

Oil Spill Task Force

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December 23, 2004

Comments submitted by email to: EleBlanc@msoprov.uscg.mil

Re: Advance Notice of Proposed Rulemaking (ANPRM) to require additional navigation safety measures for Buzzards Bay

Dear Sir,

These comments are submitted on behalf of the Pacific States/British Columbia Oil Spill Task Force, whose membership includes the oil spill regulatory agencies of Alaska, British Columbia, Washington, Oregon, Hawaii, and California. For more information on the Task Force, we refer you to www.oilspilltaskforce.org. The Task Force member agencies appreciate this opportunity to comment on the ANPRM published October 26th regarding additional navigation safety measures for Buzzards Bay.

It is our position that *U.S. v Locke* (529 U.S. 89) clearly affirmed that when a State's exercise of its police power is challenged under the Supremacy Clause, the assumption is that the historic police powers of a State are not superseded by Federal law unless there is the clear and manifest purpose of Congress. A State is empowered to regulate its ports and waterways if based on the peculiarities of local waters that call for special precautionary measures. The Supreme Court, in *RAY vs. ARCO*, clearly stated that the individual states may legislate tug escorts as long as the CG has 1) not issued such a regulation; or 2) ruled that such a requirement would be unnecessary". The tug escort requirements set forth in Section 6 of Chapter 251 of the MA Acts of 2004 are indeed "peculiar" to Buzzards Bay, and as such are not automatically preempted under the Ports and Waterways Safety Act Title II. Regarding tug escorts, the Oil Pollution Act of 1990 (OPA 90) speaks only to tug escorts for Prince William Sound, Alaska, and Puget Sound, Washington.

It is our position that states should be allowed to adopt any state initiative, within the limits prescribed in *Locke*, designed to protect the living marine resources and the environment. Such initiatives need not be to the exclusion of federal concurrent jurisdiction, but, conversely, should not be summarily excluded because the federal government attempts to impose exclusive jurisdiction.

If the USGC mandates positive control for all tug escorts in Buzzard's Bay, as is being proposed, then an unintended consequence might be that the USCG or another entity of the Department of Homeland Security (DHS) will be the sole entity with the authority to implement and enforce this mandate. And, if positive control is mandated for tug escorts in all U.S. waters - the logical next step -- presumably the USCG and DHS are surely lacking sufficient personnel resources to adequately perform this mandate nationwide. In fact, a 1991 General Accounting Office report indicated the USCG had a shortage of inspectors. (See "*COAST GUARD: Inspection Program Improvements Are Underway To Help Detect Unsafe Tankers*"). States, on the other hand, are in a better position to assess local conditions, and properly craft and staff uniquely local mandates.

Federal agencies should be wary of committing to regulatory programs where viable state programs accomplish mutually desired objectives without impinging upon federal authority or interstate commerce. In the area of environmental protection, federal-state cooperation has been most effective in addressing issues where states have a compelling interest to protect their own natural resources, especially in areas of concurrent jurisdiction.

Thanking you for this opportunity to comment, I remain,

Sincerely yours,

Jean Cameron

Jean R. Cameron

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