

ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE

February 12, 2001

1:30 p.m.

MEMBERS PRESENT

Representative Beverly Masek, Co-Chair
Representative Drew Scalzi, Co-Chair
Representative Hugh Fate, Vice Chair
Representative Joe Green
Representative Mike Chenault
Representative Gary Stevens
Representative Beth Kerttula

MEMBERS ABSENT

Representative Lesil McGuire
Representative Mary Kapsner

COMMITTEE CALENDAR

HOUSE BILL NO. 61

"An Act authorizing the commissioner of fish and game to award grants for habitat restoration or enhancement projects; and providing for an effective date."

- MOVED HB 61 OUT OF COMMITTEE

HOUSE BILL NO. 55

"An Act regarding oil discharge prevention and cleanup involving self-propelled nontank vessels exceeding 400 gross registered tonnage and railroad tank cars and related facilities and operations and requiring preparation and implementation of oil discharge contingency plans for those nontank vessels and railroad tank cars; amending the definition of 'response action' that relates to releases or threatened releases of oil and thereby amending the duties and liabilities of response action contractors; authorizing compliance verification for nontank vessels and for trains and related facilities and operations; and providing for an effective date."

- MOVED CSHB 55(TRA) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 61

SHORT TITLE:HABITAT RESTORATION/ENHANCEMENT GRANTS
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
01/16/01	0093	(H)	READ THE FIRST TIME - REFERRALS
01/16/01	0093	(H)	FSH, RES, FIN
01/16/01	0093	(H)	FN 1: ZERO(DFG)
01/16/01	0093	(H)	GOVERNOR'S TRANSMITTAL LETTER
02/05/01		(H)	FSH AT 5:00 PM CAPITOL 124
02/05/01		(H)	Moved Out of Committee
02/05/01		(H)	MINUTE(FSH)
02/07/01	0261	(H)	FSH RPT 6DP 1NR
02/07/01	0261	(H)	DP: KAPSNER, KERTTULA, STEVENS, WILSON,
02/07/01	0261	(H)	SCALZI, DYSON; NR: COGHILL
02/07/01	0261	(H)	FN1: ZERO(DFG)
02/12/01		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HB 55

SHORT TITLE:OIL DISCH PREVENTION: NONTANK VESSELS/RR
SPONSOR(S): RLS BY REQUEST

Jrn-Date	Jrn-Page		Action
01/12/01	0070	(H)	READ THE FIRST TIME - REFERRALS
01/12/01	0071	(H)	TRA, RES, FIN
01/23/01		(H)	TRA AT 1:30 PM CAPITOL 17
01/23/01		(H)	Heard & Held MINUTE(TRA)
01/25/01		(H)	TRA AT 1:00 PM CAPITOL 17
01/25/01		(H)	Heard & Held
01/25/01		(H)	MINUTE(TRA)
02/01/01		(H)	TRA AT 1:00 PM CAPITOL 17
02/01/01		(H)	Heard & Held
02/01/01		(H)	MINUTE(TRA)
02/06/01		(H)	TRA AT 1:30 PM CAPITOL 17
02/06/01		(H)	Moved CSHB 55(TRA) Out of Committee
02/06/01		(H)	MINUTE(TRA)
02/07/01	0257	(H)	TRA RPT CS(TRA) 4DP 1AM
02/07/01	0258	(H)	DP: KAPSNER, KOOKESH, SCALZI, WILSON;
02/07/01	0258	(H)	AM: KOHRING
02/07/01	0258	(H)	FN1: (DOT)
02/07/01	0258	(H)	FN2: (DEC)
02/12/01		(H)	RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

KEN TAYLOR, Director
Habitat and Restoration Division
Alaska Department of Fish and Game (ADF&G)
PO Box 25526
Juneau, Alaska 99802-5526
POSITION STATEMENT: Spoke in support of HB 61.

LARRY DIETRICK, Director
Division of Spill Prevention and Response
Alaska Department of Environmental Conservation
410 Willoughby
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support of HB 55.

BRIAN ROGERS
Information Insights, Inc.
751 Old Richardson Highway, Suite 235
Fairbanks, Alaska 99701
POSITION STATEMENT: Testified in support of HB 55.

BRECK TOSTEVIN, Assistant Attorney General
Environmental Section
Civil Division (Anchorage)
Alaska Department of Law
1031 West Fourth Avenue, Suite 200
Anchorage, Alaska 99501-1994
POSITION STATEMENT: Spoke in support of HB 55.

PAUL FUHS, Task Force Member
1635 Sitka #301
Anchorage, Alaska 99501
POSITION STATEMENT: Spoke in support of HB 55.

ACTION NARRATIVE

TAPE 01-10, SIDE A
Number 0001

CO-CHAIR BEVERLY MASEK called the House Resources Standing Committee meeting to order at 1:30 pm. Members present at the call to order were Representatives Masek, Scalzi, Fate, Green, Chenault, Stevens, and Kerttula.

HB 61 - HABITAT RESTORATION/ENHANCEMENT GRANTS

CO-CHAIR MASEK announced that the first order of business was HOUSE BILL NO. 61, "An Act authorizing the commissioner of fish and game to award grants for habitat restoration or enhancement projects; and providing for an effective date."

Number 0134

KEN TAYLOR, Director, Habitat and Restoration Division, Alaska Department of Fish and Game (ADF&G), explained that the purpose of HB 61 is to provide the commissioner of ADF&G granting authority for federal receipts for habitat and restoration projects only. He emphasized that the bill restricts the commissioner from using any funds from federal aid, Dingle-Johnson/Wallop-Breaux or Pitman Robertson funds. He said that most of the funds would come from the excise taxes that sportsmen pay for hunting and fishing sports equipment. He explained that ADF&G is asking for this "limited" authority because they have experienced difficulty in making grants to private landowners, "particularly on the Kenai," for restoration projects. He told the House Resources Standing Committee:

Since 1995, we've had a 50/50 cost-share restoration program with landowners along the Kenai River, to restore and stabilize stream banks that have been trampled by a lot of fishing use. In order to conduct this program, we've had to take the funding that was appropriated by the legislature through [SB 183], which were EVOS [Exxon Valdez Oil Spill] criminal settlement funds, and funnel it through a federal agency so that they could actually do the granting necessary to the private individuals that own the land. In doing so, the federal agencies take 11 percent of the funding right off the top. This is an administratively cumbersome process and we feel the public would be best served if we could make these grants directly to those individuals.

MR. TAYLOR pointed out that HB 61 is identical to the bill passed by the House last year, which went to the Senate at the end of session, but "ran out of time before it passed." He encouraged the House Resources Standing Committee to support HB 61. He addressed a concern expressed during the House Fisheries Committee meetings regarding that the grants might be used for other purposes or be granted to "some nonprofit whose motives weren't necessarily pure." Mr. Taylor's response to that was:

Since 1995, we've had 186 grants applied for, 180 projects that were approved - and we've completed 170 of them - and if anyone on [the House Resources Standing Committee] is interested, I did hastily put together a list of all those projects - who those grants went to over the last six years. And I think you'll see that this program has been highly legitimate, it goes to landowners that have habitat that needs repair. The landowner pays 50 percent. [ADF&G] has been covering 50 percent through this cost-share program, and occasionally if we find outside money from some other federal agency that we can put in there as well.

Number 0599

MR. TAYLOR, in response to a question by Co-Chair Masek, said that he didn't think it would ever be the case that there would be grants awarded in habitat and restoration in order to stop a development project, such as a lodge. He said such activities are almost always done on private land and the habitat and restoration grants given out in the past have been to aid development on a particular piece of private land, not to stop development on someone else's land.

Number 0645

REPRESENTATIVE GREEN asked if ADF&G worked in conjunction with the Kenai River Sport[fishing] Association (KRSA).

MR. TAYLOR said yes. He listed several groups that ADF&G "coordinates" and "cooperates" with, including KRSA, Kenai Youth Conservation Corp, and the Alaska Fly Fisherman's Association.

Number 0708

REPRESENTATIVE GREEN asked if [those agencies listed above] do [habitat restoration] on public land versus ADF&G [restoring] private land.

MR. TAYLOR replied that ADF&G has been involved in many projects along the Kenai River, public as well as private projects. He cited the EVOS small-parcel purchases along the Kenai and the Kenai Borough properties as two examples of ADF&G's public land restoration involvement.

Number 0776

REPRESENTATIVE GREEN inquired as to whether the landowners come to [ADF&G] for assistance, or does [ADF&G] come to them.

MR. TAYLOR answered that when the landowners found out that funding was available, they approached ADF&G. He referred to page 2 of the handout in the bill packet, stating that it should actually follow the last page, which is titled, "Decision Matrix." He discussed the categories listed on the "Decision Matrix" that are used to rate an applicant and prioritize the projects.

Number 0873

REPRESENTATIVE GREEN asked if the Decision Matrix had anything to do with the amount of money that was awarded.

MR. TAYLOR replied yes. He approximated that ADF&G was given about \$1.5 million - appropriated by the legislature six years ago through SB 183 - that they have been awarding each year to applicants.

REPRESENTATIVE GREEN referred to the Decision Matrix and asked Mr. Taylor if the varying amounts awarded were determined by [ADF&G], by the application, or through an evaluation.

MR. TAYLOR answered that the amount awarded is "determined by an evaluation of the project: The cost benefits of what the applicant has proposed versus what we think would be the return. And you'll find one of the factors that we used for ranking is reasonable project cost."

REPRESENTATIVE GREEN clarified his question as follows:

If I were a landowner down there, and I came in with (indisc.)... \$12,000, or heavens, \$19,000, would your group say, "Well Green, you wanting \$19,000 to do what you said, we've gone through this matrix, and yeah, you qualify, but it's not \$19,000, it's only \$8,500. And so we'll match you on \$8,500, we're not going to match you on \$19,000." And so you get your \$9,500, and that just about does it, and I don't have to come up with anything.

MR. TAYLOR replied as follows:

I have not been through this particular process with our staff on the Kenai, and I can't answer your question. But I suspect that the way things work is that they have a pretty good idea, depending on how many feet of river frontage you're going to be restoring, what techniques you're going to use. I know that our staff has a very good estimate of what it's going to cost per (indisc.) ... per 10 feet of riverbank restoration, depending on the technique. So, while an applicant may come in asking for more than what it might cost, they're not likely to get all of it paid for through this. I think ... we match dollar for dollar, and if we have a project that's \$20,000, and it only costs \$15,000, the applicant will pay \$7,500, and the state will pay \$7,500.

Number 1065

REPRESENTATIVE GREEN asked if this [habitat restoration] has been done on other "sports rivers."

MR. TAYLOR said that so far the efforts of the program have primarily focused on the Kenai River, but there have been some smaller federal grants used to try to "expand this effort to some of the streams in the Matanuska Valley." He remarked, "It isn't anything that's not a 50/50 cost-share program set up like this." Mr. Taylor added that it is the hope of ADF&G to expand the program to benefit other parts of the state.

Number 1150

MR. TAYLOR, answering a question by Representative Scalzi, stated the following:

Last year the bill allowed for the municipalities to have a tax break for restoration, it gave the private landowners a potential tax break. The original law was specific to the Kenai [River], and now that's been expanded statewide. So other municipalities, if they choose to, can provide for a tax break for restoration purposes.

CO-CHAIR SCALZI asked if the 50/50 match was part of the original legislation.

MR. TAYLOR answered that it wasn't part of that legislation, but was a "companion piece." He said that more private landowners

get involved in restoration if a tax break is made available to them, and the current state statutes are such that only Kenai residents can get a tax break.

Number 1230

CO-CHAIR MASEK stated for the record that Representative Kerttula was present. She referred to an earlier statement made by Mr. Taylor regarding a legislator who had expressed concerns over delegated funds being spent for ill purposes, and asked him to expound on that remark.

MR. TAYLOR explained that the original bill gave the commissioner [of ADF&G] "broad granting authority" of federal and state funds, with no specified purpose. Therefore, many legislators were concerned about letting the state grant money that was not earmarked for a certain purpose. Subsequently, ADF&G "narrowed the scope" on federal and state funds spending in habitat restoration. Although there was concern that this type of program could be misused in the future, the language of the bill was structured to prevent its misuse. He offered to work on the language with any legislator still concerned with it.

CO-CHAIR MASEK referred to page 1, lines 5-6, regarding grant authority, and stated that the wording needed "fine tuning."

MR. TAYLOR directed Co-Chair Masek's attention to the remainder of the language in Section 1 of the bill. He read:

[The commissioner] may award grants from federal funds, other than funds received under the federal Pittman-Robertson and Dingell-Johnson/Wallop-Breaux programs

He stated, "In other words, federal funds that are not a part of our continuing appropriation from Congress, that are the excise taxes on sporting goods."

MR. TAYLOR explained that those funds could only be used for habitat restoration or enhancement projects. He mentioned that there is big movement in the Western United States right now for Congress to provide more funding for salmon habitat restoration, because of the endangered species issue in the Pacific Northwest. Mr. Taylor said that, theoretically, if Congress provides those funds, ADF&G would come to the legislature and request a capital project. The money appropriated would not be

part of ADF&G's regular operating budget. The legislature would examine ADF&G's outline, determine whether or not to provide those funds, specify the use of the funds, and ensure that the funds were used appropriately.

Number 1595

CO-CHAIR MASEK asked if there were any further questions. She closed public testimony, and opened up committee discussion.

REPRESENTATIVE FATE made a motion to move HB 61 out of committee. There being no objection, HB 61 was moved out of the House Resources Standing Committee.

CO-CHAIR MASEK called an at-ease at 1:52 p.m. in order for the sound equipment to be checked. The committee came back to order at 1:57 p.m.

HB 55 - OIL DISCH PREVENTION: NONTANK VESSELS/RR

CO-CHAIR MASEK announced that the next order of business would be HOUSE BILL NO. 55, "An Act regarding oil discharge prevention and cleanup involving self-propelled nontank vessels exceeding 400 gross registered tonnage and railroad tank cars and related facilities and operations and requiring preparation and implementation of oil discharge contingency plans for those nontank vessels and railroad tank cars; amending the definition of 'response action' that relates to releases or threatened releases of oil and thereby amending the duties and liabilities of response action contractors; authorizing compliance verification for nontank vessels and for trains and related facilities and operations; and providing for an effective date."

[Before the committee was CSHB 55(TRA).]

REPRESENTATIVE STEVENS made a motion to adopt CSHB 55(TRA) [although that was already before the committee].

Number 1844

CO-CHAIR MASEK pointed out that a new fiscal note submitted by Mary Siroky clarifies that the funds will come from "470 monies" and have no impact on the budget. She also made note of a letter from The Boat Company of Washington, D.C., which is in the bill packet. She introduced Paul Fuhs and Larry Dietrick, together at the witness table.

LARRY DIETRICK, Director, Division of Spill Prevention and Response, Department of Environmental Conservation, testified on behalf of Commissioner Brown, who was the chair of the task force on Motorized Oil Transport. He said Commissioner Brown served on the Steering Committee of the task force, along with Representative Kott and Senator Pearce. "The task force included a 23 member cross-section of the maritime industry, the Alaska Railroad, and other interested parties. He mentioned that Brian Rogers (facilitator of the task force) was standing by on teleconference to answer questions. Mr. Dietrick paraphrased his written testimony. He stated:

The goal of this legislation is simple. It's designed to protect Alaska's renewable resources and keep Alaska's waters the cleanest and most pristine in the world by including large sea-going marine nontank vessels and the Alaska Railroad in Alaska's safety net for oil spill prevention and response. In May of last year the Twenty First Legislature debated and passed Senate Bill 273 and Senate Concurrent Resolution 1, which commissioned the task force on Motorized Oil Transport to work out the details of how to implement oil spill contingency plans and achieve the response planning standard in a way that was acceptable to those who would be affected. The task force has completed the work directed by the legislature and achieved unanimous consensus on legislation to accomplish that. The consensus legislation, as [the House Resources Standing Committee has] just adopted is CSHB 55[(TRA)], which was developed by the task force and is predicated on no further amendments by its members.

To be more detailed, although the requirement for financial responsibility was made effective last year in SB 273, the requirement to have oil spill contingency plans and meet the response planning standard was not. Instead the legislature, through SB 273 and SCR 1, commissioned the task force to determine how to implement the response planning standards and provide opportunities for streamlined oil spill contingency plans. Those standards were set by the legislature in SB 273 as the containment and control of 15 percent of the maximum oil capacity of a nontank vessel or train, within 48 hours and cleanup of the discharge within the shortest possible time, consistent with minimizing damage to the environment.

Nontank vessels were also defined in SB 273 as self-propelled vessels over 400 gross tons, not including tank vessels, oil barges, or public vessels.

SCR [1] specified 23 members of the task force on Motorized Oil Transport. This served to insure diversity of viewpoints and adequate representation of all groups to be regulated. The members included representatives from the U.S. Coast Guard, the Department [of Environmental Conservation], the [Alaska] Railroad, spill response cooperatives, the shipping industry, spot charter groups, the fishing industry, the Regional Citizens' Advisory Councils, and representatives from [the] crude oil industry and the refined oil distributors and transporters. Many more persons who were not appointed representatives attended the work group sessions and formal task force meetings.

The task force held eleven formal meetings over a five-month period in which the members worked through legal and technical issues on prevention, contingency plans, and response planning standards. Three workgroups were created to address specific areas of concern.

The recommendations of the task force are practical. They meet the requirements the legislature established in last year's bill and include implementation measures that use a market-based economy approach to keep costs down. The recommendations are based on Alaska's existing oil spill response infrastructure and provide maximum flexibility for meeting the requirements. The work of the task force has already fostered private sector initiatives that significantly increase the resources that will be brought to bear on a spill. Alliances between ship agents, stevedoring companies and spill response cooperatives are now being explored to meet response needs and a new Marine Exchange that covers all of Alaska is being created.

The members of the task force were extremely attentive to the proceedings and assimilated a tremendous amount of information during their tenure. All meetings were very well attended and the level of dialogue was frank, constructive, and productive. After careful and thorough consideration of all ideas and requests

brought before them, they achieved unanimous consensus to support 31 recommendations that are included in your report in your packet.

The task force also exhaustively reviewed the legal issues and meticulously identified what elements should be contained in regulation and what should be contained in statute. There's a table that outlines this in the report. The bill you have before you is the end result of this detailed process and it is the task force's recommendation that it be adopted without amendment, recognizing that the legal nuances and details have all been agreed to and an enormous amount of effort has gone into its formation.

Overall, the bill is simple and straightforward in its approach. It fundamentally makes SB 273, passed by the legislature last year, effective while including enabling language to support regulations detailing how it will be implemented. These regulations have effectively been negotiated through the task force proceedings, and will be drafted consistent with the recommendations contained in the report.

The cooperation between industry, state representatives, and lawmakers to develop recommendations that are practical, reasonable and economic is a tribute ... to the task force members. The work provides a foundation for enhanced spill prevention and response preparedness thereby ensuring that our state resources and economy are adequately protected for future generations. In the end the task force has successfully completed the work requested by the legislature and has produced, through consensus, a report, CSHB 55 and recommendations for rulemaking that outline an acceptable means by which they will participate in the state's oil spill safety net. I was very pleased to have been a part of this process. And speaking on behalf of the Department [of Environmental Conservation], we support the passage of [HB 55] and offer our assistance as your deliberations move forward.

I would also like to acknowledge the significant time and costs invested by the individual task force members to participate in the process. The task force recommendations are in the interest of all Alaskans

and will help protect Alaska's natural resources and make our spill response programs perhaps some of the best in the world.

Number 2264

MR. DIETRICK introduced the following three people: Brian Rogers, the task force facilitator; Paul Fuhs, the task force Marine Technical Support Contractor; and Mr. Breck Tostevin, the Assistant Attorney General assigned to this legislation.

BRIAN ROGERS, Information Insights, and Facilitator for the task force, testified via teleconference. He explained that the purpose of the task force was to discover a means to use the pre-existing legislation. The 23 members reached consensus and unanimous decision on 31 recommendations, most of which do not require statutory change, but act as guidance to the legislative process. He continued:

[HB] 55, as before you, contains the minimum changes necessary to activate the contingency planning process, to limit liability for certain participants in the process, and to enable adoption of regulations. The recommendations of the task force were to follow a market-based approach, allowing several means for alternative compliance, and to allow the regulated industry to phase in implementation in order to spread out the cost. The legislation before you, I believe, shows that negotiated rule-making between the regulators and the regulated community can work when you have the involvement of industry in determining the rules. Most of the provisions of this legislation and of the recommendations of the task force are already required in all of the other west coast states. The goals of the task force were to develop a scheme for implementing SB 273 that was realistic, effective, economically feasible, and flexible. I believe the recommendations that the group developed, in fact, do that.

MR. ROGERS outlined the recommendations of the task force. He said it recommended that a vessel demonstrate its ability to control a spill by being equipped with sufficient booms to reach three times the length of the vessel. The vessel must also have a means of deploying those booms. Furthermore, in order to demonstrate its ability to clean up, the task force recommended that the vessel either have a skimmer in the area of its

operations, or the ability to get one to the spill area within 24 hours of a spill. The task force also recommended allowing alternative methods of calculating fuel volume that would be subject to the response-planning standard. Mr. Rogers specified the c-plans required of this industry as the following: a statement of financial responsibility; the designation of a qualified individual who can make decisions on behalf of the vessel owner; a response action plan for the vessel, consisting of initial notification procedures; a contract with a PRAC who could respond to a spill; a contract with an infinite management team contractor who could manage the incident; and a requirement that the vessel meet international maritime standards set by treaty and federal law.

MR. ROGERS described alternative methods of compliance, stating that the vessel owner can have some combination of contract and equivalent resources, and choose to demonstrate to the department that they have those equivalent resources and the ability to respond to a spill. Mr. Rogers continued:

The recommendations allow use of fleet plans covering multiple vessel[s] and of a generic plan developed by a response plan facilitator [RPF] that could be activated, for example, when a spot-charter vessel comes into Alaska waters on short notice. That would allow that plan to be adopted rapidly and not impede the work of the vessel. The recommendations include tight timeframes for review by DEC and provisions for drills and verification by DEC. The prevention recommendations are all voluntary, but do provide some recognition for those vessels that go above and beyond the basic compliance requirement.

Finally, in the area of the Alaska Railroad, the task force endorses the Alaska Railroad's risk analysis process, and recommended that the railroad go through the standard [contingency plan] process required of other regulated industry.

MR. ROGERS detailed the section by section analysis of CSHB 55(TRA) as follows:

Section 1, beginning on page 1, line 10, ... was originally a letter of intent, recommended by the task force. The Transportation Committee adopted it into the legislation, basically to set some parameters for the adoption by DEC of regulations that they would be

in line with the recommendations of the task force. Sections 2 through 4 ... limit the civil liability of oil spill response action contractors, covering the new oil discharge prevention and contingency plan for nontank vessels and railroad cars.

Section 5 expands the definition of response action to contractors doing infinite management team services and [RPF] services. This [is] a fairly important section in order that the regulated industry will be able to contract with individuals to provide these services.

Section 6 amends last year's legislation to make it identical to the tank vessel legislation adopted some years ago, so that we don't have slightly different definitions between the two.

Section 7 extends the existing innocent passage exemptions [in AS 46.04.055(c)] to nontank vessels.

Section 8 is the primary section of the bill on the contingency planning and sets forth the contingency planning process for nontank vessels. The sectional analysis ... goes through those details. I can do that if there are questions.

Finally, Section 9 authorizes DEC to do its verification process.

Section 10 requires [that the] lieutenant governor certify to the Revisor [of Statutes] the effective date of the regulation.

Section 11 is the effective date clause.

MR. ROGERS stated that the task force recommends that the House Resources Standing Committee adopt this legislation "as it now stands."

Number 2659

REPRESENTATIVE STEVENS asked how [vessel] owners prove to DEC that they are adequately covered by insurance or have the financial means to cover the cost of an oil spill.

MR. ROGERS replied:

The financial responsibility section of last year's bill actually went into effect last September 1 [2000]. It requires a filing with DEC that vessels began making late in August of last year that shows that they have the financial wherewithal to clean up a spill. And I think Larry Dietrick can detail exactly what those requirements are, in terms of the documentation. In terms of needing this year's legislation, ... a contract in force is what's required and that, tied with last year's legislation and the financial responsibility, I think, gives the state sufficient documentation that, in fact, the financial wherewithal is there.

Number 2730

REPRESENTATIVE GREEN asked why the task force came up with recommendation number 31 [on page 29 of the task force report], which indicates that the "471" fund should be used to cover costs rather than charging the applicant.

MR. ROGERS replied that the task force recognizes that implementing this legislation will impose costs on the regulated industry, through the requirement of the following: the boom that would be required within 180 days after the regulations are adopted; the skimmer that will be needed to deal with persistent oil spills, which probably "can be transported by air;" and the contract with the oil spill co-op, or equivalent resources.

MR. ROGERS recognized that the prevention aspect of the "470" fund was designed specifically for prevention of oil spills. He said that the task force members - which included, in addition to members of the regulated industry, folks from the petroleum distributors, transporters, and two oil producers - felt that using funding from the "470" fund for oil spill prevention would be appropriate, since that fund was originally laid out for that purpose. He added that using "470" monies helps spread out total costs, stating that attempting to pass this legislation through [ADF&G's] general fund would prove more problematic.

Number 2850

REPRESENTATIVE GREEN made brief mention of the "bloodletting" which resulted in "the two- and three-cent split" during the creation of the "470" fund. He asked if the "470" fund was created primarily for the oil industry.

BRECK TOSTEVIN, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law, testifying via teleconference answered Representative Green's question with the following statement:

In 1994, as you know, the fund was divided into two accounts: a response account and a prevention account. And one of the uses of the prevention account was to fund DEC's review of contingency plans.

MR. TOSTEVIN, in further response to Representative Green, clarified that the contingency plans were regarding the oil industry.

Number 2918

REPRESENTATIVE GREEN returned to the subject of the two and three-cent split in order to demonstrate that there may be costs unrelated to the industry that pays. He pointed out that a significant amount of the "470" fund was appropriated to pay for the Kennicott ferry, which was intended to be used as a communications center and spill equipment carrier during an oil spill; however, the Kennicott has not been used as such.

TAPE 01-10, SIDE B

Number 2961

REPRESENTATIVE GREEN expressed concern about the fairness of allowing the railroad and as many as 900 vessels to be exempt from paying a portion of the c-plan review. Although the major oil companies have agreed to pay that cost, he questioned the fairness of that plan, and compared it to charging one person for another person's use of a park. He asked if there was a significant number of "oil people" involved in the task force.

PAUL FUHS, Task Force Member, testified in support of CSHB 55(TRA). He said he has served as a Marine Technical Advisor and a liaison to the [oil] industry for the task force. He replied to Representative Green's question with the following statement:

The industry didn't ask for this regulation, but yet was willing to go along with it last year and say, "OK we'll accept that we know other states are doing it, and it's a responsible thing to do." Some of the

larger vessels are carrying quite a bit of oil, some of it persistent oil; it can really cause a lot of environmental damage. So ... they said, "Let us have this task force and work through it, so that we can try to find efficiencies."

Well, DEC's first fiscal note was \$585,000 on this. And through the efficiencies we found through the task force and through private sector solutions to try to pick up almost all of this through creation of a new marine exchange [and] use of vessel agent, DEC's long-term fiscal note is down to \$141,000 on this. There's a couple years where there's a surge of all these plans coming in, where they're going to need a couple of temporary employees, so the industry will bear the brunt of the cost of this. And when we looked at it - the problems with the general fund and attempts to reduce there, issues there - what we looked at was what was a possible funding source where the government could partner with industry on this. So the "470" fund was established to look at marine pollution issues.

Now, [the "470" fund has] been used for a lot of other things. And, Representative Green, I was around when we went through this battle, and [I] remember a lot of this, and there were attempts to use the fund for other than prevention and response. When we talked to the oil industry people about this, their view of it was, "Well, when we split the two cents off, and at least we've capped that, it's at 50 million and that tax will stop." They figure they're going to pay that three cents forever. What really drives them wild is when you go and try to use it for something that's not really pollution prevention and response. [CSHB 55(TRA)] ... meets that requirement. And so that's why ... if we didn't spend this money, it's not like it's going to save them (indisc..) three cents or they're going to get it back, or something like that. At least this is within prevention and response, which the fund is meant for.

So, I think that was the overall logic of it, kind of a cost-sharing and partnership with industry on this. They're going to by far bear the brunt of the cost of it. And we tried to hold the cost down as much as possible, knowing that ... issues of even adding

additional employees, even if they're paid for by the "470" fund or user fees, was going to be an issue with some people in the legislature. So, the task force did its very best to hold those costs down and come up with some kind of a partnership that could work. And believe me, this will improve the safety net. The fact that if you have an incident, you don't have to wait for your insurance company, or them to call their lawyers or negotiate with somebody, as soon as something happens somebody immediately goes out the door to respond to it. This is a significant improvement in what we have now for some of these large vessels. So, that was kind of the overall logic of it, when the task force came to it; there was quite a bit of discussion about this.

Number 2759

REPRESENTATIVE GREEN stated that he agreed with the concept, but did not agree with the oil companies paying the brunt of the costs. He said that the number of ships after the initial surge would be 169, with a cost of \$141,000 a year. That's an average cost of \$1,000 per ship a year. Representative Green said that he found it "preposterous" that profit-making vessels couldn't pay that amount of money to review a c-plan. He specified that it was not that the oil companies are not able to pay; it was an issue of fairness to all involved. He said, "Those people who are subject to spill should be paying equally."

MR. DIETRICK replied that BP and Tesoro representatives were among those on the task force, and that their attendance was excellent. He said that they were part of the decision-making process and "agreed with the approach, knowing full well that they're the three-cent contributor to all of this." In regard to the fairness issue, Mr. Dietrick admitted, "a very large percentage of the contingency plans that come in to the department right now are already from people who are not contributing to that three-cent surcharge, they're piggy-backing on the crude oil surcharge."

MR. DIETRICK referred to a previous comment by Representative Green concerning the Kennicott ferry, with the following statement:

... the Kennicott is a very unique vessel now, and it is on call, as is all of our other ferries now [through an] agreement ... with DEC and [the

Department of Transportation and Public Facilities]. We can, literally, through our state on-scene coordinator, pull any of the ferries off-line on a phone-call basis, to employ it in any kind of a large response. It will take a large [spill] to activate these vessels, but even the Kennicott has been designed with unique features that would allow it to be a commanding control platform in remote area[s] of the state. It's the only ocean-class vessel. ... One of the most limiting things in keeping [a vessel] on station to jump-start a spill was water availability, oddly enough; it wasn't fuel, it wasn't provisions. And so [the Kennicott] has its own water-making capability, because one of the design factors is for it to be able to remain on station for up to 20 days, initially, until such time as replacement resources [arrive].

So, that was also three-cent crude oil charge. So, I think you're right - is [the fact that just the crew producers are paying this fee] fair? Well, it's not fair. On the other hand, I think ... the task force members from the crude industry ... do see a potential gain down the road, in that these 900 nontank vessels are likely to use our response co-ops. (Indisc.) today (indisc.) over the last 10 years, to meet the requirements for the existing regulated industry. By adding [these] vessels you're increasing the base support of those co-ops, so you're going to spread the cost of those co-ops. So, I think there is some potential down the road here that the crude industry recognizes that by a greater sharing in their preparedness costs for these co-ops that have evolved over time, that they could actually see a reduced rate down the road. That's one of those market efficiency things. So, I think there was a lot of things that went into the thinking and the discussion here to see if there would be some paybacks down the road. I think this approach is unique, using existing marine infrastructure to solve it. And we're trying to strengthen it [and] at the same time have more participants play in it. So, we're hoping that the different arrangements that are made will actually result in a better safety net, at a lower cost, because we have more players. And I can't translate that into actual cost for you, but I think it's those

kinds of things that lead them to agree with the concept, perhaps.

Number 2483

REPRESENTATIVE GREEN reiterated his previously stated concern, by reading recommendation number 31, which recommends that the nontank community "should not be charged user fees to support the nontank program." He stated that it really bothered him that the state has not come to the point of saying "enough already. There is enough sucking off this industry-supplied money." He commented that Alaska is implementing more and more user fees within the state and to its visitors, so why not charge the vessels, instead of making the oil companies pay.

Number 2384

MR. ROGERS addressed Representative Green's concerns about the funding issue by saying he understood the points that he had raised. He commented that he thought that the task force was "looking at a balancing of costs and an attempt to recognize that this imposes costs on the regulated industry."

Number 2360

MR. FUHS stated the following in response to Representative Green's previous question:

"Where does it stop?" Where it stops is at the three cents a barrel. The department cannot spend more than the three cents generate. And that was established by the legislature, and I think the industry looked at that. The legislature established that three cents to deal with prevention and response issues, and we felt like, at least this request did directly relate to prevention and response. And I think that's one of the reasons why the industry looked at that in a favorable way. No one was saying, "Let's put new taxes on the oil industry to pay for this." But since the fund does exist, established by the legislature, and it qualified, it seemed it was a legitimate cost-sharing for a program that was prevention and response.

REPRESENTATIVE GREEN recalled what a "bloodletting" session it was when the decision was being made between the two- and three-cent split. He remarked that at the time the three cents was

decided upon, the state was shipping out over "two million" a day, whereas the amount being shipped out today is under one million, and decreasing. He said "the three cent going in is going to deplete, with more and more sucking from it, and less and less going in." Representative Green asked if we were going to go back to the industry and ask for four cents when we realized that we were spending more than we thought. He stated that he had a problem with the fiscal note: "They mixed an EVOS [Exxon Valdez Oil Spill] money in there that is going to dry off." Representative Green said:

I'm just concerned that we look at the fiscal note; we really decide as a committee we don't mind charging one industry to do another industry's business. If that's really what we want to do, so be it. I'll be voting against it, but just so you know, I don't think that's fair.

Number 2251

CO-CHAIR SCALZI asked if the creation of this legislation was born of the need to regulate gray-water discharge from cruise ships.

MR. FUHS replied no. He explained that the drive for legislation was the result of some cruise ships running aground, as well as the M/V Kiroshima, the Japanese vessel that went aground in Dutch Harbor.

MR. DIETRICK added that "it was also the (indisc.) on [the] Oregon coast, and so all Pacific West Coast states and British Columbia have now adopted programs for nontank vessels as a result of a number of incidents from each kind of vessel, up and down the coast."

CO-CHAIR SCALZI said that the private sector, although not being asked to pay for this program, would have costs involved with supplies, maintenance, and training. He asked if any consideration had been given to those costs.

MR. FUHS answered that an exact figure is not available. He explained that most are expected to join a co-op, because it will be the most cost-effective plan. The co-ops cannot give a cost estimate until they know how many people will join. He said the bill does allow participants to meet the requirements themselves, but they do not know ahead of time how many people

will choose to do that. He mentioned a fiscal note from the Alaska Marine Highway System (AMHS), and said:

They've got ten vessels: seven in Southeast, two out West, and one that goes in between. And their yearly fee is \$23,500 to cover those vessels with the existing oil spill co-ops. Now they'll have some additional training and drills, and they'll need to show that they have contracted with an incident command co-op, which ... [is] being formed - the Marine Exchange. So, that kind of gives you a range of costs. It's substantial, but it's not really crippling, because of the way that we allowed streamline contingency plans; that everything's streamline (indisc.). If you're a tanker vessel, your c-plan is probably six inches [of stacked pages] deep. If you go with this streamline model your c-plan should be no more than two pages long. And that's ... how we're able to reduce the fiscal note and reduce the number of DEC personnel, except to actually review these c-plans.

MR. FUHS, in response to Co-Chair Scalzi, clarified that there is a surcharge for how much fuel each vessel is carrying, which is based on a risk factor through the co-ops; therefore, the larger vessels, container vessels, and oar ships will be paying more.

Number 2056

CO-CHAIR SCALZI expressed his understanding of Representative Green's aforementioned concerns. He said he could perceive how legislation could eventually be extended to cover smaller vessels that would not be "as fiscally strong to handle that kind of thing." He asked if the task force had discussed whether or not the Alaska State Coast Guard (ASCG) should be operating the program instead of DEC. Co-Chair Scalzi remarked, "Being in the marine industry, I know that they're pretty much the organization that I find has the most efficiency in regulating the maritime industry."

MR. DIETRICK answered:

Currently, under ... OPA, the Oil Pollution Act that's passed at the federal level, these vessels are not regulated, in that they're not required to have contingency plans, contracts with a bonafide response

cooperative with a specified response capability, et cetera, which is why the West Coast states have stepped in to fill that gap.

CO-CHAIR SCALZI said that he knew that the ASCG was not involved in regulating OPA. He restated his question regarding whether or not there had been any discussion in the task force about contracting with the ASCG for its services in overseeing the oil spill prevention and restoration plan.

MR. DIETRICK responded:

In terms of what's happening at the federal level, that would put the [Alaska State] Coast Guard in that position, there's been one bill introduced to date, at the federal level [in] the last session, that is much more stringent and restrictive than what the Alaska package is. Now whether or not that moves -- and that would effectively end [OPA] to put the [USCG] in the business of regulating these nontank vessels under federal law. The other point to this is we do have an operating agreement with the [USCG] in Alaska. That there's a DEC -- we have a memorandum agreement that is very comprehensive, that covers all aspects of the activities in the oil spill prevention response world and how we coordinate, communicate, and get together on a response. So, we're both operating under that agreement and that's what we use to coordinate our activities. And I presume that will continue until such time as there is something passed at the federal legislation that would actually put them in the driver's seat, I think.

CO-CHAIR SCALZI asked Mr. Dietrick to reiterate information he had shared in an earlier Department of Transportation and Public Facilities meeting, regarding the effects of the \$141,000 on the budget and the possible necessity for budget cuts.

MR. DIETRICK said:

In discussing the fiscal note and the long-term viability of the response fund to be able to support this, we did look at the "out year" cost, once we're over the hump here, of \$141,000 per year, against ... projected revenues from the response fund. And in fact, as we discussed earlier, [Legislative] Finance has just recently done a projection for [fiscal years

2002, 2003, and 2004] to look at the balances at the end of these fiscal years to see whether or not it's supportable. The three-cent surcharge on crude oil production in the State of Alaska generates approximately \$9 to \$10 million a year, on an annual basis. That's with the projected revenue forecast from the Department of Revenue, the farthest [forecast] of which goes out now 'til the year 2010. The department uses those projections in its budget preparation; we accept those estimates that [Department of] Revenue makes on crude oil production and the revenues that it will generate. So looking at the \$141,000 in the "out years" as the long-term cost of the state for conducting this program, as a percentage of the ... revenue generated by the three-cent surcharge of approximately \$9 to \$10 million dollars a year, roughly in that neighborhood, this is about one and one half percent of what the surcharge generates on an annual basis, at least up to almost 2010.

"What are the other things that may be reduced in the 'out years' [before] the response fund ends?" I think that's a very good dialogue because we need to look at the response fund, and we have been looking at it on a long-term basis, as opposed to a one-time fiscal year basis. Some of the other things that we see in the future that would be reduced from the fund will be the effects of Senate Bill 128, which was passed two years ago, which significantly reduced the net worth threshold for parties who were eligible for financial assistance from leaky underground storage tanks. So the possibilities that the demand to compensate, or for leaky underground storage tanks will be reduced I think is better. It took ten years for the state to meet the 1998 deadline to remove all the leaking tanks in Alaska. That was a landmark event, and indeed, Alaska hit almost 100 percent of that on the deadline. So, all of our leaky underground storage tanks, of which there were about 7,000 in the state, have been pulled and replaced now with new up-to-date tanks.

So, [with] the financing that the fund provided for that, we're over the hump on that. Now, we still have sites that have contamination left ... for which the contamination has been cleaned up, but that's an

example of the kind of thing where the demand on the fund will be going down.

Another example is the rural above-ground storage tanks in Alaska. The fund was initially used back, I think, in '94, as well. When the [US] Coast Guard threatened to shut down fuel deliveries to the rural bulk fuel [tank] farms in Alaska, they cut a deal with the state, [they] said, "If you initiate a program to start fixing these, we won't pursue our shutdowns." The response fund was tapped at that time to provide seed money to start some repair work at these, and it's been contributing to that over time.

Last year the Trans-Alaska Pipeline Liability Fund was split, and it ... was returned to the state. And \$20 million was returned to the state through the Denali Commission to go to work on replacing above-ground rural storage tank farms. And \$18 million was earmarked for remediation for cleanups at those sites where leaks had occurred. So we now have two significant revenue streams for something that the response fund had provided seed money for, which will again, I think take some pressure off the response fund to do that. Of course, as you know, that's [an] estimate to replace all those in an excess of \$200 million, so there's no way that the response fund could have taken care of that job at the levels it's at. There are those things that I think will cause the pressures to be reduced on the fund that will enhance ... maintaining the balance over time.

Number 1584

CO-CHAIR MASEK read directly from page 2 of the new fiscal note, and asked what the "newly formed Marine Exchange" is.

MR. FUHS answered that it existed before the inception of the task force and it served to unite the maritime industry to serve its best interests. When the task force was formed, there was a need for incident command. Mr. Fuhs said that the spill response co-ops will respond, but the insurance companies and ship owners want a responsible party (RP) to gauge what the right amount of response is and assure that the spending does not go unchecked. He talked about the capabilities of the tanker companies who have their own capabilities to make those decisions in-house, versus the smaller ship companies, for whom

"the only reason [they] have oil on board is because it makes the ship go." Mr. Fuhs stated that the reason the co-op exists is so that the small companies don't have to hire "three or four new people" to deal with incident command. He said that the co-op will use transponders on vessels to aid in response and that that information would be made available to the USCG. He said, "It's a specialized facet of this that really wasn't covered, and that's why the Marine Exchange ... is going to handle that portion of it."

Number 1425

MR. DIETRICK, in response to a question from Co-Chair Masek, gave a summary "of the logic behind the fiscal note." He noted that the "phase-in" time for the bill's legislation is "rather extended," explaining the reason is to allow sufficient time to get the regulations in place, which is the main goal in fiscal year 2002. He said that the following contingency plans will be put into effect in 2003 and carry through to 2004: the registration of the PRAC; the training activities; the prevention credit program; and the electronic posting. The peak years of activity will be 2003 and 2004. Mr. Fuhs explained that the permanent, full-time positions are increased by one until 2003. A couple of positions were reduced to temporary in 2003 and 2004, out of consideration that in 2005, after the main activity had taken place, those positions would no longer "stay on the books." He said that the task force hopes that the program will reach its plateau by 2005, saying "the industry actually gets a two year period after regulations to ... bring the last of the equipment on-line. And that was out of regard for them wanting to have two budget years, essentially, to spread the capitalization costs; it was another way to make it affordable to the industry." Mr. Fuhs said that the task force would assess the activity workload in 2004.

Number 1295

CO-CHAIR MASEK pointed out that there were at least five people from the petroleum industry who served on the task force. Among those industries that would be impacted by the bill, she listed: container ships industry; noncrude; spot charter; cruise ship; crude industry; and seafood processing. She asked about a seafood agent named Jeff Thompson (ph).

MR. FUHS responded:

That is a vessel agency, and they're the ones that clear all the foreign vessels. And their concern was over spot charters. You might not know even a week before, what vessel's going to come for your fish or your iron ore. So that's how we needed a streamline process. They would hold a generic contingency plan, and when that vessel would come in, they'd have to sign on that the department would turn that around in five days. That's the commitment they've made to clear a spot charter vessel, to make sure that we don't interfere with commerce and delay any of those vessels.

MR. FUHS, in response to a question from Co-Chair Masek, said:

Representative Green raised a very good point, and I remember all of this when people were proposing things that really had nothing to do with prevention and response. And I think when we split the nickle, that was an historic compromise. I think if anybody would go back and try to add to that or change it, I think you know where that'd go, that would go straight to the trashcan in a heartbeat. And that's just talking political reality. ...I don't really think it affects the oil industry that much; they pretty much accepted the three cents and they'd like it to be used for prevention and response. Who the costs will really hurt are our industries in this state that are marginal industries. And right now our fishing industry, because the prices are down, some of the stocks are down, if you start putting additional costs on to the transportation industries, they're going to pass those along, straight to the customer. And so the fishing industry gets a double whamy. Some of their ships have to meet these requirements and pay that, and pay higher shipping costs because their carriers are also having higher costs because of this regulation. And that's why people were really nervous about this. The timber industry, our costs are down and our volumes are down, so you don't get the economy to scale. Red Dog's still chugging along OK, but the price of gold and silver is down. So there is not a lot of margin in these industries to say that ... "just write a blank check and you guys are going to pay for it." It would have implications through[out all] resource industries throughout the state. That's

why so much emphasis was put on trying to contain the costs for the industry on this.

CO-CHAIR MASEK commented that it seemed that the task force and agencies involved had worked hard together to reach a compromise. She said that the plan is flexible and gives the legislative body the power to come back and make changes if needed. She stated that the issue needs to be dealt with right away. She acknowledged Representative Green's objections to the bill. Co-Chair Masek expressed that she is happy to see that "the private industry is trying to form co-ops, so that in the future they can be able to pay the fees that are necessary and not have to go back into the state for funding."

Number 0902

MR. DIETRICK stated that the reason the task force was created last year was due to "the debate about the affordability and the marginal economics of this group of vessels." The task force looked at every possible method of keeping the costs down in order to benefit the state "by getting them to participate in the safety net, but to do it in a way that was affordable." He said the plan is sustainable by the surcharge.

CO-CHAIR MASEK read the following segment of Section 8 from the sectional analysis prepared by Breck Tostevin: "... new provisions requiring oil discharge prevention and contingency plans for nontank vessels and railroad tank cars transporting oil in order to implement the response planning standards adopted by the Twenty First Legislature ... " She said "that portion there would reflect to a lot of the discussion that we've had here in this committee today." Hearing no questions from those witnesses in the room or via teleconference, Co-Chair Masek closed the meeting to public comment and opened up committee discussion.

Number 0713

CO-CHAIR SCALZI stated that, after having had the chance to interview members of the industry and representatives of the task force, he thinks the bill should be moved forward because of its "broad support." He said he had some of the same concerns as Representative Green regarding funding and future regulatory changes that could occur; however, he does not want to "hamper" such a well-supported bill because of something that may happen in the future.

Number 0601

CO-CHAIR SCALZI moved that CSHB 55(TRA) be moved from committee with individual recommendations and attachments. There being no objection, CSHB 55(TRA) was moved out of the House Resources Standing Committee.

CO-CHAIR MASEK announced the following meetings: a Federal Co-Management overview on Wednesday, February 14, 2001; and a joint meeting with the House Special Committee on Oil & Gas, concerning the Alyeska Pipeline, on Thursday, February 15, 2001. She invited Representative Fate to introduce a topic.

Number 0500

REPRESENTATIVE FATE referred to the change in 1994 from village status to tribal status. He stated that the topic is very applicable to the House Resources Standing Committee, since it is about federal and tribal co-management of game, as well as the subsistence issue. He recommended that the House Resources Standing Committee consider having an overview regarding this subject.

CO-CHAIR MASEK asked if the committee had any interest in a tribal overview.

CO-CHAIR SCALZI suggested incorporating that into the co-management overview.

CO-CHAIR MASEK indicated that Co-Chair Scalzi's suggestion would be considered.

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:05 p.m.