind discretion to the master. Obviously, an exception must be made for reasonable deviations from a mandatory navigation route to allow for matter of safety, (i.e. in order to avoid imminent navigational hazards). However, the Coast Guard must hold vessels accountable for deviations for other reasons.

A mandatory vessel route, together with a tug escort, increased manning, and a local pilot would have prevented the Bouchard-120 oil spill and probably others as well. If a mandatory navigation route with penalties for deviation had been in place, the mate may have been more sensitive to his position and not have been so cavalier with the Bay. Moreover, the K-Sea DBL152, a double hull, spilled three million gallons of oil into the Gulf of Mexico when it navigated outside of the designated navigation route and collided with a submerged object. It is obvious now more than ever that multiple regulatory protections are needed to insure the safe transport of oil.

Pilots Must Possess Extensive Local Experience and Knowledge in Order to Safely Navigate Through the Bay.

If any body of water deserves to have seasoned pilots with specific local experience on its waters, without exception, it is Buzzards Bay. The need for extraordinary caution in navigation is enhanced by the Bay's various imposing navigational hazards, with its entrances characterized by dangerous ledges, reefs and currents. As with escort tugs, there is widespread recognition within the maritime community that experienced, knowledgeable, pilots provide extraordinary safety benefits for oil-laden tug/barge units transiting sensitive waterways. A locally experienced pilot should be the only person allowed to guide hazardous cargoes through the Bay and other sensitive state waters.

The Coast Guard's proposed pilotage provision falls far short in addressing the challenges associated with safely navigating petroleum and hazardous waste through Buzzards Bay. Currently, the minimum requirements for piloting a tug and barge unit up to 10,000 GT, and carrying as much as 100,000 barrels of petroleum, is one round trip in the last five years, so long as at some point in their career they have a total of 12 round trips. See 46 CFR 10.713 and 15.812. The proposed rule in the NPRM changes these qualifications by requiring a pilot to obtain a federal first class pilot endorsement. This involves a written test, chart drawing test, proof of vessel handling ability, license for operating as a mate for the size of vessel being pilotage, and 12 round trips though the Bay with a transit at least once every five years. See 46 USC §8502(a).

However, despite the proposed rule's requirement of a federal pilot, it fails to actually require these pilots to be on board the towing vessel. Instead, the proposed rule requires that pilots "monitor" and "advise" from an escort tug for single hull barges only, leaving the real navigation to the non licensed crew members on the towing vessel for both single and double hull units. In the end; this proposed rule does nothing to improve navigation safety.

The Coalition suggests that the Coast Guard revisit this proposed rule and first consider incorporating the requirements of Massachusetts State Pilotage in order to achieve the best possible personnel qualifications. Those requirements include a pilot hold a masters unlimited license, document 24 roundtrips in the waterway in which the pilot would be operating, participate in an extensive apprentice program as well as hold the federal first class endorsement, the minimum proposed in these rules. In the alternative, a revised proposed rule could simply refer to the Massachusetts State pilotage requirements for Buzzards Bay similar to Alaska licensed pilots in Prince Williams Sound. Furthermore, enhanced pilotage requirements must apply to both single and double hulls to reduce the likelihood of human error.

Additionally, exemptions for pilots boarding the primary tug must be limited. It is understandable that the boarding of pilots is sometimes difficult at the mouth of Buzzards Bay due to high seas. However, this exemption should only be allowed until the vessel navigates into the more protective waters of Buzzards Bay or until the adverse conditions subside. In no case should the exemption be allowed for transiting the Bay.

Crew Requirements for Towing Vessels for ALL Tank Barges Must be Enhanced.

The Coast Guard's proposal to use a federally licensed pilot to improve the crew on towing vessels for single hull barges is an inadequate attempt to improve staffing levels. Additional manning must be applied to the tow vessels of both single and double hull barges in addition to a local pilot. Regulations in the towing vessel and tank barge industry are widely recognized as being inadequate and far inferior to regulation of oil tankers, and this is especially true with respect to manning requirements. The Coast Guard concurs with this assessment in the NPRM when it states that current crew requirements may be insufficient for the navigational demands associated with transiting Buzzards Bay.

Despite the Coast Guards recognition that crew requirements are inadequate, the presented solution does nothing to correct the problem. The current federal standard requires only two licensed officers on board coastal towing vessels. Here, the Coast Guards proposed solution actually fails to place any additional crew on the tow vessel. Rather, the proposed rule allows a federal pilot to monitor from an escort tug thereby leaving the status quo solidly in place.

In order to promulgate meaningful rules to improve the recognized inadequate crew requirements, additional crew members must be assigned directly to the towing vessels

with specific duties for which they are experienced and competent. For instance, the pilot's duties should be focused on directing and safely controlling the tug and barge (single and double) unit through the dangers of Buzzards Bay and not treated as crew supplement. The proposed rule should also incorporate a designated navigational watch; a person that has no other duties or responsibilities other than that of a lookout.

Clearly, if more personnel had been on board the Evening Star, more hands and eyes would have been available to help avert the Bouchard-120 tragedy. The Coalition requests that the Coast Guard consider mandating additional qualified crew members on the towing vessel while transiting Buzzards Bay.

Vessel Movement Reporting System Must Have Regulatory Penalties for Non-Compliance.

The Coalition supports the Coast Guard's efforts to establish a Vessel Movement Reporting System ("VMRS") within Buzzards Bay to monitor the movement of vessels. However, in order for this system to operate as intended, the Coast Guard must insure that these systems are turned on in each vessel, and make available penalties for those vessels which turn their systems off. The effectiveness of the VMRS will be greatly compromised if vessels capable of transmitting AIS data are not required to do so. In addition, the proposed rule indicates that the Coast Guard and U.S. Army Corps of Engineers will enter into a Memorandum of Understanding to delineate the functions and responsibilities of each agency operating the VMRS. The Coalition suggests that the Coast Guard include the Commonwealth of Massachusetts in this Memorandum, as the State will act as an important partner in implementing and insuring compliance.

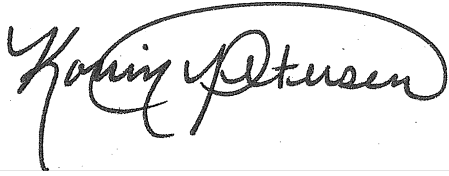
Conclusion

To conclude, only redundant layers of safety for both double and single hull tug/barge units provide meaningful reductions in the risk of future oil spills and anything less leaves Buzzards Bay and the surrounding communities open to harm. It is essential to reiterate here, as discussed above, that double hulls be included in all improved safety regulations as they are indeed subject to breach and should not be considered as a complete solution to preventing the discharge of oil or hazardous materials. Buzzards Bay reaches that level of significance and sensitivity to justify enhanced provisions like escort tugs for all barges (single and double hulled), a mandatory vessel route, enhanced pilotage requirements, and better crew requirements. No one safety measure exists to provide significant risk reduction for the Bay but together adequate protections can be had. In addition, the Coalition is not asking for a novel level of protection, as these particular measures discussed above have been employed and proven effective in other areas of the country.

We thank you for the opportunity to comment on these proposed rules, and encourage the Coast Guard to reconsider their proposed rules in light of these comments. We also encourage the Coast Guard to continue to cooperate with the Commonwealth of

Massachusetts – which has worked so diligently toward a goal the Coast Guard has always professed to share.

Sincerely,

Handwritten signature of Korrin N. Petersen in black ink.

Korrin N. Petersen, Esq.
Advocacy Director

Handwritten signature of Captain Benjamin Bryant in blue ink.

Captain Benjamin Bryant
Marine Policy Specialist