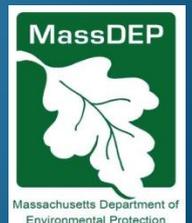


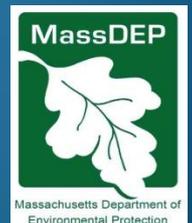
Mass OSA Advisory Committee

June 22, 2012



**Ben Ericson,
Assistant Commissioner, BWSC,
MassDEP**

Welcome & Introductions



Seth Schofield, Assistant Attorney
General

Christine Ayers, BWSC Chief Legal
Counsel, MassDEP

US 1st Circuit Appeals Court Ruling



Litigation Regarding MOSPRA and Coast Guard Rule for Buzzards Bay

- 2005: the U.S. (acting on behalf of the USCG) sues the Commonwealth, claiming that MOSPRA is unconstitutional
- 2006: the District Court rules that federal law “preempts” MOSPRA and enjoins its enforcement
- 2007: the Court of Appeals disagrees, in part, and reinstates MOSPRA’s tugboat escort , enhanced personnel, and certificate of financial assurance requirements.
- 2007: the U.S. again asks the District Court to enjoin MOSPRA’s escort and enhanced personnel requirements based on a 2007 USCG Final Rule for Buzzards Bay.
- 2008: the Commonwealth sues the U. S. claiming that the USCG violated the National Environmental Policy Act when it issued the Final Rule.

First Circuit Finds that the Coast Guard Failed to Comply with NEPA

2010: the District Court rules that the USCG violated NEPA, excuses the violation as harmless, and goes on to rule that the USCG's Final Rule invalidates MOSPRA's escort and personnel requirements

- "can only be described as an act of procedural hubris"; "supercilious denigration and dismissal of thoughtful environmental concerns."

2011: the Court of Appeals disagrees, ruling that the USCG's violation was not harmless.

- "shortcomings are troubling, but the sockdolager is that the [USCG] did not perform any environmental analysis at all. Indeed, it made no site-specific appraisal of the potential environmental effects of its action. It gave the matter the barest of glances and . . . made no "reasoned finding."

Oil Spill Act Requirements Reinstated

U.S. Court of Appeals lifts injunction that prevented implementation of;

- M.G.L. c. 21M, s. 4, Manning of towing vessels and barges
- M.G.L. c. 21M, s. 6, Tugboat Escort requirements in Buzzards Bay

District Court remands Final Rule to the USCG for compliance with NEPA

Manning Requirements (M.G.L. c. 21M, s 4)

Watch Requirements for Towing Vessels (M.G.L. c. 21M, s. 4(a)):

- All tow vessels towing or pushing a single-hulled tank barge carrying 6,000 or more barrels through Buzzards Bay and the Cape Cod Canal must have at least 1 licensed deck officer or tow vessel operator serving exclusively as a lookout with no other concurrent duties during the transit of Buzzards Bay and the Canal.
- All tow vessels towing or pushing a single-hulled tank barge carrying 6,000 or more barrels through Buzzards Bay and the Cape Cod Canal must have three licensed officers or tow vessel operators onboard during the transit of Buzzards Bay and the Canal.
- Tow vessel operators subject to M.G.L. c. 21M, s. 4 must (1) maintain a list of crew members onboard the towing vessel, and (2) log the name of each navigation watch member in the deck log as the member assumes his or her watch duties .

Crew Requirements for Barges (M.G.L. c. 21M, s. 4(b)).

- The crew on a single-hulled tank barge shall consist of 2 personnel, 1 of whom shall be a certified tanker-man under 46 CFR subpart 12.20 and shall be onboard the tank barge whenever the tank barge is in Buzzards Bay or the Cape Cod Canal.
- The crew requirement does not apply to single-hulled tank barges that are not equipped to accommodate personnel on board or if the barge is carrying less than 6,000 barrels of oil.

Tugboat Escort Requirements (M.G.L. c. 21M, s. 6)

Single and double hull tank vessels carrying 6,000 or more barrels of oil must hire a Tugboat Escort to enter or transit "areas of special interest" (M.G.L. c. 21M, s. 6(a))

"Areas of Special Interest" are defined as the waters of Buzzards Bay (including the Cape Cod Canal), Mount Hope Bay, and Vineyard Sound (M.G.L. c. 21M, s. 1)

Fact Sheet "Massachusetts Oil Spill Act Requirements for Tugboat Escorts" available at:

<http://www.mass.gov/dep/cleanup/oilsprep.htm>



State-funded Pilot (M.G.L. c. 21M, s. 9(b) and 314 CMR 19.05)

As of July 12, 2011, MassDEP will no longer pay for a State Pilot to accompany a vessel towing or pushing a double-hulled tank barge loaded with 6,000 or more barrels of oil through Buzzards Bay and the Cape Cod Canal, even if the tank vessel chooses to provide 24-hour advance notice of the vessel's intent to operate in Buzzards Bay and the Canal

M.G.L. c. 21M, s. 6 mandates that they hire their own Tugboat Escort, so no double hulled tank barge loaded with 6,000 or more barrels of oil will be "unaccompanied by a tugboat escort," as provided in M.G.L. c. 21M, s. 9(b).

24- Hour Advance Notification (M.G.L. c. 21M, s. 9(a) and 314 CMR 19.04)

The owner or operator of a tank vessel carrying 6,000 barrels or more of oil as cargo *may* continue to provide 24-hour advanced notice to MassDEP of its intent to operate the vessel in Buzzards Bay (Western boundary - the Buzzards Bay Tower at 41° 23.8 N, 71° 02.0 W; Eastern boundary - the Cape Cod Canal buoy at 41° 48.9 N; 70° 27.7 W)

**Richard F. Packard,
Oil Spill Prevention and Response
Program Manager, MassDEP**



MOSPRA Program Operational Changes



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MarineTraffic.com



SPTTE Provided Escort Tug

Operated under contract to MassDEP from
March 29, 2010 - July 11, 2011

Escorts Provided by McAllister Towing of
Narragansett Bay

228 double-hulled escorts conducted from Jan 1 – July
11, 2011

Cost of \$2.1 million

Transition from SPTE to Industry Provided Escort Tug

SPTE contract suspended on July 11, 2011

Tugboat Escort Certification form submitted within 30 days (314 CMR 19.03(1)(c))

Two (2) fully compliant tugboats McAllister Towing of Narragansett Bay (A.J.McAllister, Sabine)

Two (2) fully compliant tugboats Boston Towing and Transportation (Independence, Justice)

8 non compliant tugs certified for use by waiver authorization



Industry Provided Escort Tug

Became effective on July 12, 2011

244 single and double hulled tank barges escorted from July 12, –
December 31, 2011

Voluntary notifications to MEMA of intent to transit
continue to be made

Escort coordination and scheduling performed by
McAllister Towing

Escorts conducted by McAllister and Boston Towing
and Transportation

Escort Tug Waivers

M.G.L. c. 21M, §9(f) and (314 CMR 19.03 (1)(b)) MassDEP may authorize the use of a tugboat that does not meet the definition of a tugboat escort upon determination that exigent circumstances exist

6 waiver requests were approved from Jan 1, – July 11, 2011, (under SPTE contract) to use an escort tugboat that did not meet all specifications

24 waiver requests were approved from July 12, - December 31, 2011, (industry provided escorts) to use an escort tugboat that did not meet all of the specifications

Ongoing Program Implementation Activities



Massachusetts Department of Environmental Protection

Oil Spill Equipment

76 spill trailers provided to coastal communities and
MassDEP regional offices

2000' of 36" boom stored at MMA and New Bedford
Harbor

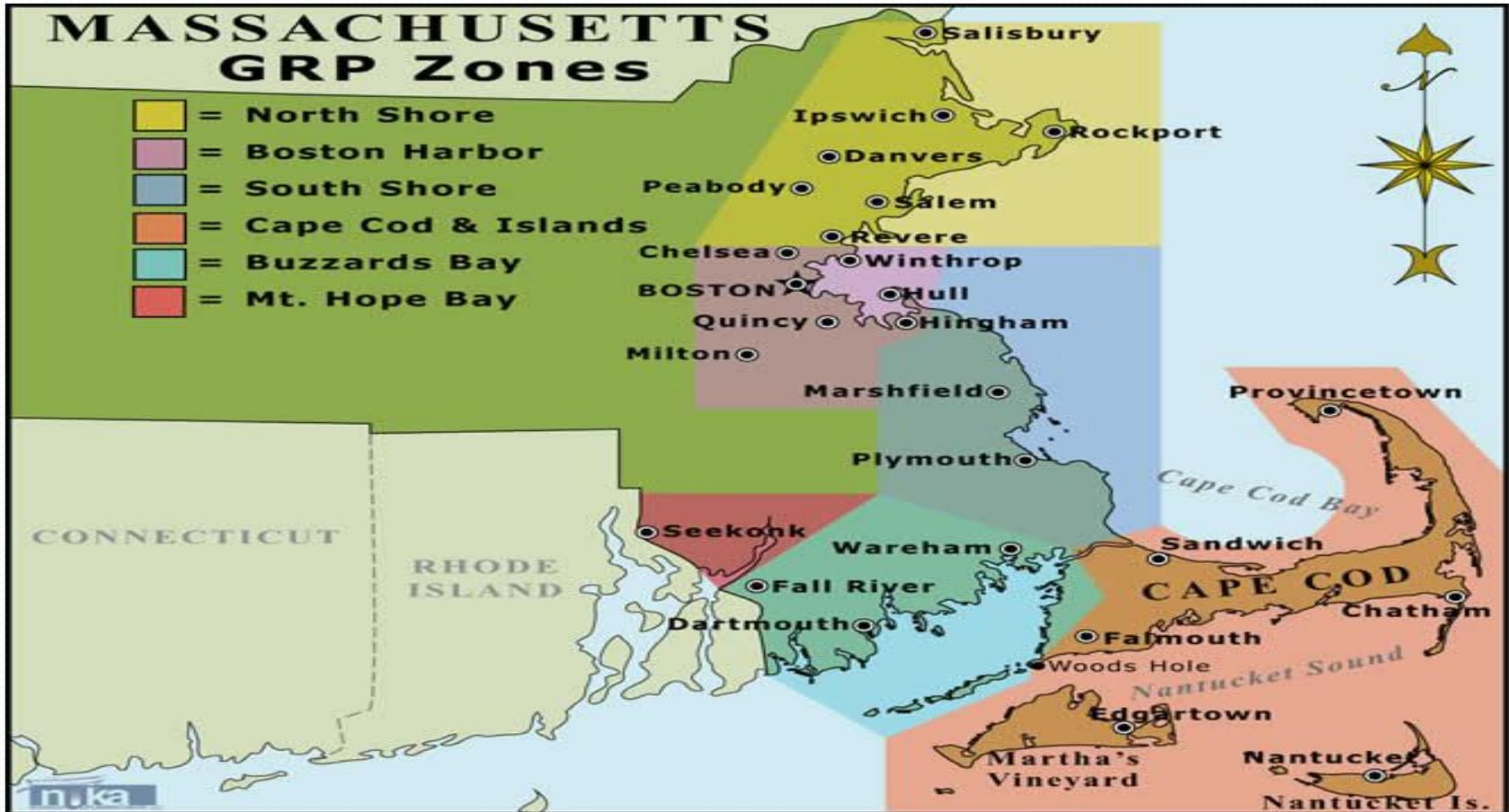
6 spill trailers being procured for Boston Harbor

Oil Spill Equipment

Annual maintenance and restocking of spill trailers
conducted by MassDEP contractor

Equipment deployment and mutual aid SOP
Implementation training

Geographic Response Plans



MassDEP GRP Project

Five Geographic Response Plans have been developed for Massachusetts coastal areas

Mt Hope Bay & Taunton River GRP development began June 2012

Mt Hope Bay & TR GRP scheduled for completion Fall June 2012

Final GRP will be presented to SENE area committee

GRP Testing & Training Program



Uses local first responders and
MassDEP spill equipment

Test selected GRP strategy

Participants USCG, MassDEP, Harbormaster,
Fire

Department & Contractors

Document deployment test & lessons learned

GRP Testing & Training Program

- Increasing participation from local emergency management agencies
- Local press coverage



Homeland Security Exercise & Evaluation Program (HSEEP) Funding

Elise De Cola

Nuka Research & Planning Group, LLC



HSEEP Funding



Homeland Security Exercise & Evaluation Program (HSEEP) is FEMA program that provides standard approach to exercise design, development, conduct, evaluation, and improvement planning.

HSEEP training/exercise grant money available through regional homeland security councils in MA: SERAC (SRPEDD) and NERAC (MAPC)

Local budget cuts were making backfill/OT costs barrier to GRP exercise participation → HSEEP funding

HSEEP Funding

MassDEP (NUKA) secured funding for OT & backfill cost for local responders

Grant application submitted to SERAC (SRPEDD) and NERAC (MAPC)

Training objectives align with HSEEP

- Inter-agency coordination

- Resource coordination

- Local oil spill preparedness

Projects FY 2012-13

Continue to monitor compliance w escort tug provisions
Develop GRP for Mt. Hope Bay & Taunton River
Continue GRP testing & first responder training
Complete double hull/marine pilot risk study
Maintain & Restock Response trailers
Other projects as funding allows

