



Farrell Fritz, P.C.

1320 Reckson Plaza
Uniondale, New York 11556-1320
Telephone 516.227.0700
Fax 516.227.0777
www.farrellfritz.com

Charlotte Biblow
Partner

Direct Dial 516.227.0686
Direct Fax 516.336.2266
cbiblow@farrellfritz.com

Our File No.
19301-100

November 17, 2006

Via Electronic Filing

Ms. Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First St., N.E., Room 1A
Washington, DC 20426

Re: Broadwater Energy – LNG Project
FERC Docket Nos.: CP06-54-000
CP06-55-000
CP06-56-000

Dear Secretary Salas:

This firm represents the County of Suffolk, New York, (“Suffolk County”) an intervener party in the above-referenced proceedings. I enclose herewith Suffolk County’s objections to easements that were requested by Broadwater Energy LLC and Broadwater Pipeline LLC from the New York State Office of General Services (“NYSOGS”). Suffolk County’s objections were filed with NYSOGS on November 15, 2006. Suffolk County’s objections to Broadwater’s requested easements are applicable to the decisions that FERC will render in this matter and demonstrate why this project cannot be approved by FERC.

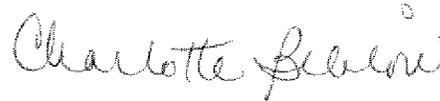
Suffolk County’s objections detail the pervasive interference that Broadwater’s proposal would have on other users of Long Island Sound. In particular, 950 acres of Long Island Sound will be forever lost if this project is approved as that is the required safety exclusion zone mandated by the United States Coast Guard around Broadwater’s floating storage regasification unit. Another 1,722 floating acres of Long Island Sound will be lost as the LNG tankers traverse through Long Island Sound almost on a daily basis. Two centuries ago, the United States Supreme Court explained the public trust doctrine and how it prohibits easements such as the ones being sought by Broadwater in this matter. In *Illinois Central Railway Co. v. Illinois*, 146 U.S. 387 (1892), the Illinois legislature purported to transfer rights to the Illinois Central Railroad Company for a one-thousand-acre portion of the bed of Lake Michigan adjacent to

November 17, 2006
Page 2

Chicago. *Id.* at 452. The Supreme Court ruled that the purported transfer was “a gross perversion of the trust over the property under which it was held” by the State of Illinois. *Id.* at 455. Given this massive disruption of Long Island Sound and the significant safety and security problems associated with this project, which are detailed in the attached submission, NYSOGS and FERC cannot approve the Broadwater project, especially since it involves an intolerable invasion of public trust land and water.

As a result, FERC must deny this application. At the very least, no decisions should be rendered by FERC unless full public hearings on the Broadwater project are held. In addition, Suffolk County requests that FERC consider these objections in its deliberations of Suffolk County’s still-pending demand to terminate these proceedings, which demand was filed with FERC on December 8, 2005.

Very truly yours,

A handwritten signature in cursive script that reads "Charlotte Biblow".

Charlotte Biblow

cc: All counsel on the official service list (w/enclosure)

FFDOCS1\717273.01

BW010018



1320 Reckson Plaza
Uniondale, New York 11556-1320
Telephone 516.227.0700
Fax 516.227.0777
www.farrellfritz.com

Charlotte Biblow
Partner

Direct Dial 516.227.0686
Direct Fax 516.336.2266
cbiblow@farrellfritz.com

Our File No.
19301-100

November 15, 2006

BY FEDERAL EXPRESS AND E-MAIL
New York State Office Of General Services
Bureau of Land Management
Division of Land Utilization
Corning Tower, 26th Floor
Empire State Plaza
Albany, NY 12242-0001

E-Mail to: LandUnderWater@ogs.state.ny.us

Re: Applications of Broadwater Energy LLC and Broadwater Pipeline LLC for easements to occupy lands under Long Island Sound

Dear Sir or Madam:

This firm represents the County of Suffolk, New York ("Suffolk County"). Enclosed you will find Suffolk County's Objections to the Notices by Broadwater Energy LLC and Broadwater Pipeline LLC ("Broadwater") for easements. I am enclosing two originals, one for each Notice filed by Broadwater. I'm also enclosing one copy per Notice as per your regulations. A copy of Suffolk County's objections is also being sent to Broadwater's attorney, Robert J. Alessi in his Albany office.

Very truly yours,

Charlotte Biblow

Enclosures

- cc: Robert J. Alessi, Esq. (via federal express) (w/enclosure)
- John Armentano, Esq. (w/enclosure)
- Christine Malafi, Esq. (w/enclosure)
- George Nolan, Esq. (w/enclosure)
- G.S. Peter Bergen, Esq. (w/enclosure)

FFDOCSI\716844.01

STATE OF NEW YORK
OFFICE OF GENERAL SERVICES

-----X

In the Matter of the Petitions of Broadwater Energy LLC
and Broadwater Pipeline LLC for grants of easements
in the lands under the waters of Long Island Sound
situated approximately nine miles off the coast of
the Towns of Riverhead, Brookhaven, and Smithtown
which are located in the County of Suffolk, New York.

-----X

**OBJECTIONS OF THE
COUNTY OF SUFFOLK, NEW YORK
TO BROADWATER'S NOTICES**

The County of Suffolk, New York ("Suffolk County"), by its attorneys, Farrell Fritz, P.C., hereby submits this objection to the October 20, 2006 Notices (collectively the "Notice") filed by Broadwater Energy LLC and Broadwater Pipeline LLC (collectively "Broadwater") seeking easements under § 3(2) of the New York State Public Lands Law for a proposed project (the "Broadwater Project"). Suffolk County demands that the New York State Office of General Services ("NYSOGS") deny Broadwater's requests for grants of easements in lands under Long Island Sound.

Suffolk County strenuously objects to any easement being granted on public trust lands to Broadwater by the NYSOGS on a variety of grounds: (1) Broadwater's requests are premature as the review being conducted by the Federal Energy Regulatory Commission ("FERC") is not final and FERC has yet to even issue a draft environmental impact statement ("DEIS") in connection with the project; (2) NYSOGS does not have the authority under the Public Lands Law to grant these types of pervasive and intrusive easements affecting not only underwater lands but also massive areas of surface water in Long Island Sound; rather Broadwater must petition the New York State Legislature for these types of easements; (3) the easements sought by Broadwater

violate Suffolk County's local law, enacted under the express authority of the New York State Legislature, which prohibits LNG facilities in Long Island Sound; (4) the easements sought by Broadwater violate the Public Trust Doctrine and cannot be granted by NYSOGS; (5) the easements sought by Broadwater violate the federal Long Island Sound Stewardship Act of 2006; (6) the Broadwater Project is inherently dangerous and violates the safety and security of all residents of Suffolk County; (7) NYSOGS cannot issue the easements without first complying with the State Environmental Quality Review Act ("SEQRA"); and (8) NYSOGS must conduct a hearing before it can issue the easements requested by Broadwater. As a result, NYSOGS must deny Broadwater's requests for easements.

I. Introduction

In the Notice, Broadwater states that it is seeking easements from NYSOGS for Broadwater's floating storage regasification unit ("FSRU"), the safety zone established by the United States Coast Guard ("USCG"), the mooring tower and the interconnection pipeline. Broadwater would have NYSOGS believe that its proposed project is a minor intrusion into the underwater land beneath the Long Island Sound and the waters of Long Island Sound, both of which are subject to the public trust doctrine and are held in public trust. Given Broadwater's terse description of the requested easements in the Notice, one would think that Broadwater was requesting a mooring for a rowboat. Broadwater's proposed project, however, is extensive in size and includes not just the FSRU, the mooring tower and its footings, but also the 25-mile long pipeline it intends to build as part of the project, and the enormous safety zones recommended by the USCG around the FSRU and the large liquefied natural gas ("LNG") supply tankers.

The Broadwater Project will have catastrophic and negative effects on the use and safety of Long Island Sound. In particular, the surface of Long Island Sound will be impacted, in terms of: (i) the size and breadth of the proposed facility; (ii) the ability of the FSRU to pivot in various

directions; (iii) the significant reduction in useable area of Long Island Sound on an almost daily basis; and (iv) the additional prohibition of access to Long Island Sound during the transit of the LNG tankers through the Long Island Sound on their way to and from the FSRU and during the transfer of product at the FSRU. Broadwater has stated that will take approximately 12-18 hours per shipment to unload the LNG and these vessels will be entering Long Island Sound 2 to 3 times a week. Under such circumstances, especially since most if not all of the LNG to be unloaded at Broadwater's FSRU is not destined for use on Long Island, Broadwater cannot demonstrate that the requested easements promote the public interests or do not substantially impair the public interest and public trust use of the waters of the surface of Long Island Sound. Simply put, the Broadwater Project is NOT in the public interest and in fact violates long-standing doctrines establishing the rights of the public in this area of Long Island Sound, and creates intolerable dangers to the public health and safety.

II. Grounds for Objections

1. Broadwater's Requests For Easements Are Premature

Initially, it must be noted that Broadwater's requests for easements from NYSOGS comes at a curious time. The FERC proceedings are far from complete.¹ Indeed, FERC has not even issued a draft environmental impact statement ("DEIS") under the National Environmental Policy Act ("NEPA") and it has not issued any approvals or certificates to Broadwater. It is quite uncertain whether Broadwater will ever be licensed by FERC, especially in light of the USCG Report wherein the USCG admitted it did not have the assets or manpower to provide adequate safety and security for the Broadwater Project. In addition, the United States Army Corps of Engineers has not yet acted on the permit request Broadwater filed with that agency.

In addition, none of the necessary approvals from New York State agencies has been

¹ Suffolk County has intervened in the FERC proceedings.

issued and many of those proceedings are dormant because of the status of the FERC proceeding. In particular, Broadwater requires a finding from the New York State Department of State (“NYSDOS”) that the proposed project is consistent with the Long Island Sound Coastal Zone Management Plan. A timeframe for that process has not yet been announced by the NYSDOS. In addition, the New York State Department of Environmental Conservation (“NYSDEC”) has not issued any required permits. Given the status of the approval process, in the interest of orderly procedure and efficiency, there is no reason for the NYSOGS to grant any easement at this time, especially since no other government agency has approved any aspect of the Broadwater Project. Simply put, Broadwater’s requests for easements are wholly premature and must be denied.

2. NYSOGS Does Not have The Authority To Convey Easements to Broadwater

The State of New York owns portions of the underwater land of the Long Island Sound. Pursuant to Chapter 695 of the Laws of 1881, Suffolk County has jurisdiction of the waters of Long Island Sound to the Connecticut boundary. Thus, while the New York State Legislature has delegated certain powers to grant easements in underwater lands owned by the State to NYSOGS pursuant to the New York State Public Lands Law, it has also expressly granted jurisdiction over the waters to Suffolk County. Accordingly, NYSOGS has no authority to grant easements to Broadwater that include the right to use significant portions of the waters of Long Island Sound.

At the time the Public Lands Law was enacted, no one envisioned that easements would be sought for the scope and type of project Broadwater is proposing, which would permanently remove from public use, vast areas of Long Island Sound. As more fully explained herein, the requested easements would permanently exclude from public use several thousand acres of Long Island Sound. The Public Lands Law was never intended to permit NYSOGS to transfer to a private for-profit company the exclusive right to use this amount of acreage of navigable waters

Putting aside the fact that Broadwater must obtain permission from Suffolk County because it has jurisdiction over the waters of Long Island Sound and the fact that Suffolk County has banned LNG facilities from being sited in Long Island Sound, (*see* Point 3, *infra*) the easements to the underwater lands being sought by Broadwater can only be obtained from the New York State Legislature, not from the NYSOGS.

Even if NYSOGS believes it has the authority to grant such pervasive easements, which it does not, it would still have to deny Broadwater's applications. Broadwater requests easements under § 3 of the Public Lands law to place its FSRU, mooring and pipeline in Long Island Sound. Mooring easements in Long Island Sound can only be granted pursuant to § 75(6), and not § 3(2), of the Public Lands Law. Under § 75, Broadwater must demonstrate that its request is "consistent with the public interest in the use of state-owned lands underwater for the purpose of navigation, commerce, fishing, bathing, and recreation; environmental protection; and access to the navigable waters of the state." Public Lands Law § 75. Moreover, mooring easements are limited under § 75(7)(a) of the Public Lands Law to owners of adjacent uplands and easements to any other person are void. Public Lands Law § 75(7)(a). Broadwater admits it is not seeking the easements as an adjacent upland owner in the Notice, wherein it states "[t]he adjacent upland of the undersigned is located at: Not applicable." Thus, any action by NYSOGS under § 75 is void.

Furthermore, under § 3(2) of the Public Lands Law, NYSOGS can only issue easements that are "consistent with local land use regulations." The Suffolk County Legislature acting pursuant to Chapter 695 of the Laws of 1881, adopted Resolution No. 821 of 2006, which enacted a local law prohibiting the construction and operation of an LNG FSRU in the waters of Long Island Sound under the jurisdiction and control of Suffolk County. A copy of that Resolution is attached hereto as Exhibit "A." Thus, NYSOGS cannot issue these easements

under § 3(2) of the Public Lands Law as they violate and are inconsistent with local laws.

Moreover, NYSOGS's own regulations require that it deny Broadwater's request. NYSOGS must consider a number of factors when deciding to grant or deny easements. These factors include whether the requested easements are "*consistent with the public interest in navigation, commerce, public access, fishing, bathing, recreation, environmental and aesthetic protection, and to ensure the waterfront owners reasonable exercise of riparian rights and access to those underwater lands.*" 9 NYCRR § 270-1.1 (Emphasis added.) NYSOGS must also consider the "*size, character and effects of the project,*" the "*potential for interference with navigation, public use of waterway and riparian/littoral rights*" and "*consistency with the public interest for purposes of fishing, bathing, and access to navigable waters.*" 9 NYCRR § 270-3.2(a). (Emphasis added.)

On its face, there is no way that the Broadwater Project is consistent with any of these factors. Further, NYSOGS cannot even begin to make such findings based on the mere Notice filed by Broadwater. At the very least, NYSOGS must comply with SEQRA and hold public hearings on the requested easements so that all interested parties may be heard. (*See Point 7, infra.*)

NYSOGS does not have the authority to grant the easements requested by Broadwater. Assuming *arguendo*, that it did have such authority, the Broadwater Project conflicts with NYSOGS's policies and regulations. Broadwater's requests for easements must, therefore, be denied.

3. The Easements Sought By Broadwater Violate Suffolk County's Laws

The waters of Long Island Sound are within the jurisdiction of Suffolk County pursuant to the Laws of 1881, Chapter 695. This statute provides in, pertinent part, that: "the jurisdiction of the legally constituted offices of Queens and Suffolk Counties and of their respective towns of

said counties bordering on Long Island Sound is hereby extended over the waters of said Sound to the Connecticut State line.” Thus, it is beyond dispute that the waters involved in the Broadwater Project are within the jurisdiction of Suffolk County.

New York State Navigation Law §§ 1 and 2(4) establishes Suffolk County's jurisdiction to protect the waters of Long Island Sound by exempting from the definition of “navigable waters of the state” all tidewaters bordering on and lying within the boundaries of Nassau and Suffolk Counties. Suffolk County has consistently maintained jurisdiction and regulation of all tidewaters bordering on and lying within its boundaries.

Suffolk County has banned this type of use in all of its waters when the Suffolk County Legislature adopted Resolution No. 821 of 2006. This local law prohibits the construction and operation of an LNG FSRU in all of the waters of Long Island Sound under the jurisdiction and control of Suffolk County. *See* Exhibit “A.”

Since the Broadwater Project is banned by Suffolk County Law, NYSOGS cannot violate that statute and its own regulations by issuing easements to Broadwater for this prohibited use.

4. The Easements Sought By Broadwater Violate The Public Trust Doctrine

Pursuant to the public trust doctrine, the State holds lands under navigable waters in its sovereign capacity as trustee for the beneficial use and enjoyment of the public. The State's power to transfer lands under navigable waters is sharply limited. Two centuries ago, the United States Supreme Court explained the public trust doctrine and how it prohibits easements such as the ones being sought by Broadwater in this matter. In *Illinois Central Railway Co. v. Illinois*, 146 U.S. 387 (1892), the Illinois legislature purported to transfer rights to the Illinois Central Railroad Company for a one-thousand-acre portion of the bed of Lake Michigan adjacent to Chicago. *Id.* at 452. The Supreme Court ruled that the purported transfer was “a gross perversion of the trust over the property under which it was held” by the State of Illinois. *Id.* at

455.

In *Illinois Central*, the Supreme Court emphasized that the public trust doctrine is derived from the overriding need to preserve the public's free and unobstructed use of navigable waters. The Court explained that "[t]he doctrine is founded upon the necessity of preserving to the public *the use of navigable waters from private interruption and encroachment . . .*" *Id.* at 436. (Emphasis added.) The Court also explained that under the public trust doctrine, the State holds underwater lands in trust for the public so that the public "may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, *freed from the obstruction or interference of private parties.*" *Id.* at 452. (Emphasis added.)

The New York State Court of Appeals also has a long history of utilizing the public trust doctrine to prohibit the kind of easements being sought by Broadwater. In *Coxe v. State of New York*, 144 N.Y. 396 (1895), a physical obstruction of the public's access to navigable waters was found to violate the public trust doctrine. *Coxe* involved the State Legislature purporting to transfer the State's title to all of the submerged lands adjacent to Staten Island and Long Island, an area extending over four counties. *Id.* at 401. The Court of Appeals rejected that transfer as being "absolutely void," stating that: "so far as the statutes [conveying the land] attempted to confer titles to such a vast domain which the state held for benefit of the public, they were absolutely void" *Id.* at 405.

The *Coxe* Court articulated the test for a public trust doctrine violation. It held that: "title which the state holds and the power of disposition is an incident and part of its sovereignty that cannot be surrendered, alienated or delegated, *except for some public purpose, or some reasonable use which can be fairly be said to be for the public benefit.*" *Id.* at 406. (Emphasis added.) The *Coxe* Court further noted that the public trust doctrine is so broad that it would also prohibit transfers that are "for the public benefit" if they encroach upon navigable waters.

[W]hen we consider that the locality where the operations of the [purported transferee] were to be carried on is *the great highway of commerce which should be open and common to all*, it is not difficult to see that such power, if upheld, *might seriously interfere with the navigation upon the waters*, and consequently with the freedom of commerce.

Id. at 408. (Emphasis added.) Like the voided transfer in *Coxe*, the Broadwater Project will “seriously interfere with the navigation upon the waters” because it will deprive the public of access to vast areas of Long Island Sound, which is a recreational mecca and critical commercial highway, possibly in perpetuity. *Id.*

In *Long Sault Dev. Co. v. Kennedy*, 212 N.Y. 1 (1914), the Court of Appeals confirmed again that the public trust doctrine was violated when a private corporation is given exclusive use of navigable waters. That case involved the State Legislature enacting a law purporting to convey to the Long Sault Development Company a franchise on the St. Lawrence River for purposes of constructing dams, bridges, locks and canals. The Court of Appeals concluded that the transfer violated the public trust doctrine because the State may *never* surrender its control over navigation to a private corporation. The Court explained:

[T]he legislature cannot authorize the conveyance of a navigable portion of the St. Lawrence to a private company to maintain and control navigation thereon, thereby parting for all time with its own power to improve such navigation. The privilege of the state to control the St. Lawrence as a navigable river (subject to the direction of Congress) cannot be assigned to others in the manner attempted by this legislation. *As long as the waters are maintained as navigable, they remain public waters of the state; and as long as they remain public waters of the state the state is bound to retain control over them in the public interest.*

Id. at 10. (Emphasis added.) According to *Long Sault*, not only is it impermissible for the State to permit private parties to construct obstacles to navigation, the State is *powerless* to even make a conveyance that would permit a private corporation to control navigation to the exclusion of the State or the public.

The Second Department in 1989 reaffirmed the *Coxe* principles and explained that deprivation of public access to surface waters for fishing and navigation violates the public trust doctrine. *Smith v. State of New York*, 153 A.D.2d 737, 737 (2d Dep't 1989). In *Smith*, the East Island Association claimed that it held title to the underwater land and waters around East Island in Glen Cove pursuant to an 1888 land patent. It sought to prohibit the general public from using the waters and beaches around East Island. Members of the public who had been excluded from using the water and beaches sought an injunction against the East Island Association to prevent it from excluding the public based on the public trust doctrine. The appellate court noted that excluding the public from an area they have lawfully enjoyed for over 100 years would constitute an impermissible impairment of the public interest. *Id.* at 739. After invoking the Supreme Court's *Illinois Central* decision and the Court of Appeals' *Coxe* decision, the appellate court found that the public benefit will be lost if the East Island Association can exclude the public from this area used for over a century for fishing and other recreational activities. *Id.* at 740.

In a recent opinion, the highest ranking lawyer in New York State government, the New York State Attorney General, acknowledged that transfers of underwater lands that are "injurious to the public's use of the waters" violate the public trust doctrine. The Attorney General, relying upon *Coxe*, stated that "the public owner of lands used for navigation does not hold the lands in a proprietary capacity" and that "a trust is engrafted upon this title for the benefit of the public of which the [public owner] is powerless to divest itself." The Attorney General further stated that "underwater lands must be for a use that either benefits the public or at least is not injurious to the public's use of the waters." See 2005 Op. Att'y Gen. 11, 2002 WL 870807, at *2. Broadwater's proposed project runs afoul of this policy as it will make tremendous areas of Long Island Sound entirely inaccessible to every other user of Long Island Sound except Broadwater,

a single private corporation.²

The public trust doctrine cases make it clear that *the size of the transfer matters* to the analysis. In *Illinois Central*, the voided conveyance involved 1,000 acres. *Illinois Central*, 146 U.S. at 433-34. Similarly, in *Coxe*, the Legislature attempted to convey underwater land adjacent to the shoreline in four counties. *Coxe*, 144 N.Y. at 401-02. There, the Court indicated that the “extensive character” was a factor in its analysis. *Id.* at 401.

The easements requested by Broadwater violate the public trust doctrine. As in *Illinois Central*, where the Supreme Court was troubled by a state’s conveyance that gave a private company the power to manage and control the Chicago harbor, Broadwater’s requested easements will result in its permanent and exclusive management and control of a significant portion of Long Island Sound.

Based on the USCG’s Waterway Suitability Report, issued September 21, 2006, Broadwater’s FSRU will be surrounded by a circular security exclusion zone with a radius of 1,210 yards.³ **Broadwater will therefore permanently deprive the public of access to 950 acres of the surface of the Long Island Sound.**⁴ Further, the LNG tankers used to supply LNG to the FSRU will have moving security zones around them that are 1,550 yards wide and 5,000 yards long (plus the length of the carrier itself).⁵ **These moving security zones will prohibit public access to 1,722 acres of the surface of Long Island Sound⁶ at least four to six times a**

² For other cases addressing deprivation of public access to navigable waters, see *Trustees of the Freeholders and Commonalty of the Town of Brookhaven v. Smith*, 188 N.Y. 74, 77 (1906) (explaining that at common law any “obstruction [of] the public right of navigation, or the *jus publicum*, could be abated as a nuisance”); *People of the State of New York v. New York & Staten Island Ferry Co.*, 68 N.Y. 71, 76 (1876) (explaining that if the grant in that case “assumed to interfere with [the public right of access to navigable waters], or to confer a right to impede or obstruct navigation, or to make an exclusive appropriation of the use of navigable waters, the grant was void.”).

³ USCG Waterways Suitability Report at § 4.6.1.5, p. 130.

⁴ This was calculated as follows. The area of the circular exclusion zone is 3.14 x 1,210 yards x 1,210 yards, which equals, 4,579,274 square yards. As one acre equals 4,840 square yards, 4,579,274 square yards equals 949.85 acres.

⁵ Waterways Suitability Report at § 4.6.1.4., pp. 128-30.

⁶ This was calculated as follows. The area of the rectangular tanker exclusion zone is 5377.43 yards long x 1,550 yards wide or 8,335,016.5 square yards. As one acre equals 4,840 square yards, 8,335,016.5 square yards equals

week.

That means that an area of 950 acres of Long Island Sound will comprise the safety exclusion zone surrounding the FSRU, an area almost identical in size to the prohibited transfer in *Illinois Central*. In addition, moving security zones around the LNG carriers will deprive the public of access to an additional 1,722 acres of Long Island Sound each time the LNG tankers traverse Long Island Sound.⁷ Denying public access to such enormous portions of Long Island Sound is the quintessential public trust doctrine violation.

To further exacerbate the severity of the violation of the public trust doctrine, Broadwater's proposed project is set at the center of critical commercial routes to and from New York City, portions of Connecticut, Long Island and Westchester. It will deprive the public of access to the area for no less than thirty years, and possibly in perpetuity. Figure 2-6 of the USCG Waterways Suitability Report depicts long-established commercial traffic routes abutting the proposed location of the FSRU. *See* Waterways Suitability Report at 31 and 33. That figure unequivocally demonstrates that the FSRU will obstruct these traffic lanes. Moreover, that figure grossly under-represents the extent to which the FSRU will actually interfere with Long Island Sound vessels. Figure 2-6 only tracks vessels with on-board AIS Tracking Systems. The figure does not take into account the other 180,000 registered vessels in Connecticut, the 80,000 registered vessels in New York and the 43,000 registered vessels in Rhode Island, all of which use Long Island Sound, but do not have on-board AIS Tracking Systems.

Further, with respect to the LNG tankers moving security zones, the USCG indicated that the "vessel traffic routing scheme" it will have to impose around the tankers will "have an undue impact on recreational vessel operators," especially in *The Race*.⁸ This interference violates the

1,722.11 acres.

⁷ USCG Waterways Suitability Report at § 3.1.4.1, p. 56.

⁸ *Id.* at § 4.6.1.5, p. 130-31.

doctrines of *Long Sault*, *Coxe* and *Illinois Central*.

Broadwater violates the public trust doctrine because it eliminates “public access” to a 950-acre area of Long Island Sound in perpetuity, and to a 1,722-acre moving area of the Long Island Sound every time one of the supply vessels navigates to or from the FSRU. Broadwater expects two or three shipments per week, meaning that the 1,722-acre moving exclusion zone will impact the public’s use of Long Island Sound 4 to 6 times a week for extended periods of time during the transport vessels entering and leaving Long Island Sound. Given this pervasive and continuous impact on navigable waters, the NYSOGS cannot approve Broadwater’s requested easements.

4. The Easements Sought By Broadwater Violate The Long Island Sound Stewardship Act of 2006

The Long Island Sound Stewardship Act of 2006 (the “Act”) was signed into law by President Bush on October 16, 2006. The Act declares that Long Island Sound is a “national treasure of great cultural, environmental, and ecological importance.” Act § 2(a)(1). The Act further declares that Long Island Sound-dependent activities “contribute more than \$5,000,000,000 each year to the regional economy.” Act § 2(a)(3). Congress warns that “the portion of the shoreline of the Long Island Sound that is accessible to the general public . . . is not adequate” and that “large parcels of open space already in public ownership are strained by the effort to balance the demand for recreation with the needs of sensitive natural resources.” Act §§ 2(a)(4), 2(a)(6).

The Act’s principal goal is to preserve Long Island Sound for “ecological, educational, open space, public access, or recreational” use. Act § 2(b). To do so, the Act establishes the “Long Island Sound Stewardship Initiative.” Act § 2(b), which includes: (i) designating certain areas of Long Island Sound as “stewardship sites,” (ii) developing management plans that

addresses threats to “stewardship sites”, and (iii) protecting and enhancing “stewardship sites.” Act § 6(a)(1). Plainly put, the Act requires the identification and preservation of desirable parcels of property adjacent to Long Island Sound that may serve important ecological, educational, open space, public access, or recreational uses of Long Island Sound. Act § 9(b)(2)(a). All of this, of course, is to make Long Island Sound more accessible to and useable by the public. It is not intended to carve out huge areas of Long Island Sound for private profit-making use or to exclude the public from vast areas of this treasured body of water.

Broadwater is entirely inconsistent with the federal policy, embodied in the Act, of preserving and improving public access to Long Island Sound. The permanent mooring of the FSRU containing ninety million gallons of toxic and flammable liquid natural gas in the center of Long Island Sound conflicts with this federally-declared purpose. In addition, the exclusion zones discussed above prohibit public access to large areas of Long Island Sound. In short, the Broadwater Project violates the letter and spirit of this new federal statute and the easements must be denied.

6. The Easements Sought By Broadwater Violate The Safety and Security of the Residents of Suffolk County

NYSOGS must consider safety in its deliberations about Broadwater’s requested easements. There is considerable public opposition to the Broadwater Project primarily focusing on the inherent safety risks of the proposal. This is not tried and true technology. Rather, it is experimental, i.e., if approved, it will be the first floating FSRU ever built in the world. None exists today. By its easement requests, Broadwater wants to make Long Island Sound a laboratory for a very risky and unproven venture.

Safety is of paramount importance to Suffolk County. Safety is also of concern in FERC proceedings. In the *Weaver’s Cove LNG* proceeding, FERC stated the following. “The primary

consideration before us is whether the proposed Weaver's Cove facilities can be constructed and operated safely.⁹ Thus, not only must FERC be assured that Broadwater can be constructed and operated in a safe manner but Suffolk County and its residents and the State of New York must also be assured that all safety issues associated with the proposed project are sufficiently identified and assessed before any approvals or easements can be granted.

Broadwater has yet to provide any adequate answer to Suffolk County's concerns about first responders from local communities not having the training, equipment and resources necessary to handle Broadwater-related emergencies. The fact that Broadwater intends to provide safety training to its on-board personnel fails to acknowledge that these on-board personnel may be disabled by the emergency and that local rescue and fire squads must respond to such emergencies. Because Broadwater has failed to establish that its facility can be constructed and operated safely, and has yet to even prepare an Emergency Response Plan, NYSOGS cannot grant the easements.

Suffolk County's concerns are buttressed by a report, issued in February 2006, by the New York State Office of Homeland Security entitled "Focus Report: Maritime Terrorist Threat." This report discusses safety and security concerns associated with facilities such as Broadwater's LNG proposal, among other maritime concerns. The report notes that there are serious security issues raised by foreign-flagged vessels loading LNG in poorly secured overseas ports and the lack of appropriate vetting processes to ensure that employees on LNG tankers are properly trained about safety and emergency procedures. The report also notes that little information is known about multiple system failures occurring simultaneously on the FSRU and tankers and notes that the available data is limited to assessing each system separately. The

⁹ Order Granting Authority Under Section 3 of the Natural Gas Act and Issuing Certificate in Weaver's Cove Energy, LLC et al Docket No. CP04-36-000 (Issued July 15, 2005), 112 FERC ¶ 61,070. at p 12 ¶ 32.

report also discusses the catastrophic consequences of an LNG tanker accident closing The Race in Long Island Sound, an issue that Broadwater sloughs off. Such an accident will significantly impact and impair other commercial and recreational users of Long Island Sound; who use The Race to enter and exit the Sound, Broadwater has provided no analysis of the impact on such LNG supply disruptions on its own FSRU operations.¹⁰ Broadwater's analysis also fails to provide any information on the impact on national security if The Race is blocked, which prevents United States Navy vessels from entering or exiting Long Island Sound.

Suffolk County's position is also buttressed by the USCG Water Suitability Report, which identified major safety risks of the Broadwater Project. As noted above, the USCG evaluated the intensity of use of Long Island Sound by vessels with AIS Tracking Systems in Block Island Sound and The Race, all in an area which must be traversed several times a week by the vessels supplying the FSRU. When non-AIS Tracking Systems vessels are included in the analysis, there are over 300,000 vessels using Long Island Sound. Because of this, the USCG noted in its Water Suitability Report that special precautions are necessary to protect the vessels carrying the LNG, as well as the FSRU facility.

The USCG also recognized safety concerns in Long Island Sound. The USCG noted that:

[t]he proposed frequency of LNG shipments to the terminal would be 2-3 times per week, on average. The total duration for operations from transit beginning at the Point Judith Pilot Station, discharging cargo, and ending with disembarking the pilot at Point Judith is expected to take approximately 40 hours per LNG carrier. At a transit speed ranging between 12 and 15 knots, from Point Judith Pilot Boarding Station to the proposed location of the FSRU, a distance of approximately 69.1 miles, transit would take between approximately 5 to 6 hours. The remainder of the time would be spent berthing, deberthing and conducting cargo operations, approximately 25 to 30 hours.¹¹

¹⁰ See NYS Department of Homeland Security Report, a copy of which is attached as Exhibit "B."

¹¹ *Id.* at p. 56.

The USCG further noted that because of the dangerous nature of the LNG cargo, the vessel carrying the LNG will be required to be met in the area of Port Judith, Rhode Island and escorted to and then through The Race, and then to the proposed LNG facility. During this transit, the moving safety exclusion zones required by the USCG will interfere with other users of Long Island Sound. As noted above, each LNG tanker must have exclusion zones of 4,000 yard buffer zone in front of the vessel, a 2,000 yard buffer zone at the stern of the vessel and 750 yards on each side of the ship.¹² Once the LNG tankers are attached to the FSRU, they will remain there for 12 to 18 hours under armed guards in the USCG-mandated FSRU exclusion zone.¹³

The USCG also acknowledged that adverse weather conditions, particularly in an area east of The Race and the Block Island Sound, are of grave concern because the wind speeds in those areas average about 15 miles per hour throughout the year, and the conditions are very similar to the conditions on the high seas. The Race is a deep navigable portion of the Sound generally thought to be only 1.4 miles wide and runs between Race Rock and Valiant Rock in the area of Block Island Sound.¹⁴ The USCG further noted that “there are always strong rips and swirls in the wake of all broken ground in The Race, except for about one-half hour at slack water. The rips are exceptionally heavy during heavy weather, and especially when a strong wind opposes the current or the current sets through against a heavy sea.”¹⁵ Under such circumstances, the 15 knot transit speed through The Race asserted by Broadwater is certainly not a realistic estimate of transit times through The Race, a fact acknowledged by the USCG.

In the winter months, the USCG noted that there is an added safety problem of ice flow

¹² *Id.* at p. 130.

¹³ *Id.*

¹⁴ *Id.* at p. 77-78.

¹⁵ *Id.* at p. 78.

and intense fog.¹⁶ All of this activity is occurring while other heavy commercial traffic is also attempting to transit the 1.4 mile wide Race and ferries are plying between Orient Point and New London, and the military is using its nuclear submarine base in Groton. Into this calculus, one must add the fact that the USCG readily admitted that it does not have the personnel or equipment to properly secure the safety of the FSRU and the LNG tankers.

The USCG also noted that Broadwater was a particular safety challenge due to the FSRU's location in a "thoroughfare used by a wide variety of waterway users."¹⁷ The USCG further admitted that the LNG vapor cloud from a collision in Long Island Sound could cross over Fisher's Island, Plum Island, and portions of the North Fork of Long Island before dispersing.¹⁸

Critically, analyzing the resources required to adequately and properly provide for security and safety of the Broadwater Project, the USCG stated:

Based on current levels of mission activity, Coast Guard Sector Long Island Sound currently does not have the resources required to implement the measures that have been identified as being necessary to effectively manage the potential risk to navigation safety and maritime security associated with the Broadwater energy proposal. Obtaining the required resources would require either curtailing current activities within the Sector, reassigning resources from outside of the Sector, or for the Coast Guard to seek additional resources through the budget process...

In addition to the resources identified in Section 7.2, additional Coast Guard resources may be required to implement the vessel traffic management recommendations that were identified in Sections 4.6.1.6 and 4.6.1.7 as well as some of the maritime security measures identified in Section 5.5 of the SSI portion of this Report. The resources required to implement these measures cannot be identified insofar as additional analysis is required to establish specific operational capabilities. Resource requirements would be identified after the operational capabilities are established. **State or local law enforcement agencies could**

¹⁶ *Id.* at p. 79.

¹⁷ *Id.* at p. 104.

¹⁸ *Id.* at 111.

potentially assist with implementing some of the measures identified for managing potential risks to maritime security associated with the proposed Broadwater Energy project. With the appropriate legal agreement (i.e. Memorandum of Understanding), State law enforcement personnel could enforce Coast Guard safety or security zones either around the FSRU or the transiting LNG carrier. This assumes the state law enforcement agency has the appropriately trained and outfitted personnel in addition to small boats capable of operating in the most probable worst case sea condition of Long Island Sound. **Currently the agencies that could potentially provide such assistance do not have the necessary personnel, training, or equipment.**¹⁹ (Emphasis added.)

The above is a candid admission by the USCG that it does not have the resources to provide any safety and security for the FSRU and the LNG tankers.

Broadwater also identified significant safety issues in its filings with FERC. Some of these are described below.

History of Marine Accidents Involving LNG

Broadwater admits that at least 20 marine accidents involving LNG facilities and tankers have occurred worldwide. *See* Broadwater Resource Report Nos. 10 and 11. Broadwater further admits that eight of these incidents involved spillage of LNG. *Id.* It also admits that LNG carrier groundings and collisions have occurred, including one with a submarine surfacing beneath an LNG carrier. *Id.* Groton, Connecticut, located on Long Island Sound near The Race and the proposed route for the LNG tankers, is home to a United States Navy nuclear submarine base.

Flammable Vapor Release

Broadwater admits that an LNG spill may occur and if the material does not ignite into a fireball, a large LNG vapor cloud will be dispersed over a wide area of Long Island Sound. *Id.*

Fracture of Tanks from Exposure to LNG

Broadwater admits that the failure of two or more LNG cargo tanks due to exposure to

¹⁹ *Id.* at p. 156-157.

ultra-cold LNG would increase the extent of the fireball or vapor cloud by twenty to thirty percent. *Id.*

Remoteness of Site is not a Panacea

Broadwater admits that the remoteness of the site does not eliminate safety risks to the public. Broadwater's Resource Reports note that: "[a]ccidents could occur on the FSRU, on transiting or berthed LNG carriers, or during the performance of facility support operations. Despite the facility's remote location, such accidents could impact the public, facility personnel, or the facility itself." *Id.* at 11-13.

Sloshing of LNG Damaging Membrane Containment System

Broadwater admits that "forces produced by wave action acting on the FSRU in its marine environment could cause sloshing of LNG in the cargo tanks on the FSRU, potentially damaging the membrane containment system." *Id.* at 11-19.

Yoke Mooring Never Attempted for an FSRU

Broadwater admits that a "yoke mooring system has not been used in conjunction with an FSRU application . . ." *Id.* at 11-27. Broadwater is admittedly using untested technology.

Simulations Show LNG Vessel Berthing May be Unsafe

Broadwater conducted a study in which it simulated an LNG vessel's berthing with the FSRU. **Broadwater admits that "four of the 25 simulations resulted in less than acceptable safety margins."** *Id.* at 11-46. That means that berthing operations were unsafe more than fifteen percent of the time. Assuming there are only two LNG offloads per week (a conservative estimate), that means that there will be approximately 16 unsafe offloads per year.

Broadwater's Inability to Comply With State Safety Statutes and Regulations

The New York State Department of Public Service ("NYSDPS") has been designated at the State's liaison with Broadwater for purposes of "consulting with FERC on all siting and

safety matters regarding Broadwater's applications." NYSDPS Safety Advisory Report, dated February 28, 2006 at 2-3. The NYSDPS identified many New York statutes with which Broadwater cannot comply. For example, "[s]ince the structure is floating on water, the exiting system of the facility could never terminate at a public way. Therefore, the exiting system cannot meet the requirements of the Building Code." *Id.* at Appendix B at 1. Similarly, although Broadwater proposes to "dump[] [spilled] LNG to the port side of the FSRU . . . [t]his does not meet the intent of isolation" required by the State Fire Code. *Id.* at Appendix C at 1. Other state-law safety violations are identified throughout the report. *See, Id.* at Appendix A-D.

Overall, given the significant and wide-ranging safety risks, NYSOGS cannot issue easements to Broadwater.

7. SEQRA

Since SEQRA applies to actions by State agencies (*see* New York State Environmental Conservation Law ("ECL") §§ 8-0105(1) and 8-0105(4)(i)), and since NYSOGS is a duly created State agency under Public Lands Law § 2(a), SEQRA applies to Broadwater's easement applications. To grant such easements is an "action" which is subject to SEQRA and requires that NYSOGS consider the environmental impacts associated with the proposed action and ways to minimize or avoid adverse environmental effects. *See Town of Henrietta v. NYSDEC*, 76 A.D.2d 215 (4th Dept 1980) and comments to ECL § 8-0109(c). Generally, any applicant requesting that a governmental agency take an action must, at minimum, file an Environmental Assessment Form ("EAF") to analyze the potential environmental impacts. In this regard, the Court of Appeals has recently declared that:

[a]ll "actions" subject to SEQRA (i.e., a Type I and unlisted actions) initially require the preparation of an EAF whose purpose is to aid the agency "in determining the environmental significance or nonsignificance of actions" (6 NYCRR 617.2[m]; see also 617.6[a][2][3]).

City Council of Watervliet v. Town Board of Colonie, 3 N.Y.3d 508, 519 (2004).

NYSOGS's own regulations requires that prior to issuing an easement, NYSOGS must:

ascertain the probable effect of the use, structure or facility on the public interest in State-owned lands underwater and in consultation with the Department of Environmental Conservation (DEC), Department of State (DOS) and Office of Parks, Recreation and Historic Preservation (OPR&HP) or such other agencies or authorities as required by law, shall examine the following factors: (1) environmental impact of the project; (2) values for natural resource management, public recreation and commerce; (3) size, character and effects of the project in relation to neighboring uses; (4) potential for interference with navigation, public uses of waterway and riparian/littoral rights; (5) water dependent nature of use; (6) adverse economic impact on existing commercial enterprises; (7) effect of the project on the natural resource interests of the State in the lands; and (8) consistency with the public interest for purposes of fishing, bathing and access to navigable waters and the need of the owners of private property to safeguard their property.

9 NYRCC § 270-3.2(a).

NYSOGS's regulations also provide that the applicant:

submit an environmental assessment form, including marine project information, indicating the purpose, scope and potential impacts of the project. The commissioner shall solicit the written comments of DEC, DOS and OPR&HP in their respective areas of expertise and give due regard to incorporating those comments in the review of the application and any plan of the use, structure or facility and shall incorporate into any grant, lease, easement, permit or lesser interest those conditions deemed necessary by the Department of Environmental Conservation to adequately protect the affected environment or natural resource. If the environment or natural resource cannot be protected as determined in findings by the Commissioner of Environmental Conservation, the proposed application shall be denied.

9 NYRCC § 270-3.2(b).

Broadwater has failed to do comply with any of these requirements. In light of that failure and in light of the multitude of environmental concerns set forth above, such an omission

is fatal to Broadwater's applications. Clearly, Broadwater believes it is above the law and that SEQRA does not apply to it. Broadwater is wrong again, because the easement requests to NYSOGS are not exempt from the ECL, the Public Lands Law, the ECL regulations and the Public Lands Law regulations. In fact, State agencies are required by SEQRA to stop, look and listen before any way risking environmental impacts. *See H.O.M.E.S. v. NYSDEC*, 69 A.D.2d 222 (4th Dept 1979).

8. Hearing

Broadwater's request for easements raises significant safety, security and environmental concerns that cannot be properly evaluated by NYSOGS without an evidentiary hearing. Moreover, a full examination of all environmental impacts must be analyzed under SEQRA and a public hearing on the DEIS should be held in which all parties may present real evidence subject to the time-honored test of cross-examination. The safety, security and integrity of Long Island Sound demand it.

CONCLUSION

For the reasons listed above, NYSOGS cannot issue Broadwater its requested easements as it is without jurisdiction to issue the easements, the pervasive nature of the requested easements requires State Legislative approval, and the easements violate Suffolk County Law, the public trust doctrine and the Long Island Stewardship Act of 2006. NYSOGS must, therefore, deny Broadwater's requests in their entirety. In the event that NYSOGS determines it has jurisdiction, which it does not, it must comply with SEQRA and must hold an evidentiary hearing before issuing any easement.

Dated: Uniondale, NY
November 15, 2006

Respectfully submitted,

FARRELL FRITZ, P.C.

By: Charlotte Biblow

Charlotte Biblow, Esq.

John M. Armentano, Esq.

Attorneys for the County of Suffolk, New York

1320 Reckson Plaza

Uniondale, New York 11556-1320

(516) 227-0700

cbiblow@farrellfritz.com

jarmenano@farrellfritz.com

Of Counsel:

G.S. Peter Bergen, Esq.

27 Pine Street

Port Washington, New York 11050

pbergen@optonline.net

To: Robert Alessi, Esq.

LeBoeuf, Lamb, Greene & MacRae, LLP

99 Washington Avenue,

Suite 2020

Albany, NY 12210

FFDOCSI\716451.01

EXHIBIT A

Intro. Res. No. 1809-2006

Laid on Table 6/13/2006

Introduced by Presiding Officer, on request of the County Executive, Deputy Presiding Officer Vilorio-Fisher and Legislator Cooper

RESOLUTION NO. 821 -2006, ADOPTING LOCAL LAW NO. 40 -2006, A LOCAL LAW TO PROHIBIT THE CONSTRUCTION AND OPERATION OF LIQUEFIED NATURAL GAS (LNG) FLOATING STORAGE REGASIFICATION UNITS IN THE LONG ISLAND SOUND

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on June 27, 2006, a proposed local law entitled, "A LOCAL LAW TO PROHIBIT THE CONSTRUCTION AND OPERATION OF LIQUEFIED NATURAL GAS (LNG) FLOATING STORAGE REGASIFICATION UNITS IN THE LONG ISLAND SOUND," and said local law in final form is the same as when presented and introduced; now, therefore, be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 40 -2006, SUFFOLK COUNTY, NEW YORK

A LOCAL LAW TO PROHIBIT THE CONSTRUCTION AND OPERATION OF LIQUEFIED NATURAL GAS (LNG) FLOATING STORAGE REGASIFICATION UNITS IN THE LONG ISLAND SOUND

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that the New York State Legislature has conferred upon Suffolk County the right to regulate its abutting navigable and tidal waters.

This Legislature hereby finds and determines that the ecology of Long Island Sound and the health, safety and security of those who are adjacent, or approximate to those waters must be protected.

This Legislature further finds and determines that the State's codification of the County's jurisdiction is historical in origin and is derived from royal land grants, patents, and laws establishing the boundaries of the County over the waters of the Long Island Sound to the Connecticut State Line, as evidenced by, among other laws and documents, Chapter 685 of the Laws of 1881, "An Act Extending Jurisdiction of Queens and Suffolk Counties . . . Over the Waters of Long Island Sound."

This Legislature further finds and determines that the New York State Legislature, through Navigation Law § 1 and 2(4), further established the County's jurisdiction to protect the waters of the Long Island Sound by exempting from the definition of "navigable waters of the state" all tidewaters bordering on and lying within the boundaries of Nassau and Suffolk Counties.

This Legislature also finds and determines that Suffolk County has consistently maintained jurisdiction and regulation of all tidal waters/tidewaters bordering on and lying within its boundaries.

This Legislature hereby finds that Liquefied Natural Gas ("LNG") facilities may pose significant health, economic, safety, security and environmental hazards to the Long Island Sound.

Therefore, the purpose of this law is to prohibit, by the exercise of the County's jurisdiction over its tidal waters/tidewaters, the construction and/or operation of LNG floating storage regasification units or similar LNG facilities in Long Island Sound for health, safety, security and environmental reasons.

Section 2. Amendments.

1. The Suffolk County Code is hereby amended by the addition of a new Chapter 109 to Part II of the Administrative Local Laws as follows:

Chapter 109. Liquefied Natural Gas (LNG) Floating Storage Regasification Units, Prohibition

§ 109-1 – Definitions

A. "Person" shall mean an individual, a partnership, an unincorporated association, a corporation or any other legal entity.

B. "Construct" shall mean to build, assemble, place, erect or install.

C. "Action" shall mean any steps taken to initiate or advance a liquefied natural gas (LNG) floating storage regasification unit project.

§ 109-2 Prohibited Acts

It shall be unlawful for any person to construct any type of liquefied natural gas (LNG) floating storage regasification unit in or on the tidal waters/tidewaters of the Long Island Sound bordering on and lying within the boundaries of Suffolk County.

Section 3. Applicability.

This law shall apply to any action taken at any time to initiate or advance a liquefied natural gas (LNG) floating storage regasification unit project.

Section 4. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision,

section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 5. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5 (c) (20) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Article 8 of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

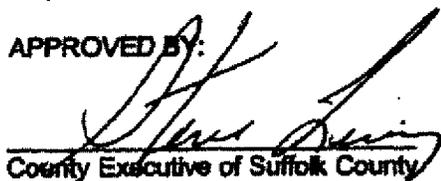
Section 6. Effective Date.

This law shall take effect upon filing in the Office of the Secretary of State and apply to any action taken at any time to initiate or advance a liquefied natural gas (LNG) floating storage regasification unit project.

[] Brackets denote deletion of existing language
___ Underlining denotes addition of new language

DATED: August 8, 2006

APPROVED BY:

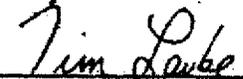

County Executive of Suffolk County

Date: August 28th, 2006

SUFFOLK COUNTY
County Legislature
RIVERHEAD, N.Y.

This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County, on August 8, 2006, and signed by the County Executive on August 28, 2006, after a public hearing duly held on August 22, 2006, and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk on


Clerk of the County Legislature

10-2254-01/000

EXHIBIT B

**New York State Office of Homeland Security
Focus Report:
Maritime Terrorist Threat**

February 21, 2006

**Prepared by Senior Intelligence Analyst Christian Weber
cweber@security.state.ny.us**



**New York State Office of Homeland Security
633 Third Avenue
New York, NY 10017**

**Phone: 212-867-7060
Fax: 212-867-1785**

**James McMahon
Director**

“While commercial aviation remains a possible target... Opportunities to do harm are as great, or greater, in maritime transportation.”

- The 9/11 Commission Report

Overview

American military forces have effectively denied Islamic terrorists access to inland safe havens from which to train and operate. The al Qaeda that existed prior to October 2001 with secure bases in Afghanistan no longer exists; it has been forced to transform into a new structure with different characteristics, tactics, communication patterns, travel methods, and sources of funding.¹

As a result terrorists are seeking to exploit the largest area on the face of the earth, the sea, and has increasingly shifted their focus towards maritime operations. The maritime domain in particular presents not only a medium by which terrorists can move, but offers a broad array of potential targets that fit the terrorists' operational objectives of achieving mass casualties and inflicting catastrophic economic harm.²

The CIA warned as early as February 2003 that al Qaeda was developing and refining maritime attack capabilities.³ Recent indications point to al Qaeda's intention to intensify operations against maritime targets and increase strikes against shipping and port facilities as part of a strategy to strike economic targets.

British Royal Navy Admiral Sir Alan West, the First Sea Lord and Chief of Naval Staff, has warned that we are entering “an era where the maritime terrorist threat is a clear and present danger.”⁴

Suicide attacks against the *USS Cole* in October 2000 and the French-owned oil tanker *MV Limbourg* in November 2002 are the most notable manifestations of al Qaeda's oceangoing threat. However, there is evidence pointing to al Qaeda's growing focus on waterborne attacks.

In May 2002, a joint Moroccan-CIA operation captured a four man al Qaeda cell planning to attack U.S. and British ships in the Strait of Gibraltar using bomb-laden Zodiac speedboats. The operatives described to American intelligence officers their plan to acquire speedboats, load them with high explosives, and after a series of test runs, utilize the boats as “human torpedoes” against U.S. and British ships.

Furthermore, information gleaned as a result of the November 2002 capture of al Qaeda's nautical strategist, Abd al-Rahim al-Nashiri, confirmed that the Moroccan cell was just the crest of a planned wave of nautical terrorism. Nashiri, an expert in naval demolition and sabotage, detailed to interrogators al Qaeda's strategy for attacking Western maritime

¹ Bill Gertz, *Breakdown*, (Washington, DC: Regnery Publishing) 150.

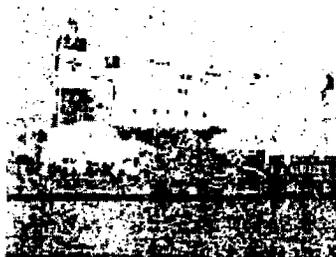
² The National Strategy for Maritime Security, September 20, 2005

³ Captain James Pelkofski, “Before the Storm: al Qaeda's Coming Maritime Campaign”, Proceedings, December 2005.

⁴ Sean Rayment, “Navy Chief Has ‘Too Few Ships to Guard Sea Lanes from Terrorists’”, *Telegraph*, July, 9, 2003.

targets. The strategy called for ramming underway vessels with explosive-laden speedboats, detonating vessel-borne improvised explosive devices in ports, attacking large cargo ships and supertankers from the air with explosive-laden small aircraft, and subsurface attacks by divers or suicide demolition teams, utilizing limpet mines (a magnetic explosive device used for disabling and destroying surface vessels) and other improvised explosive devices.

Along with Nashiri, coalition forces seized an al Qaeda maritime military manual detailing where to strike different classes of vessels and the quantity of explosives needed to cause critical damage.



Saud Hamid al-Utaibi, a senior al Qaeda lieutenant, integral in the attacks on the *USS Cole* and *MV Limburg*, is believed to have replaced Nashiri as the new al Qaeda strategist. Al-Utaibi's promotion reinforces concerns by security agencies around the world that the maritime industry is a prime target for future al Qaeda attacks.⁵

On August 25, 2004, Stephen Flynn, the Jeane J. Kirkpatrick Senior Fellow for National Security Studies at the Council on Foreign Relations and a retired Coast Guard commander, in congressional testimony before the Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation stated he had, "little doubt that al Qaeda possesses the means to identify those users of the maritime transportation system that US authorities currently view as low security risks and are fully capable of exploiting the many opportunities to intercept and compromise these legitimate shipments either at their point of origin or anywhere along the transportation route they travel."⁶

The very factors that allow maritime transport to contribute to economic prosperity also leave it uniquely vulnerable to terrorism. As Flynn characterized, the maritime industry is "the soft underbelly of globalization"⁷. Any number of major attack scenarios against the maritime transport system could result in massive casualties, cripple global trade and have immediate and significant economic impact⁸.

Maritime Vulnerability

The security of our ports, sea lanes and maritime chokepoints is of vital importance to the United States. In today's interdependent global economic environment, with more than 95 percent of the world's commerce moved by sea, a catastrophic terrorist attack against the U.S. maritime industry would have a devastating impact on the global economy. Over 95 percent (by volume) of our non-North American foreign trade, including 100%

⁵ <http://www.ict.org.il/articles/articleDet.cfm?articleid=532>

⁶ Bruce Moody, "Shipping Containers: Poor Man's Nuclear Missile?" *Homeland Defense Journal*, June 2005.

⁷ CDR Michael Dobbs, "Homeland Security... From the Sea", *Journal of Homeland Security*, November 2002.

⁸ John F. Fritelli, "Maritime Security: Overview of Issues", CRS Report to Congress, December 5, 2003.

of key foreign commodities (i.e. foreign oil), enter the country through maritime channels.⁹

Terrorists may target a port that handles a large volume of oil and other goods and has a densely-populated area that tankers and freighters pass on their way through a harbor to an unloading terminal¹⁰. Various cities worldwide meet these criteria, including the Port of New York and New Jersey which spans over 2 states, 6 large port facilities and 4 smaller ones. It is the largest port of import in the United States and tenth largest in the world. It handles over 3 million containers in a year, including a broad range of liquid and dry chemicals and regularly handles more petroleum products than any other American port. It is the main and immigration gateway of the Eastern seaboard of North America.¹¹



A vital component of U.S. maritime security is the ability to achieve sufficient awareness of all activities and elements in the maritime domain that could represent threats to the safety, security, or environment of the country. However, as the recently retired Pacific Fleet Commander, Admiral Walt Doran has warned, across the board our situational awareness is not very tight.¹²

The United States' maritime surveillance capability was primarily designed to monitor a few hundred large Soviet warships, not the 130,000 merchant vessels operating on the 21st century sea highways.¹³ This situation is exacerbated by a veritable veil of secrecy provided ships operating under "flags of convenience".¹⁴

Despite the UN Convention on the Law of the Sea requiring a tangible link between a merchant vessel and the flag it operates under, several nations, most notably Liberia, Panama, and Tonga, maintain open registries. Countries with open registries allow foreign ships to register and operate under the registries country flag. The practice is largely undertaken to avoid taxes, labor laws, and insurance requirements normally imposed by their home countries. Terrorists are believed to exploit this loophole to mask the ownership and identity of their vessels. The lack of transparency in ship ownership is a significant concern since most ships calling U.S. ports are foreign owned and foreign crewed. In August 2001, the Tonga-flagged *Sara*, which had changed names four times in two years and flags twice during that span, was intercepted off the coast of Sicily with 15 al Qaeda operatives onboard all holding fraudulent Pakistani papers. According to the

⁹ James M. Loy and Robert Ross, "Global Trade: America's Achilles' Heel", *Defense Horizons*, February 2002.

¹⁰ Jonathan Medalia, "Port and Maritime Security: Potential for terrorist Nuclear Attack Using Oil Tankers", CRS Report to Congress, December 7, 2004.

¹¹ Harlan Ullman, "Securing the Port of New York and New Jersey: Network-Centric Operations Applied to the Campaign Against Terrorism", Stevens Institute, September 2004.

¹² David Brown, "Keeping Eye Out For Terrorists a Multinational Job", *Navy Times*, October 13, 2003. P21.

¹³ Maki Becker, "Terror lurks on high seas", *New York Daily News*, September 21, 2003.

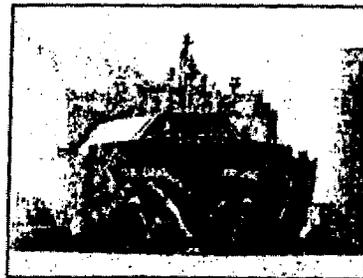
¹⁴ Colin Robinson, "Al Qaeda's 'Navy' - How much of a threat?", *Center for Defense Information*, August 20, 2003

Sara's captain, the operatives boarded the ship at Nador, Morocco and were intended to be transferred to a second vessel during a rendezvous at sea.

To further exacerbate the problem, a large number of certificates held by seafarers have been found to be fraudulent. In this operating environment, there is considerable opportunity for terrorists to masquerade as crew ultimately taking over a ship and using it in a terrorist attack. Terrorists with fraudulent documents could also gain unauthorized access to ships and port facilities to place explosives. At least one captured al Qaeda operative is known to have been in the process of obtaining an international seaman's license that would allow him into any port in the world without a visa.¹⁵ In February 2002, the cargo ship *Twillinger* was boarded at Trieste, Italy and found to have eight al Qaeda operatives onboard posing as Pakistani crewmen carrying false documents and large sums of money.

Terrorist Exploitation of the Sea

Terrorists' access to funding has been significantly hampered since the September 11th attacks. However, al Qaeda has proven resourceful at finding alternate methods to fund operations. In almost every instance, unfettered access to the sea is intrinsically linked to the terrorist organization's ability to raise capital.



In October 2003, Admiral Thomas Fargo, former head of US Pacific Command, pointed out that "although acts of terror can and do occur on the high seas, it is the maritime movement of terrorists and their use of vessels as weapons or weapons couriers that pose a significant maritime challenge."¹⁶

Al Qaeda has been known to raise money by arms smuggling and human slavery¹⁷. Moreover, coalition naval forces have interdicted over 125 al Qaeda operatives on *dhow*s, traditional Middle Eastern working sailing boats, transporting weapons and drugs in Persian Gulf waters.

Intelligence officials have identified cargo freighters believed controlled by al Qaeda, and could be used by the terrorist network to ferry operatives, bombs, money, or commodities on the high seas.¹⁸ These small container ships are believed to be al Qaeda's preferred method of globally transporting terrorists, weapons, and supplies. In November 1995, an al Qaeda-owned tramp freighter, *Seastar*, is believed to have delivered explosives for a car bomb attack in Saudi Arabia that killed five Americans. Similarly, it is believed that a freighter was utilized to deliver explosives to a Kenyan cell of al Qaeda that were used in the bombings of U.S. embassies in Kenya and Tanzania in August 1998.

¹⁵ <http://www.ict.org.il/articles/articledet.cfm?articleid=532>

¹⁶ David Brown, "Keeping Eye Out for Terrorists a Multinational Job", *Navy Times*, October 13, 2003, P21.

¹⁷ Fay Bowers and Peter Grier, "How Al Qaeda Might Strike the U.S. by Sea", *The Christian Science Monitor*, 5-14-03

¹⁸ <http://www.ict.org.il/articles/articledet.cfm?articleid=532>

It is widely believed that Osama bin Laden has control of an estimated 20 merchant ships and crews.¹⁹ A number of these ships are believed to be coastal vessels that operate in the area of the Red Sea or the Horn of Africa. According to the June 8, 2004 *Jane's Terrorism & Security Monitor*, the ships operate under Liberian or Panamanian flags of convenience and are frequently re-named, re-painted and re-registered.²⁰ Ostensibly, the vessels transport legitimate commercial goods. However, it is believed that they play a vital clandestine role in the movement of operatives, funds, messages, explosives, arms, ammunitions and other terrorist-related material to al Qaeda cells strategically situated on key shipping lanes.

Experts monitoring suspected "al Qaeda vessels" have tagged the ships as, among other nefarious purposes, part of a network for transporting heroine and hashish from the Middle East to the West.²¹ Such a revelation is hardly shocking as there is evidence of a highly synergistic relationship between terrorists and drug lords. On March 13, 2002 Rand Beers, Assistant Secretary for International Narcotics and Law Enforcement Affairs provided testimony on this symbiotic relationship before the Senate Committee on the Judiciary Subcommittee on Technology, Terrorism, and Government Information.

Beers explained that, "drug traffickers benefit from the terrorists' military skills, weapons supply, and access to clandestine organizations. Terrorists gain a source of revenue and expertise in illicit transfer and laundering of proceeds from illicit transactions. Both groups bring corrupt officials whose services provide mutual benefits, such as greater access to fraudulent documents, including passports and customs papers. Traffickers and terrorists have similar logistical needs in terms of material and covert movement of goods, people, and money."²²



Some notable incidents of terrorist attempts to exploit the sea include:

- **January 2002:** Israeli Naval forces captured the ship, *Karine A*, sailing in international waters on its way to the Suez Canal. In the hull of the ship, more than 100 Lau missiles were discovered, along with 20 rockets, dozens of mortar launchers of various range, hundreds of mortar bombs, dozens of mines, sniper rifles, machine guns and assault rifles, two rubber boats and two complete underwater diving apparatuses. The weapons had been supplied to Palestinian terrorists by Iran and Hezbollah and placed in special sealed containers.
- **May 2001:** Israeli Naval Commandos intercepted the *Santorini*, an Egyptian fishing boat, off Israel's coast carrying five metal boxes containing 122-mm. rocket fuses and bomb-making components, including a radio activation system and electronic delay units, land -to-air missiles, RPGs, mortar bombs, mines, guns and ammunition.

¹⁹ James Hessman, "Shipping Container Security and the Weakest Link Scenario", *Sea Power*, October 2003.

²⁰ Jonathan Howland, "Countering Maritime terror, US Thwarts Attacks, Builds Up Foreign Navies", June 17, 2004

²¹ James Russell and Iliano Bravo, "Homeland Defense: Ramping Up, but What's the Glide Path?", *Strategic Insight*, March 2002.

²² <http://usinfo.state.gov/topical/pol/terror/02031310.htm>

Among the other items on board were 36 CD's with instructions for preparing bombs, including such information as where a bomber should stand on a commuter bus in order to inflict maximum casualties.

- **January 1995:** Abdelghani Meskini, an al Qaeda operative convicted for his alleged participation in the "Millennium plot" to bomb Los Angeles International Airport, is known to have illegally entered the United States onboard an Algerian LNG tanker.²³

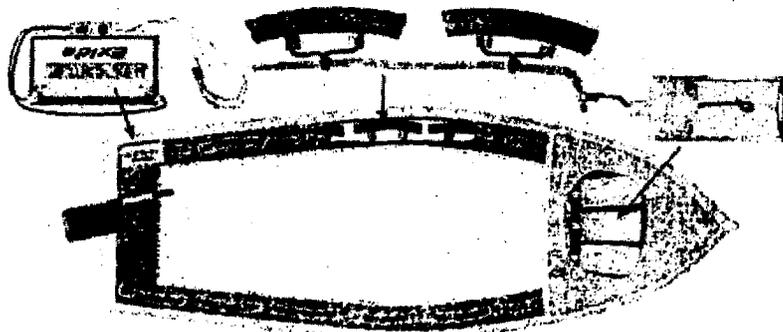
Sea Tigers: The Maritime Terrorism Trend Setter

The Sea Tigers are the highly skilled, organized, and equipped maritime component of the Liberation Tamil Tigers of Elam (LTTE), a group operating in northern Sri Lanka and designated as a terrorist organization by both the U.S. and the UK. Since their creation in July 1990 the Sea Tigers have emerged as the most technologically and tactically innovative of the world's maritime terrorist groups.²⁴

As with terrorism on land, maritime terrorism tends to mimic successful tactics, thus the Sea Tigers modus operandi is likely to be emulated by other groups. Sea Tiger tactics that have proved successful or effective have been modified according to local circumstances and situations and repeated elsewhere.

During a December 2002 interview, Colonel Soosai, Commander of the Sea Tigers, told the BBC that al Qaeda had clearly copied terrorist tactics from the Sea Tigers. According

A cluster bomb boat adapted to deliver approximately 100-150 pounds of high explosives. The configuration and nature of the charges suggest that the boat was intended to strike a high-value target (such as a port facility) while causing maximum collateral damage to the surrounding harbor.



Device Construction and Initiation

The device consists of three forward-facing HE charges in steel cylinders placed on the forward deck and two on the deck and the top of the hull. A remote trigger is attached to the top of the cylinders. The charges are connected to a common trigger line. The charges are connected to a common trigger line. The charges are connected to a common trigger line.

A battery powers the circuit to the charges. Multiple charges are connected to a common trigger line. The charges are connected to a common trigger line.

to Soosai, the attack on the *USS Cole* in particular had all the hallmarks of Sea Tiger tactics adapted for al Qaeda purposes.²⁵ Such a development is not surprising considering the Sea Tigers perpetuate their expertise in a maritime school and academy, and formally package and publish a body

of knowledge applicable to maritime terrorism.²⁶ Although not ideologically aligned with al Qaeda, LTTE shares the political and economic motivation to engage in maritime

²³ Jonathan Howland, "Hazardous Seas", JINSA online, April 1, 2004

²⁴ Significant Events of Maritime Terrorism

²⁵ <http://www.lankaweb.com/news/items02/131202-1.html>

²⁶ Captain James Peikofski, "Before the Storm: al Qaeda's Coming Maritime Campaign," Proceedings, December 2005.

terrorism, which impinges on its larger adversary's ability to achieve economic prosperity and security.²⁷

Reportedly, terrorist operatives from the al Qaeda-linked Jemaah Islamiyah group, responsible for the October 2002 and 2005 Bali bombings, have reportedly been trained in sea-borne guerilla tactics, such as suicide diving and ramming, developed by the Sea Tigers.²⁸

The Sea Tigers own and operate ocean-going ships for legitimate commercial activities, and when needed they are utilized to facilitate acts of terrorism like hijacking, arms smuggling, drug trafficking and transporting operatives. They have utilized a "fleet" of freighters operating under "Pan-Ho-Lib" flags (Panama, Honduras, Liberia) to pioneer the modern terrorist version of "underway replenishment", the replenishment of ammunition, food, fuel, personnel, communications, spare parts, and terrorism-related materials to cells by off-loading the weapons and materials from the freighters at sea into smaller high speed boats. In the early 1990s, Osama bin Laden is believed to have tasked Wadhi el Hage, later convicted as a conspirator in the 1998 US embassy bombings, with purchasing vessels and front companies to set up a similar system for al Qaeda.

The Sea Tigers' suicide bomber sub-unit, the Black Sea Tigers, pioneered a form of maritime suicide terrorism that uses attack craft loaded with large quantities of explosives and constructed of fiber glass hollowed out in a shoe shape to ensure they are fast, maneuverable and low profile. The unit's boats are equipped with a frame on the front of the boat bearing holding spikes that fasten the boat to the broadside of larger vessels upon impact. The Black Sea Tigers modus operandi is generally to attack under cover of darkness.²⁹



In July 1990, a Black Sea Tiger suicide attack by explosive-laden fast boats badly damaged the Sri Lankan naval ship *Edithara* and a similar attack in May 1991 sank the Sri Lankan command ship *Abitha*. In October 2000, the Sea Tigers penetrated a high security zone around Sri Lanka's largest naval complex utilizing suicide go-fast boats, sinking a naval boat and damaging a number of others. The Black Sea Tigers also employed kamikaze-style suicide tactics with explosives-laden boats in September 2001 against the Sri Lankan navy, utilizing about 20 such boats.

Although predominately focused on strikes involving explosive-laden boats rammed into surface ships, the Black Sea Tigers have utilized innovative maritime technologies to attack targets in port such as mini 2-man suicide submarines, covert infiltration/exfiltration of suicide divers, and one-man suicide torpedoes. The Black Sea Tigers have reportedly executed more than 40 seaborne suicide attacks.

²⁷ Dr. Joshua Sinai, "Trends in Worldwide Maritime Terrorism", US Maritime Security Expo, 2005.

²⁸ <http://www.ict.org.il/articles/articledet.cfm?articleid=532>

²⁹ <http://www.hindu.com/2004/07/28/stories/2004072802311000.htm>

The Sea Tigers carried out USS Cole-style attacks as far back as 1990 and maritime terrorism experts believe that they are tactically at least 10 years ahead of al Qaeda. In this regard, examining the Sea Tigers model may provide a critical benchmark for general developments in the area of maritime terrorism and situational awareness of threats to maritime security.³⁰

Maritime Terrorist Threat to US Ports

The maritime threat posed by al Qaeda, its affiliates, and sympathetic extremist groups is limited only by the imagination of terrorist planners. Ports are prime targets for al Qaeda because of their respective economic and "iconic" importance.



Ports are an essential intermodal link in the movement of international goods and are critical to the nation's economy and security. They are one of the most valuable and most vulnerable, low risk high payoff target for terrorists³¹. The nation's over 360 ports with more than 3,700 passenger and cargo terminals are a nexus for a large network of intermodal linkages including: 152,000 miles of rail, 460,000 miles of pipelines, 45,000 miles of interstate highways and

more than 1000 harbor channels and 25,000 miles of inland, intracoastal and coastal waterways.

Attacks against port infrastructure are designed to disrupt, halt, or slow the operational efficiency of the port's capability to deliver vital goods. As far back as 1956, Egyptian forces successfully shut down the Suez Canal for over a year by sinking ships in the narrow waterway.³² Were terrorist to scuttle a large bulk carrier or oil tanker in one of the US' major ports, the economic consequences would be equally as severe. Potential damage could include a spike in oil prices, an increase in the cost of shipping due to the need to use alternate routes, congestion in sea-lanes and ports, more expensive maritime insurance, and probable environmental disaster. If several such attacks occurred simultaneously in multiple locations worldwide the global economic impact would be devastating.

Merchant vessels are most vulnerable in coastal areas while anchored outside port facilities or traversing navigation channels and coastal waterways at slow speeds.³³ In this environment high civilian traffic and narrow sea lanes reduce the time afforded ships to detect, react and respond to sea-borne threats.

³⁰ Peter Chalk, "LTTE Suicide Terrorism: Evolution, Tactics And Execution", WAPS International Conference, Oslo, Norway Aug 04

³¹ Harlan Ullman, "Securing the Port of New York and New Jersey: Network-Centric Operations Applied to the Campaign Against Terrorism", Stevens Institute, September 2004.

³² Jonathan Howland, "Hazardous Seas", JINSA online, April 1, 2004

³³ *ibid.*

Seaports take on added significance in war time. Commercial ports provide the critical interface between the water and surface modes of transportation for handling both commercial and military cargoes. The Department of Defense (DOD) relies heavily on the use of US commercial ports to deploy its forces. Military cargo moves for US operations in Iraq and Afghanistan would not be possible without the nation's network of multiple ports with adjoining rail capabilities and intermodal infrastructure. The US Maritime Administration (MARAD) has designated 14 ports as "strategic commercial ports", including the Port of NY/NJ.

A large ship could ram and thus knock out bridge abutments and block shipping channels, or intentionally be sunk outside a key harbor blocking civilian and military vessels in port.³⁴ The lengthy closure of a military port could hamper the military's ability to re-supply deployed forces.³⁵

Maritime Terrorist Threat to Passenger Vessels

Each year US ports transport 134 million passengers by ferry and host more than 5 million cruise ship passengers. While heightened safety measures in U.S. ports may afford passenger vessels some degree of protection from attack, they are still highly vulnerable.

In October 1985, terrorists from the Palestinian Liberation Front hijacked the passenger liner *Achille Lauro* off the coast of Egypt and murdered a US citizen, highlighting the potential terrorist threat to cruise ships.

Cruise ships are commonly viewed abroad as symbols of Western opulence and prosperity. They carry upwards of several thousand passengers and as Dave Brennan, an analyst with the Rand Corporation points out, cruise ships are "low-risk targets"³⁶. As a targeting strategy, a successful attack on a cruise ship could produce high casualties; devastate that tourist industry and garner significant worldwide media attention for al Qaeda. Between 1992 and 1994 Ayman al Zawahiri and the Egyptian Islamic Group, now merged with al Qaeda, specifically targeted and attacked cruise ships along the Nile to damage Egypt's tourist trade.

In open waters, cruise ships can easily outrun a freighter and their compartmentalized design would make it extremely difficult for a small craft, such as the ones used to attack the *USS Cole* or *MV Limburg*, to deliver a blow that would severely endanger the ship.³⁷ However, even the fastest cruise ship could be at least temporarily disabled by a small craft suicide attack or sabotage from within, by either passengers or crew.

In August 2005, Lu'ai Sakra, a Syrian-born al Qaeda lieutenant, was arrested in the southern Turkish city of Antalya and charged with planning to attack Israeli cruise ships using explosive laden Zodiac speedboats. In total, 10 al Qaeda members, with 1,650 lbs.

³⁴ Fay Bowers and Peter Grier, "How Al Qaeda Might Strike the U.S. by Sea", *The Christian Science Monitor*, 5-14-03

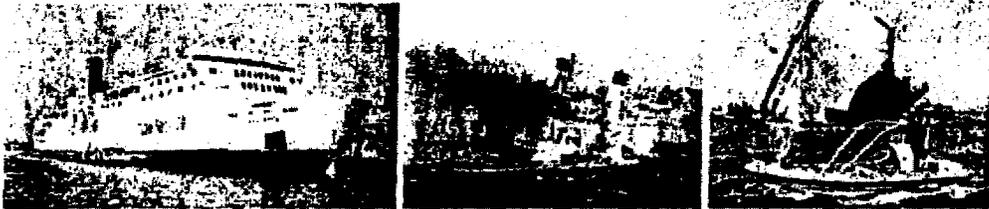
³⁵ Peter Goodspeed, "Piracy at Sea Reaches Record High", *National Post*, July 24, 2003.

³⁶ Tom Knowlton, "Signs of More Maritime Attacks", *DefenseWatch*, January 15, 2003.

³⁷ John Mintz, "15 Freighter Believed to be Linked to al Qaeda", *Washington Post*, December 31, 2002.

of C-4 explosives in their possession, were arrested in Turkey in connection with the plot, a further indicator of al Qaeda's ongoing interest in maritime terrorism.

Ferries have been long viewed by terrorists as a target capable of yielding high casualties. Most notably, on February 27, 2004, a television set filled with 8lbs of TNT was detonated onboard the Philippines' *Superferry 14* by Islamic terrorists killing 116.



In January 1996, nine pro-Chechen gunmen hijacked a Turkish ferry in the Black Sea and held 255 passengers and crew hostage for three days. The Turkish authorities allege the hijackers had earlier considered blowing up one of the two suspension bridges over the Bosphorus with explosives in order to block the Strait to traffic.

Maritime Terrorist Threat to Oil-Centric Targets

Security of oil and gas platforms and vessels in US ports has come under greater scrutiny since the October 2002 al Qaeda attack on the *MV Limburg* marked what many experts feel is the "beginning of maritime terrorism against the petroleum industry". However, On October 23, 2001, a year before the attack on the *Limburg*, five Black Sea Tiger suicide boats attacked a Sri Lankan bound oil tanker carrying over 450 metric tons of fuel, ramming the tanker, which later burst in flames.

After the *Limburg* attack Osama bin Laden's declaration that the attack targeted the "umbilical cord and lifeline of the crusader community" further fueled such concerns.³⁸ The US annually imports 3.3 billion barrels of oil and al Qaeda has expressed an ongoing interest in specifically attacking American dependence on foreign oil.

On April 24, 2004, three small boats laden with explosives attacked Iraq's Al-Basra Oil Terminal. The crew of one boat set off explosives as U.S. military personnel prepared to search it, killing three American sailors. The other two exploded near the Al-Basra Oil Terminal's installations, shutting down the terminal for two days with a loss of about 350,000 barrels of production worth \$40 million in lost revenues.

A 40-minute al Qaeda videotape made in September 2005 and released in December 2005, featuring senior al Qaeda deputy Ayman al Zawahiri specifically called for strikes against energy infrastructure in the Persian Gulf region. The region's oil wealth is viewed

³⁸ John Kerin, "Warning: Oil Rigs Terror Targets", October 15, 2003, http://www.news.com.au/common/story_page/0,4057,7563631%5B421,00.html accessed 10/15/2003

by al Qaeda as the "blessing of Allah upon Arabs and Muslims"³⁹. Al Qaeda lieutenants, including Osama bin Laden, have made remarks about the need to halt the theft of Muslim oil numerous times in the past. However, it is believed that Al-Zawahiri is not issuing a warning to the oil industry or the West, but rather is giving targeting guidance to al Qaeda's operatives and sympathizers.⁴⁰

Maritime Threat Scenarios: Tactics

The 21st century maritime threat is asymmetrical and multidimensional. Terrorists might hijack a vessel, register a ship in a 'flag of convenience' nation and use it for terrorist activities; or purchase and make use of a legitimate shipping company and its vessels to carry out acts of terrorism without coming under suspicion. These ships could be loaded with explosives and crashed into other vessels, port facilities, critical infrastructure, or population centers on the coast.⁴¹ Maritime attacks may also involve the use of small underwater craft, such as small submarines or underwater motor-propelled sleds for divers. Some terrorist groups are known to have experimented with such methods.



"Trojan Horse"

Security experts have expressed concern over the potential for terrorists to use the international maritime container shipping system to smuggle terrorist weapons or even terrorist operatives into the United States.⁴²

In March 2003, Two Palestinian terrorists wearing Israeli Army uniforms secreted behind a false wall in the rear of a 40-foot container loaded with marble and ceramic tiling infiltrated the Israeli Port of Ashdod. The terrorists emerged from the container and detonated explosive vests killing 10 port workers. Israeli security personnel had



conducted an electronic scan of the container as well as a physical inspection of the interior and exterior and failed to detect the false wall. Ashdod has long been considered one of the most secure port facilities in the world because security guards inspect 100 percent of the cargo containers coming into the port.⁴³

In October 2001, Italian authorities arrested an Egyptian al Qaeda operative, Rigk Amid Farid, stowed away aboard the German merchant vessel *Ipex Emperor*. Farid was ensconced in a container that had been outfitted with a bed, kitchen, cell phones, Canadian

³⁹ Fred Burton, "Al Qaeda: Targeting Guidance and Timing", STRATFOR, December 9, 2005
⁴⁰ Ibid.
⁴¹ <http://www.ict.org.il/articles/articledet.cfm?articleid=532>
⁴² Commissioner Robert C. Bonner, Council on Foreign Relations, New York, New York, January 11, 2005
⁴³ Jonathan Howland, "U.S. Starting to Focus on Maritime/Seaborne Terror", JINSA online, April 16, 2004

passports, entry permits for security men and mechanics to New York JFK, Newark, and O'Hare airports, and three weeks worth of supplies. The container had been painted over to resemble the container that should have been placed aboard the vessel.

In May 2002, Senator Bob Graham (D-Fla.), chairman of the Senate Intelligence Committee, confirmed a classified Coast Guard intelligence alert that 25 suspected Islamic extremists were thought to have entered major seaports in California, Florida, and Georgia that year by hiding in cargo containers and walking away undetected, dressed as stevedores.

It is believed al Qaeda's director of global operations Khalid Sheikh Mohammed was involved in a plot to gain regular access to containers used to ship garments from Karachi to New York harbor before he was captured in Pakistan in March 2003.⁴⁴

In the Weapons of Mass Destruction (WMD) spectrum, one noteworthy threat posed by maritime terrorists is a "Trojan horse" scenario, the smuggling into an American or Western port a weapon of mass destruction. A massive explosion within the confines of an American harbor would have devastating effects. Documents captured from one of bin Laden's top aides reveal plans for smuggling high-grade radioactive materials into the United States encased in shipping containers of sesame seeds.⁴⁵

In a October 2003 interview with *Seapower* magazine, Senator Ernest Hollings (D-S.C.) described U.S. ports as the "most vulnerable component of the U.S. critical infrastructure", citing that "a single weapon of mass destruction, concealed in a container and smuggled into a major U.S. seaport, could cause untold damage to our economy, killing thousands of people and costing tens of billions of dollars in damage."⁴⁶ There additionally exists the potential for a synergistic effect if such an attack was to occur in a port such as Houston, where damage to nearby petrochemical plants could result in the release of toxic chemicals into the atmosphere.⁴⁷

*Analyst Note Experts assert that rather than attempt to smuggle a whole nuclear device into the country, al Qaeda is more likely to attempt to bring a device in piece by piece through several of the country's over 360 ports.*⁴⁸

Vessel-Borne Improvised Explosive Device

There is concern al Qaeda-linked terrorists will attempt to explode a ship laden with explosives or flammable material in a key port, canal or internal waterway, to cause maximum casualties, infrastructure damage and economic harm.

A study published in October 2003 by Aegis Defence Services, a London-based security consultancy, reported new and disturbing developments for maritime terrorism in Southeast Asia. In March 2003, the chemical tanker *Dewi Madrim* was boarded off the

⁴⁴ Niala Boodhoo, "Other Groups, with Al-Qaeda, Said to Threaten US," Reuters May 20, 2002

⁴⁵ Jonathan Howland, "Hazardous Seas", JINSA online, April 1, 2004

⁴⁶ James Hessman, "Shipping Container Security and the Weakest Link Scenario", *Sea Power*, October 2003.

⁴⁷ Fay Bowers and Peter Grier, "How Al Qaeda Might Strike the U.S. by Sea", *The Christian Science Monitor*, May 14, 2003.

⁴⁸ Bruce Moody, "Shipping Containers: Poor Man's Nuclear Missile?" *Homeland Defense Journal*, June 2005.

coast of Sumatra in Indonesian waters by 10 pirates from a speedboat armed with machine guns, machetes and carrying VHF (very high frequency) radios. They disabled the ship's radio, took the helm and steered the vessel, altering speed, for about an hour. Then they left, with some cash and the captain and first officer, who remain missing. The Aegis report concludes that this was a case of terrorists learning to drive a ship, and that the kidnapping (without any attempt to ransom the officers) was designed to acquire expertise for carrying out a maritime attack. The takeover of the *Dewi Madrim* has been described as 'the equivalent of the al Qaeda hijackers who perpetrated the Sept 11 attacks going to flying school in Florida'.⁴⁹

Among the vessels that could be used by terrorists to create a massive vessel-borne improvised explosive device (VBIED) are large ships carrying liquefied petroleum gas (LPG) and liquefied natural gas (LNG), crude oil, toxic chemicals, and ammonium nitrate.

The main risk from LPG and LNG is during loading or unloading when the cargo can be released in a gaseous state. An ignited LNG vapor cloud would generate a extremely high heat output and cause extensive loss of life and damage to property. Moreover, released LNG would be more difficult to contain at sea than on land since it would disperse faster on the ocean. LNG also vaporizes more quickly on water because the ocean provides a relatively enormous heat source. For these reasons, most analysts conclude that the shipping, loading and off-loading LNG are significant terrorist targets.⁵⁰



A considerable body of evidence suggests that liquefied petroleum gas (LPG) and liquefied natural gas (LNG) carriers, while potentially dangerous in the hands of terrorists, may be considerably more difficult to "weaponize" than other big ships that carry crude oil, especially fuel and other heavy oils, toxic chemicals, and ammonium nitrate.



Fuel tankers carry the approximate explosive force of a .8 megaton bomb and are easy marks for hijackers as they are lightly manned and generally equipped with only fire hoses for repelling hostile boarders. The Piracy Reporting Centre of the International Maritime Bureau (IMB) reported that of the attacks in 2004, oil and gas tankers were the most popular targets with a total of 67 attacks. Theoretically, al Qaeda could hijack of an oil or gas tanker and attempt to explode it in mid-sea or in a

major port. Even a strike from a smaller VBIED, while failing to cause a massive explosion could have devastating effects to a port, as the attack against the double hulled

⁴⁹ Michael Richardson, "Terror at Sea: The World's Lifelines are at Risk", *The Strait Times*, November 17, 2003.

⁵⁰ Michael Richardson, "A Time Bomb for Global Trade: Maritime-Related Terrorism in an Age of Weapons of Mass Destruction", *Institute of Southeast Asian Studies*, 2-24-04.

oil supertanker *MV Limburg* and the subsequent release of 90,000 barrels of burning crude oil into the Gulf of Aden clearly demonstrated.⁵¹

Moreover, barges loaded with Certain Dangerous Chemicals (CDC), including oxidizing materials, blasting agents, radioactive materials and gases capable of producing a highly toxic cloud such as Chlorine; routinely travel through US ports and waterways. If a CDC barge was struck by a VBIED or itself used as a weapon by terrorists, the incident could result in substantial loss of life, property, environmental damage, and grave economic consequences.

Particularly alarming is the fact that no less than ten tug boats have been hijacked and stolen in the waters of Southeast Asia. Tugs do not carry cargo and have few crew members compared to larger cargo ships. However, security experts are concerned that these tugs could be used to utilize to literally tow an explosive laden barge into a major port facility for an attack.⁵² Terrorist manuals cite the value of authentic disguises and historical examples of commercial ships used as decoys to get close to targeted ships before attacking.⁵³ Early reports suggested the small boat that attacked the *Cole* gained access by operating among and possibly posing as one of the harbor workboats assisting with mooring and refueling preparation.⁵⁴ Hijacked harbor tug or workboat could cause enough uncertainty to delay a ship's force-protection response and allow a boat to approach close enough to detonate a potent payload.⁵⁵

Along New York State's 524-mile long commercial canal system, which connects the Hudson River with the Great Lakes, Finger Lakes, and Lake Champlain, there are than 4 million registered small boats on the Great Lakes alone.⁵⁶ VBIEDs may also be fast inshore attack craft (powerboats, interceptors, rigid hull inflatable boats (RHIBs), jet skis, etc) equipped as suicide craft loaded with explosives.⁵⁷

Speedboats are emerging as the terrorist weapon of choice, providing superior maneuverability and reduced radar detection, and capable of executing multiple attacks from several vectors, hiding in crowds such as fishing fleets, creating diversions, luring a target with distress calls or false emergencies, and conducting lethal assaults, initial or follow on, using various forms of arms.⁵⁸ Speedboats and recreational vehicles are also far more common and easy to acquire than an ocean-going vessel.

Although, small crafts have a very limited range, an al Qaeda merchant ship could carry and deploy small speedboats packed with explosives. The World War II German merchant raider *Michel* made extensive usage of motor launches to attack merchant vessels.⁵⁹

⁵¹ Jonathan Howland, "Hazardous Seas", JINSA online, April 1, 2004

⁵² Ibid.

⁵³ Military Studies, p. UK/BM-17-18.

⁵⁴ Roberto Suro and Alan Sipress, "Navy Revises Initial Account of Bombing," The Washington Post, October 21, 2000

⁵⁵ James Pelkofski, "Defeat al Qaeda on the Waterfront", Proceedings, June 2004.

⁵⁶ CDR Stephen Flynn, USCG, "Homeland Security is a Coast Guard Mission," Proceedings, October 2001.

⁵⁷ CAPT Michele Cosentino, "Defeating Terrorism from the Sea," Proceedings, December 2004.

⁵⁸ Captain James Pelkofski, "Before the Storm: al Qaeda's Coming Maritime Campaign", Proceedings, December 2005.

⁵⁹ Auxiliary Cruisers Raiding Tactics. <http://www.asocitica.com/pentagon/2833/general/tactics/raiding/raiding.html>. Accessed November 7, 2003.

More recently, officials are searching for a "mother ship" believed to be used to launch high-speed boats for several recent pirate attacks off Somalia. Fishermen in the area spotted a "pirate mother ship" drifting off the Somali coast in July 2005, on November 5, 2005, when pirates tried unsuccessfully to attack a 440-foot cruise liner operated by Seabourn Cruise Lines. Officials think the smaller boats used in the attack were launched from the mother ship.

The high level of commercial and civilian sea traffic in the region hinders the detection and tracking of these small vessels, further truncating the response timeline.⁶⁰

Stand Off Attack

Media reporting indicates that the Department of Defense is examining the potential for terrorists to launch an asymmetric attack with a missile from a freighter off the US coast.

Thousands of SCUD missiles and other inexpensive short-range ballistic missiles are spread worldwide, many in countries where terrorist organizations operate freely. A number of relatively short-range ballistic or cruise missiles, capable of being armed with chemical, biological or even nuclear warheads, could be launched from an innocuous-looking merchant ship off the 12,400 miles of U.S. coastline (including Alaska and the Great Lakes). Even the relatively large Seersucker, a Soviet-designed ant-ship cruise missile, can be hidden and launched from a standard 12-meter shipping container. Considering 75 percent of the nation's population and military bases are within 200 miles of the coast.

The ease with which these weapons are available was evidenced in December 2002, when federal agents discovered a SCUD missile and launcher inside a shipping container in the Port of San Pedro, Calif. A Silicon Valley-based arms collector had purchased the weapon on the open market.



In August 2004, Secretary of Defense Rumsfeld, at the seventh annual Space and Missile Defense Conference, cited the danger of terrorists or rogue states attacking the United States by putting a short-range SCUD-type missile on a freighter and firing it close to U.S. shores. Iran, a leading state sponsor of terrorism and weapon proliferator, began deploying short-range and medium-range Scud ballistic missiles aboard cargo vessels, and equipped them to be launched from ships using standard commercial radar and electronic equipment.⁶¹

It is believed that Iran has also experimented with ship-launched missiles as part of the development of an Electromagnetic Pulse (EMP) warhead capable of delivering a nuclear

⁶⁰ Tom Knowlton, "Use Predators to Protect our Warships", *DefenseWatch*, January 22, 2003.

⁶¹ <http://missilethreat.com/news/200408180843.html>

explosion high in the atmosphere and disrupting nearly every form of electrical system in the effected area. On March 8, 2005, Lowell Wood, a member of the Congressional EMP Commission, testified before the Senate Committee on the Judiciary's Subcommittee on Terrorism, Technology, and Homeland Security, testified that such an attack could be delivered against the United States by "a SCUD missile launched from a freighter off the Atlantic coast."⁶²

Subsurface Threats

After the 9/11 attacks, the Safe Dive club in Eindhoven, Holland came under scrutiny after a diving instructor and some of his students were suspected of al Qaeda links. Wahid Gomri, a 35-year-old Tunisian dive instructor, arrived as a refugee to Holland and paid \$8,000 for an accelerated diving certification course. Once certified, he rented expensive scuba diving suits, tanks and other gear on a regular basis at the Safe Dive club to teach his own summer classes for Arabic speakers at lakes around the Netherlands. In 2002, Gomri purchased a bulk order of about \$7,000 worth of suits and equipment with funds that came to the school via a bank transfer from India. Gomri's students spoke little Dutch or English and came from Lebanon, Saudi Arabia, Afghanistan, and North Africa during the summer, studied with Gomri and then returned to North Africa or the Middle East.⁶³ Gomri has publicly acknowledged that three of the students he had trained at the Safe Dive Club in Eindhoven were later arrested for militant activities.

Since the June 2002 capture of al Qaeda's head of operations in Southeast Asia, Omar al-Faruq and his admission that he was reportedly planning SCUBA attacks against U.S. ships in the Indonesian port of Surabaya, counter-terrorism experts have become increasingly concerned al Qaeda may be training for unconventional underwater stealth attacks using SCUBA diving equipment, motorized underwater sleds, and human torpedoes. Al Qaeda divers could plant explosives on the hulls of ships, act as seagoing suicide bombers or sneak aboard vessels and commandeer them for attacks.

Specially trained and equipped terrorists can infiltrate straits, harbors, and bases near shore by swimming or scuba diving to damage vessels, facilities, and port resources with limpet mines, a time-fused contact mine attached to the target by magnets to disable and sink merchant ships moored at port.



Media reporting indicates that as far back as the late 1990s, a detachment of SEAL Team 6, in an undisclosed US-allied Arabic country captured several terrorists during an attempted attack on a US Navy amphibious ship. The captured terrorists were armed with AK-47s, but also yielded SCUBA diving gear, and improvised limpet-type explosive devices believed to be designed to punch an approximately three foot hole in a

⁶² <http://missilethreat.com/news/200504271305.html>

⁶³ Sebastian Rotella, "Fears Persist of Al Qaeda Terrorist Link to PADI Dive Center," Cyber Diver News Network, <http://www.cdnn.info/news/article/a030802.html>

ships hull, fabricated from Yugoslavian clock detonators, and TNT shaped around a Semtex core.⁶⁴

On at least two occasions during the summer of 2002, the Israeli Defense Force intercepted armed Palestinian SCUBA divers from the Gaza Strip attempting to infiltrate Israeli settlements to perpetrate terrorist attacks.

CIA Director George Tenet testified before the US Senate Committee on Intelligence in February 2003 that al Qaeda was developing new means of striking, including the use of "underwater methods to attack maritime targets."

According to an August 22, 2003 Department of Homeland Security Intelligence Bulletin, "Swimmer Attack Indicators and Protective Measures," maritime industry operators have reported a number of incidents involving suspicious activity including increased incidents of suspect terrorist individuals making inquiries into obtaining specialized equipment and training related to SCUBA diving and underwater operations.⁶⁵

The October 2003 Aegis Defence Services study found evidence that suspected Southeast Asian terrorists have been learning to dive, and reportedly few of them were concerned about life-saving decompression techniques, a disturbing parallel to the 9/11 hijacker's indifference to landing and takeoff procedures in their flight instruction. The report cited an April 2000 incident involving the al Qaeda-linked Abu Sayyaf terrorist group in the southern Philippines, kidnapping a maintenance engineer from a Sabah holiday resort. On his release, the engineer reported that his kidnappers knew he was a diving instructor and wanted instruction.⁶⁶

In April 2004, media reports indicated U.S. intelligence agencies were reporting an increase in terrorist "chatter" regarding ships, port facilities, bridges, and SCUBA diving.⁶⁷

Al Qaeda websites have indicated that maritime attacks could also involve the use of small underwater craft, such as mini-submarines or submerged diver delivery vessels (SDV).⁶⁸ While such tactics sound more like James Bond than reality, there have been a number of such vessels recovered in recent years. In April 2000, Thai Marine Police raided the shipyard of Seacraft Co. Ltd. and discovered a half built mini submarine capable of accommodating 2-3 persons. The Thai police also discovered sophisticated sonar and GPS systems, satellite phones, combat training videos in Tamil, LTTE calendars and uniforms. A similar submarine was seized by Sri Lankan Government Forces from the LTTE in the early 1990's.



⁶⁴ <http://www.blackwaterusa.com/btw2005/articles/082905port.html>

⁶⁵ <http://www.blackwaterusa.com/btw2005/articles/082905port.html>

⁶⁶ Michael Richardson, "Terror at Sea: The World's Lifelines are at Risk," *The Strait Times*, November 17, 2003.

⁶⁷ Jonathan Howland, "Hazardous Seas", JINSA online, April 1, 2004

⁶⁸ http://www.defense-update.com/2005_12_01_defense-update_archive.html

Mines

In April 1988, the US Navy frigate USS *Samuel B. Roberts* was badly damaged by an Iranian mine in the Persian Gulf. The mine blew a 15-foot hole in the hull, flooded the engine room, and knocked the two gas turbines from their mounts.

During February 20, 2002 testimony before the House Armed Services Committee Subcommittee on Research and Development, Greg Smith, Chief Operating Officer of Swath Ocean Systems, warned that the threat of a mine being placed in U.S. harbors or ports or coastal waters was not only imaginable, but also very possible. He described the economic impact of closing a port due to terrorist mining or even just the threat of a mine while waiting for mine clearing assets to arrive as "tremendous".⁶⁹



A mine is essentially an explosive charge in a casing that is laid underwater to destroy ships. Mines can be positioned on the seabed, moored at a predetermined case depth, or floated. They pose a significant threat in waters shallower than 300 feet.⁷⁰ Mines can be detonated by striking a ship, by the acoustic, magnetic, seismic, electric potential, or pressure influences (singularly or in combination) from a ship, or by remote when the target is within range. However, the terrorist objective is likely not so much the destruction of the ship as the political impact and economic damage caused by disruption to trade, increased shipping insurance rates and extended journey times.⁷¹

Mines are cheap (as little as \$200), easy to acquire or to produce and achieve a dramatic surprise effect, making them an ideal terrorist weapon.⁷² A number of countries are actively engaged in the development and manufacture of sea mines including Iran and North Korea, both state sponsors of terrorism and armed proliferators. Terrorists may also have access to a number of advanced Russian and Chinese mine variations and designs.

Conclusion

Preventing terrorists from utilizing the maritime superhighways to transport materials and from which to launch attacks poses a significant challenge in the war on terrorism. The maritime terrorist threat, while not new, appears to be growing more acute as militant jihadist groups became more adept at sharing information on seaborne attacks. Law Enforcement and homeland security authorities in states such as New York, with 127 miles of Atlantic Ocean coastline, 210 miles of northern border along the Great Lakes,

⁶⁹ February 20, 2002 Testimony before the House Armed Services Committee Subcommittee on Research and Development, Greg Smith, Chief Operating Officer of Swath Ocean Systems

⁷⁰ Joint Doctrine for Barriers, Obstacles, and Mine Warfare, Joint pub 3-15. III-13

⁷¹ http://www.navweaps.com/index_tech/tech-068.htm

⁷² CAPT Michele Cosentino, "Defeating Terrorism from the Sea", Proceedings, December 2004.

and the longest intrastate waterway system in the nation (800 miles), need to maintain heightened vigilance in light of this emerging trend.

Testing weapons and practicing advanced asymmetrical attack techniques, hallmarks of al Qaeda's typically meticulous preparation, takes time. Particularly if, as threat reporting seems to indicate, al Qaeda and its affiliates and sympathizers are developing the expertise to conduct a prolonged maritime campaign rather than a single spectacular maritime terrorism operation.

While driving small explosive-laden speedboats may be fairly rudimentary, operating at sea requires skills neither easily nor quickly acquired. It requires special training in navigation, coastal piloting, and ship handling to pilot a ship into a bridge, port facility, or other vessel, particularly a moving target.⁷³ Likewise, maneuvering through the dark waters and deafening engine noise of a busy port is difficult for experienced divers, let alone a comparative amateur strapped with heavy explosives.

Ultimately, the propensity of al Qaeda for patient and intricate preparation augurs a future sustained maritime terrorism campaign, rather than a continued irregular pattern of attacks.⁷⁴

⁷³ Captain James Pelkofski, "Before the Storm: al Qaeda's Coming Maritime Campaign", Proceedings, Dec 2005.

⁷⁴ Captain James Pelkofski, "Before the Storm: al Qaeda's Coming Maritime Campaign", Proceedings, Dec 2005.

Potential Indicators and Warnings of Maritime Attacks

The following are suggested activities, though not fully inclusive, that may be of *possible* concern to law enforcement:

- Inquiries from individuals residing in foreign countries into boating and diving instruction and courses.
- Suspicious requests (e.g. wanting to know how to pilot vessels, but not dock them).
- Unusual requests for training as well as certain characteristics of training could represent potential terrorist interest in using diving to conduct terrorist activity. These indicators may include:
 - Requests for specific specialty training, including odd inquiries that are inconsistent with recreational diving.
 - Requests to learn advanced skills that can be associated with swimmer attack training, including training with rebreathers, deep diving, conducting "kick counts" or receiving navigation training.
 - Rapid progression of diver training and certifications, particularly if the training is routinely attended by the same students.
 - Training routinely conducted between the same two or three individuals.
 - Training sponsored by groups or agencies not normally associated with diving.
 - Training given by instructors who do not advertise and appear to have little means of visible support, especially those with a history of extremist views.
 - Training conducted in remote or atypical locations or restricted areas.
 - Threats, coercion or attempts to bribe trainers for certification.
- Suspicious attempts to purchase specialized marine equipment may provide indication of pre-operational activity. Including:
 - Individual purchases of common gear in excessive quantities.
 - Attempts to rent advanced gear without required certifications or attempts to rent gear that is inconsistent with the stated purpose of the diving report.
 - Volume purchasing inquiries related to Swimmer Delivery Vehicles (SDVs) and Diver Propulsion Vehicles (DPVs).
 - Exclusive purchases of darkened gear or after market painting.
 - Attempts to purchase large magnets, large diameter PVC pipe or empty compressed gas cylinders or theft of same.
 - Attempts to purchase advanced gear such as rebreathers or other equipment used in mixed gas diving by individuals who appear to lack expertise in the use of the equipment.
- People appearing to be engaged in surveillance of any kind in or around a port facility Particularly:
 - Under and around bridges, tunnels, or overpasses
 - Near commercial areas or services like ports, fuel docks, cruise ships, marinas.
 - Near industrial facilities, power plants and oil, chemical, or water intake facilities.

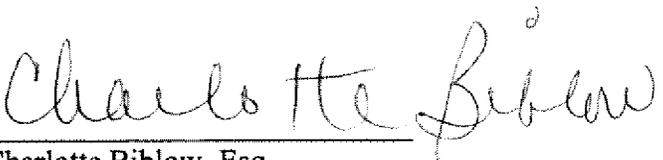
- Near military bases and vessels, other government facilities, or security zones
- In and around passenger terminals for ferries and day cruiser lines
- Near railroad lines serving any of the above listed facilities
- Unattended vessels or vehicles in unusual locations.
- Lights flashing between boats.
- Unusual diving activity.
- Unusual number of people onboard.
- Unusual night operations.
- Recovering or tossing items into/onto the waterway or shoreline.
- Operating in or passing through an area that does not typically have such activity.
- Fishing/hunting in locations not typically used for those activities.
- Missing fencing or lighting near sensitive port-related locations.
- Anchoring in an area not typically used for anchorage.
- Transfer of people or things between ships or between ship and shore outside of port.
- Operating a vessel in an aggressive manner.
- Small planes flying over critical port locations.
- People attempting to buy or rent fishing or recreational vessels with cash for short-term, undefined use.

CERTIFICATE OF SERVICE

I hereby certify that on the **15th day of November, 2006**, I caused a true and correct copy of the attached **OBJECTIONS OF THE COUNTY OF SUFFOLK, NEW YORK TO BROADWATER'S NOTICES** to be served by Federal Express on the following:

Robert Alessi, Esq.
LeBoeuf, Lamb, Greene & MacRae, LLP
Attorneys for Broadwater Energy LLC and Broadwater Pipeline LLC
99 Washington Avenue
Suite 2020
Albany, NY 12210

Dated: Uniondale, New York,
November 15, 2006


Charlotte Biblow, Esq.

Farrell Fritz, P.C.
*Attorneys for the
County of Suffolk, New York*
1320 Reckson Plaza
Uniondale, NY 11556-1320
Tel.: (516) 227-0686
Fax.: (516) 336-2266
cbiblow@farrellfritz.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Uniondale, New York, this 17th day of November, 2006


Charlotte Biblow, Esq.

Farrell Fritz, P.C.
Attorneys for the
County of Suffolk, New York
1320 Reckson Plaza
Uniondale, NY 11556-1320
Tel.: (516) 227-0686
Fax.: (516) 336-2266
cbiblow@farrellfritz.com

FFDOCS\712030.02

BW010072

Submission Contents

Comments of Suffolk County, New York
DOC.pdf..... 1-56