

SCOMM

123:11

**TASK FORCE ON MOTORIZED OIL TRANSPORT
PREVENTION WORK GROUP**

Co-Chairs: Eric Britten, Heather McCarty, Mike O'Hara

Meeting on September 27, 2000

Anchorage Legislative Information Office

10:00 a.m. to noon and 1:00 p.m. to 4:00 p.m.

REVISED DRAFT AGENDA

Goal: To determine a prevention program for nontank vessels in Alaska and whether a system of prevention credits is feasible.

Prevention credit program proposals

Reduction in response planning standard (RPS)

Reduction in insurance rates; insurance premium tax credit

Tax credits

Reduction in penalties for spills

State award program

Other proposals

Work Group recommendation to Task Force

State Prevention Measures

Review list crafted at 9/1/00 meeting

List measures by vessel type

System for industry prevention proposals

Prevention measure scoring system

Work Group recommendation to Task Force

Inspections

Work Group recommendation to Task Force

Liability Issues

Review of questions posed to Attorney General

Information Relating to Tax Credits for Nontank Vessels

Prepared by Deborah Vogt
Information from the Alaska Department of Revenue
Income and Excise Audit Division FY99 Annual Report
Prepared for the Task Force on Motorized Oil Transport

1. What taxes are paid by at least some members of the non-crude vessel group?

Taxes directly paid:

- Corporate Income Tax
- Fisheries Business Tax
- Fisheries Landing Tax

Taxes indirectly paid:

- Insurance Premium Tax
- Motor Fuel Tax

2. Corporate Income Tax (AS 43.20)

Who pays

"C" corporations doing business in Alaska who show a profit on their federal tax return are subject to Alaska's corporate income tax. The rate is graduated up to income of about \$90,000; above that amount, the rate is 9.4%.

Corporations that are organized as "Subchapter S" corporations do not pay income tax in Alaska. There are approximately 14,000 corporations that file reports with the Alaska Department of Revenue each year. Of these, 5500 are "S" corporations. "S" corporations are generally closely held or family corporations. Undoubtedly some of the non-crude vessel companies are "S" corporations.

Income from foreign registered vessels is, under legislation passed in 1998, exempt from corporate income tax. Even though the owner of the vessel might be a domestic company, if the vessel is registered abroad, income from its activities is exempt. The Jones Act prohibits non-US vessels from carrying cargo between US ports. A similar act does the same for passengers. Most vessels carrying freight or passengers between Alaska and a foreign country are foreign registered and pay no income tax. The large cruise ships that board in Vancouver fall into this category, as would spot charter vessels carrying cargo abroad. Domestic cargo and passenger vessels engaged in trade within US ports are subject to the corporate income tax.

How much is paid?

Taxpayer information is, of course, confidential so it is not possible to know the amount of tax paid by members of the nontank vessel group. Excluding oil companies, 7460 corporations paid \$52,870,342 in taxes in FY99 (the most recent year for which information is available). Although the average tax liability would thus

be about \$7,000, in fact only 1011 taxpayers paid more than \$1000 in tax. The 79 top taxpayers paid 78% of the tax.

The Department of Revenue does not have detailed "sector" information showing how much tax various categories of taxpayers pay. The department's economist has put together some broad categories; he indicates that in FY99, the following amounts were paid:

Fisheries	\$1,359,905
Transportation	\$3,669,637

The "Fisheries" category includes shore-side processors, and, of course, income from vessels less than 400 tons. The "Transportation" category is dominated by air transportation, and also includes land-based companies.

How is the tax calculated?

The Alaska corporate income tax is based on a taxpayer's federal tax return. A portion of the taxpayer's federal taxable income is "apportioned" to Alaska using a formula that, for vessels, includes a comparison of how many days the taxpayer's ship was in Alaska ports compared with its days in port everywhere. The inevitable result of an apportionment system is that a taxpayer will sometimes pay tax in Alaska despite suffering losses in the state, or may pay no tax in Alaska despite earning significant income here.

3. The taxes on fisheries businesses (AS 43.75 and AS 43.77).

The "raw fish tax" is levied on a fisheries business (processor) based on the value paid to fishermen. The rate varies from 1% to 5%; it is 5% for floating processors. Of the approximately 500 fisheries business licenses issued in FY99, about half were to floating processors. The tax generated \$25.9 million in FY99, or an average of about \$50,000 per taxpayer. The proceeds of the tax are shared 50/50 with the municipality in which the fish were processed.

The fishery resource landing tax is a companion tax to the raw fish tax, and is levied on those engaged in offshore fishing who land fish in Alaska. It is based on the value of the fish landed; the rate is 3% except for developing species, which is 1%. The 66 taxpayers in this group paid \$5.9 million, or about \$90,000 each. This revenue is also shared with the local government on a 50/50. Under federal law, businesses pay for fish taken off Alaska but not landed there (generally, the "last load") an amount equivalent to what the tax would be if the fish were landed in Alaska.

4. Motor fuel tax (AS 43.40).

The motor fuel tax on marine fuel is \$.05 per gallon, and has been since 1977. The tax is collected from fuel distributors, of which there are about 300 for all fuel types (marine, highway, and aviation). There are no statistics on the number of ultimate consumers of marine motor fuel. Marine fuel tax taxpayers paid \$6,631,548 in FY99

(it is possible that some of this fuel, while purchased as marine fuel, was not actually sold for marine transportation).

No credits are currently in place for the motor fuel tax; however, there is an existing mechanism for consumer refunds. Consumers can claim a refund for fuel tax paid if the tax was paid by the distributor on the fuel, and the fuel was used for an exempt purpose (e.g., home heating, charitable institutions, etc). Consumers can also claim a partial refund for off-highway use. The use of these provisions is negligible.

While a portion of the aviation motor fuel tax is shared with local municipalities (when the municipality owns the airport), none of the marine motor fuel is shared with municipalities.

5. Insurance Premium Tax.

[Information about the Insurance Premium Tax will be provided to the Task Force separately.]

6. Existing credits.

Education credits. Taxpayers can claim as a credit against a variety of taxes including the corporate income tax, the fisheries business tax and fisheries landing tax, 50% of the first \$100,000 contributed to educational institutions, and 100% of the next \$100,000 so contributed. The credit is limited to 50% of the tax liability. In the case of the fisheries taxes, the credits do not affect the share of tax received by a municipality. Corporate income tax taxpayers claimed \$1.6 million in education credits in FY99; fisheries business tax taxpayers, \$0; and fishery resource landing tax taxpayers, \$165,000. The fisheries taxpayers may also contribute to a scholarship fund called the Winn Brindle memorial scholarship account and claim a credit up to 5% of the tax liability; fisheries business taxpayers claimed \$231,329 in credits, and landing tax taxpayers claimed \$16,528. Education credits are not available under the motor fuel tax.

CDQ credits. Landing tax taxpayers may claim a credit up to 45.45% of the tax liability due on the CDQ resources landed by the taxpayer for contributions to fisheries related programs at educational institutions. These taxpayers claimed \$35,482 in credits in FY99.

Prevention Considerations

Following are recommendations for consideration by the Prevention Sub-Committee that I raised during the September 20, 2000 meeting. Due a prior commitment I will not be able to participate in your upcoming subcommittee meeting. Gene Burden

Propose that there be several "guiding principles" for prevention, i.e.:

- Prevention is a desirable objective and should be incorporated into the guidance provided to the non-tank shippers;
- All companies should comply with existing state and federal laws; however the Task Force is not recommending mandatory prevention actions beyond those required by existing federal and state laws;
- The quantification of benefits from prevention measures is recognized to represent a cumbersome process for the Department as well as the applicant and the recommendations that follow are intended to reflect a common-sense methodology for recognizing the prevention efforts;
- C-Plan applicants may adopt prevention measures that go beyond required actions. Such actions should be described to the Department with a proposed quantification and explanation of the percentage of reduction in spill risk expected from the voluntary preventive measure(s);
- The Department shall extend credits in response to the recognized prevention efforts that are commensurate with the projected spill risk reduction;
- The array of incentives at the outset of this program are presented in Table One below with proposed credits described;
- The Department shall propose additional incentives beyond those presented in Table One to the Legislature by January 15, 2002;
- The Department shall publish the prevention actions and resulting credits on a minimum of once per year; and
- The opportunities for prevention actions and credits should be extended to oil and oil product transporters.

Table One: Proposed Prevention Reduction Methodology¹

	Prevention Measure(s) Projected % Reduction in Spill Risks		
	Tier 1 Reduction 10 – 30%	Tier 2 Reduction >30 – 60%	Tier 3 Reduction >60%
1. Implement a spill prevention plan for each vessel	Once each 4 years		Once each 6 years
2. Implement a spill prevention plan for each facility	Once each 4 years		Once each 6 years
3. Implement a spill prevention plan for each pipeline	0.9 X specified penalty regime		0.5 X specified penalty regime
4. Implement a spill prevention plan for each port	The "Alaska" Award		The "Alaska Governors Award for Environmental Excellence" or whatever you want to call it!!!
5. Implement a spill prevention plan for each state	Reduce state marine fuel tax obligation by 25%		Reduce state marine fuel tax obligation by 75%

¹ Recommend three categories of prevention with reasonable ranges which will preclude expectations that extremely precise measurements are required...or possible!!

² This will require a change in current statute which specifies C-Plans each 3 years.

Sec. 46.03.758. Civil penalties for discharges of oil.

(a) The legislature finds that

(1) recent information discloses that the discharge of oil may cause significant short and long-term damage to the state's environment; even minute quantities of oil released to the environment may cause high mortalities among larval and juvenile forms of important commercial species, may affect salmon migration patterns, and may otherwise degrade and diminish the renewable resources of the state;

(2) the exact nature and extent of oil pollution can be neither documented with certainty nor precisely quantified on a spill-by-spill basis; however, in light of the magnitude of harm which may be caused by oil discharges, and the vital importance of commercial, sport, and subsistence fishing, tourism, and the state's natural abundance and beauty to the economic future of the state and its quality of life, it is the judgment of the legislature that substantial civil penalties should be imposed for the discharge of oil in order to provide a meaningful incentive for the safe handling of oil and to insure that the public does not bear substantial losses from oil pollution for which, because of its subtle, long-term, or unquantifiable nature, compensation would not otherwise be received; and

(3) the handling of oil in large quantities is a hazardous undertaking that poses a significant threat to the economy and environment of the state, which can be substantially reduced only by the taking of rigorous safety precautions involving considerable expense; conversely, persons handling oil in smaller amounts pose a correspondingly lower risk to the economy and environment of the state, and are capable of safe oil handling practices at correspondingly lower costs; in order to provide an incentive that is effective, but not punitive, it is necessary and appropriate that the assessment of civil penalties for discharges of small quantities of oil be left for case-by-case judicial determination, while ensuring, through the penalty provisions of this section, that the handling of oil in large quantities occurs in a manner that will not impair the renewable resources of the state.

(b) No later than the 10th day after the convening of the Second Session of the Tenth Alaska Legislature, the department shall submit to the legislature regulations establishing the following schedule of fixed penalties for discharges of oil:

(1) subject to (2) of this subsection, the penalties for the following categories of receiving environments may not exceed

(A) \$10 per gallon of oil which enters an anadromous stream or other freshwater environment with significant aquatic resources;

(B) \$2.50 per gallon of oil which enters an estuarine, intertidal or confined saltwater environment; and

(C) \$1 per gallon of oil which enters an unconfined saltwater environment, public land or freshwater environment without significant aquatic resources;

(2) for discharges of oil that are caused by the gross negligence or intentional act of the discharger, or when the court finds that the discharger did not take reasonable measures to contain and clean up the discharged oil, the penalty shall be determined by multiplying the penalty established under (1) of this subsection by a factor of five.

(c) Regulations adopted under (b) of this section shall become effective 60 days after submission to the legislature, unless disapproved by a special concurrent resolution introduced in either house, and concurred in by a majority of the members in joint session within 60 days of the submission of the regulations. The department may periodically revise regulations adopted under (b) of this section. Revised regulations shall be submitted to the legislature no later than 10 days after the convening of the appropriate regular session of the legislature, and are subject to disapproval as specified in this subsection.

(d) The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. The schedule shall also vary according to the sensitivity and productivity of the receiving environment. Variations

under this subsection may be by subcategories of receiving environments, specific receiving environments, or both. The maximum penalties established in (b) of this section shall apply to discharges in the most sensitive and productive of receiving environments within each category of receiving environment, and the penalty shall decrease for less productive or sensitive receiving environments.

(e) If a discharge of oil in excess of 18,000 gallons not permitted under applicable state and federal law occurs within the territorial jurisdiction of the state, or into or upon the adjacent outer continental shelf of the state, the following persons, in addition to the person causing or permitting the discharge, are jointly and severally liable to the state, in a civil action, for the full amount of penalties established in the regulations adopted under this section:

(1) if the discharge occurs from any commercial or industrial facility other than a vessel or offshore platform, the owner, lessee or permittee, and operator of the facility;

(2) if the discharge occurs from a vessel,

(A) the owner and operator of the vessel; and

(B) the owner of the oil carried as cargo on the vessel at the time the vessel was loaded, if the loading occurred within the territorial jurisdiction of the state, or at a deep-water port or other offshore storage facility adjacent to the state; however, if the owner of the oil temporarily transfers ownership of the oil to another person, and the transfer has the purpose or effect of evading the vicarious liability imposed by this section, the transferor shall be considered the owner of the oil for the purposes of this subsection; and

(3) if the discharge occurs from an offshore platform, the lessee or permittee of the tract or acreage upon which the platform is situated, and the operator of the platform.

(f) The court shall deduct from the penalties for which the person charged is liable under (e) of this section that amount of oil which was removed from the environment as a result of a clean up operation undertaken in conformity with applicable state and federal law, unless the oil was removed by an agency of state, local or

federal government. The dispersal of oil through the use of chemical agents or other means is not considered removal for the purposes of this subsection. The court may estimate the amount of oil removed.

(g) Except as provided in (f) and (j) of this section, the entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate. In determining whether mitigating circumstances exist, the court shall recognize that scientific knowledge pertaining to oil spills is very limited and if there is insufficient knowledge either to predict a base case or to show mitigating circumstances varying from that base case, the administratively established schedule of penalties shall apply. If mitigating circumstances are proven by a preponderance of the evidence, the court may reduce or totally eliminate the penalty, in accordance with the purposes of this section.

(h) A person otherwise liable for penalties under (e) of this section is not liable if the person demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

(1) an act of God;

(2) an act of a third person with intent to cause a discharge, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) - (3) of this section;

(3) a negligent or intentional act of this state or the United States; or

(4) an act of war.

(i) Notwithstanding AS 46.03.875, a person liable under this section is not also liable for the discharge of oil under AS 46.03.760 (a). A person causing or permitting a discharge of oil of 18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760 (a); however, the court may impose a penalty of less than \$500 for the discharge.

(j) The court may reduce the penalty imposed under this section if the person charged demonstrates, by a

preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) - (3) of this section.

(k) [Repealed, Sec. 19 ch 59 SLA 1986].

(l) In this section

(1) "adjacent outer continental shelf" means that portion of the outer continental shelf that would be within the territorial jurisdiction of the state if its boundaries were extended seaward to the outer margin of the outer continental shelf;

(2) "confined saltwater environment" means a bay, sound, or other partially enclosed saltwater body in which flushing through tidal or current action is significantly restricted;

(3) "discharge of oil" means the entry of oil into or upon the water or public land of the state, except oil discharges into an enclosed and impervious oil spill containment area, regardless of causation;

(4) "intertidal" means the ocean area between highest high water and lowest low water of tidal action;

(5) "offshore platform" means an offshore structure, whether floating or temporarily or permanently secured to the floor of the ocean or other water body, which is used primarily for the exploration for or production of oil or natural gas;

(6) "oil" means petroleum and any substance refined from petroleum, except crude oil;

(7) "operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

(8) "vessel" means any form or manner of watercraft, whether or not capable of self-propulsion, except

offshore platforms.

Sec. 46.03.759. Civil penalties for discharges of crude oil.

(a) A person who is found to be liable under any other state law for an unpermitted discharge of crude oil in excess of 18,000 gallons is, in addition to liability for any other penalties or for damages or the cost of containment and cleanup, liable to the state in a civil action for a civil penalty, up to a maximum of \$500,000,000, in the amount of

(1) \$8 per gallon of crude oil discharged for the first 420,000 gallons discharged; and

(2) \$12.50 per gallon of crude oil discharged for amounts discharged in excess of 420,000 gallons.

(b) In determining how many gallons of crude oil have been discharged for purposes of assessing a penalty under (a) of this section, the court shall deduct the number of discharged gallons of crude oil that the defendant proves were removed by the defendant from the environment within the first 36 hours after the discharge as a result of a cleanup operation undertaken in conformity with applicable state and federal law. The dispersal of oil through burning, the use of chemical agents, biological additives, or sinking agents, or other means is not considered removal for the purposes of this subsection.

(c) Subject to the \$500,000,000 maximum set under (a) of this section the court shall assess four times the penalty set out in (a) of this section if the court finds

(1) the discharge was caused by the gross negligence or intentional act of the defendant;

(2) the defendant did not take reasonable measures to contain and clean up the discharged oil; or

(3) the defendant did not act or respond in accordance with an approved oil discharge prevention and contingency plan.

(d) Notwithstanding AS 46.03.875, a person liable for civil penalties under this section is not also liable for the discharge of the crude oil under AS 46.03.760 (a). A person causing or permitting a discharge of crude oil of

18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760 (a); however, the court may impose a penalty of less than \$500 for the discharge.

(e) The court may reduce the penalty imposed under this section if the defendant demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person unless the third person is a person with whom the defendant was found jointly and severally liable for the discharge under other state law.

(f) A person otherwise liable for penalties under this section is not liable if the person demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

- (1) an act of God;
- (2) a negligent or intentional act of the State of Alaska or the United States; or
- (3) an act of war.

(g) In this section, "discharge" means entry of crude oil into or upon the water or public land of the state, regardless of causation, except discharges into an enclosed and impervious oil spill containment area.

Sec. 46.03.760. Civil action for pollution; damages.

(a) A person who violates or causes or permits to be violated a provision of this chapter other than AS 46.03.250 - 46.03.314, or a provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$5,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

- (1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects

caused by the violation, which shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged.

(b) Except as determined by the court under (e)(4) of this section, actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature.

(c) The court, upon motion of the department or upon its own motion, may defer assessment of all or part of that portion of the sum imposed upon a person under (a)(3) of this section conditioned upon the person complying, within the shortest feasible time, with the requirement for which a violation is shown.

(d) In addition to liability under (a) - (c) of this section, a person who violates or causes or permits to be violated a provision of AS 46.03.740 - 46.03.750 is liable to the state, in a civil action brought under AS 46.03.822, for the full amount of actual damages caused to the state by the violation, including

(1) direct and indirect costs associated with the abatement, containment, or removal of the pollutant;

(2) restoration of the environment to its former state;

(3) amounts paid as grants under AS 29.60.510 - 29.60.599 and as emergency first response advances and reimbursements under AS 46.08.070(c); and

(4) all incidental administrative costs.

(e) A person who violates or causes or permits to be violated a provision of AS 46.03.250 - 46.03.314,

AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged; and

(4) the need for an enhanced civil penalty to deter future noncompliance.

(f) As used in this section, "economic savings" means that sum which a person would be required to expend for the planning, acquisition, siting, construction, installation and operation of facilities necessary to effect compliance with the standard violated.

Questions from Task Force's Prevention Workgroup

- 1. Question: If the State of Alaska adopts a requirement set out under a current federal regulation as a mandatory requirement under a new state regulation, will the vessel owner or operator (whomever is the subject of the regulation) be subject to penalties by both the State and the Federal Government for failure to meet the terms of the regulation?**
- 2. Question: If State of Alaska adopts a oil pollution prevention requirement as part of a prevention credit program, but does not make it mandatory under State regulations, will there be penalties assessed by the State for failure to meet the requirement?**
- 3. Question: If the Task Force develops a list of prevention measures and adopts a prevention program whereby a vessel owner or operator who performs a certain number of measures (non-mandatory) gets an award or some recognition for doing so, will this create a "standard of care" such that the vessel owner or operator who does not perform any measures will automatically be seen as negligent when that owner or operator has an oil spill even though that owner or operator was fully in compliance with the law?**

Components of a Prevention Credits Program

Draft, October 21, 2000

[components involving DEC]

Procedural provisions

1. A nontank vessel owner or the owner's representative will submit an affidavit to the Department of Environmental Conservation, attesting to the existence of prevention measures with respect to a particular vessel. The initial affidavit may be filed at any time. Subsequent affidavits may be required at the time the vessel's contingency plan is reviewed.
2. The affidavit must contain a statement that the vessel and its crew comply with all applicable federal and international law. In addition to any other penalty that would apply under those laws, the failure to comply with those laws with respect to the vessel would result in the revocation of any prevention credit granted to the owner of the vessel.
3. By applying for prevention credits, the vessel owner consents to inspection, by the state or the Coast Guard, of the vessel for the existence of prevention equipment and of the owner's records pertaining to the prevention equipment or prevention procedures. The vessel owner must retain those records for at least three years after any tax credit or refund is claimed.
4. The DEC will issue a numbered certificate for the vessel that will identify the class of vessel for which the certificate is issued, and list the prevention measures that have been claimed by the owner. The certificate will state the tax and penalty reductions to which the owner is entitled pursuant to those measures, according to the schedule set out in [statute/regulation]. [See attached table setting out three alternative systems.]
5. The certificate is valid until the contingency plan under which the vessel operates expires. The certificate will be reviewed when the contingency plan is reviewed, and new certificate will be issued when the new contingency plan is approved.

Reduction in penalty for oil discharge.

6. The statutory penalty for the discharge of oil by a vessel that has been issued, or has submitted an application for, a current prevention measure certificate is entitled to a reduction in the statutory penalty for that discharge in the amount stated on the certificate.

[Components involving Department of Revenue]

Tax refund and credit.

7. Motor Fuel Tax refund. The owner of a vessel with a current prevention measures certificate is entitled to a refund of Alaska motor fuel taxes in the amount stated on the certificate, if Alaska motor fuel tax has previously been paid (by the distributor or vendor) on the fuel.

8. The vessel owner may claim a refund by submitting invoices for fuel, together with a copy of the prevention measures certificate, to the department within one year of the purchase of the fuel.

9. Fisheries Business Tax, Fisheries Business Landing Tax credits. The owner of a vessel that has had a prevention measures certificate in effect for the entire tax year is entitled to a credit, in the amount stated on the certificate, against the fisheries business tax due as a result of the fisheries resource processed or landed by that vessel. The amount of tax shared with a municipality will not be affected by this provision.

Prevention Measures - Weight and Applicability

Prevention Measures*	Relative Weight of Measure	Fishing Vessels	WL	Fish Processors Tenders	WL	General Cargo	WL	Cruise Ships	Container Ships
1 Emergency towline or dedicated mooring line with on-board means for deployment	2	Yes	2	Yes	2	Yes	2	Yes	2
2 Emergency on-board dewatering or petroleum pumps	2	Yes	2	Yes	2	Yes	2	Yes	2
3 On-board storage bladder or dedicated tank	2	Yes	2	Yes	2	Yes	2	Yes	2
4 Non-contiguous tank location on vessel	3	No	0	No	0	Yes	3	Yes	3
5 Redundant propulsion systems	3	Yes	3	Yes	3	Yes	3	Yes	3
6 Redundant/integrated navigation systems	1	Yes	1	Yes	1	Yes	1	Yes	1
7 Use of an Alaska marine pilot when not otherwise required by law	2	No	0	No	0	Yes	2	Yes	2
8 Maintaining a transponder, AIDS or other vessel location/identification technology onboard	2	Yes	2	No	0	Yes	2	Yes	2
9 Use of advanced anchoring systems or placement of mooring buoys	1	No	0	Yes	1	Yes	1	Yes	1
10 Compliance with bridge safety management practices, meeting International Safety Management Code (ISMC) requirements before July 2002, licensing, certification, training beyond fed/Intl. requirements	1	No	0	No	0	Yes	1	Yes	1
11 Participation in risk assessment process for operations	2	Yes	2	Yes	2	Yes	2	Yes	2
12 Membership in a marine safety organization	1	Yes	1	Yes	1	Yes	1	Yes	1
13 Tugboats staged/on standby	2	No	0	No	0	No	0	Yes	2
14 Additional staged equipment onshore to improve RPS	1	Yes	1	Yes	1	Yes	1	Yes	1
15 Weather/oceanographic equipment and systems	1	No	0	No	0	Yes	1	Yes	1
16 Enhanced maintenance	1	Yes	1	Yes	1	Yes	1	Yes	1
17 Ice classification	2	No	0	No	0	Yes	2	Yes	2
18 Specialized onboard training programs in prevention and response	2	Yes	2	Yes	2	Yes	2	Yes	2
19 Mooring plan	1	No	0	Yes	1	Yes	1	Yes	1
20 Others as proposed by operators	1	Yes	1	Yes	1	Yes	1	Yes	1
Total possible score for vessel category	33		20		20		31	33	33

Bold = measure included in "Top Five"

* See text for discussion of spot/voyage charters

Yes = applicable to this category of vessels

No = Not applicable to this category of vessels

U. S. COAST GUARD NEWS

MEDIA ADVISORY

USCG Headquarters, Washington DC

Sept. 22, 2000

Contact: Dan Dewell, 202 267-2304

PLEASE DO NOT PUBLISH BEFORE

10:30 A.M. MONDAY, SEPT. 25, 2000

U.S. COAST GUARD UNVEILS INCENTIVE PROGRAM FOR SAFE SHIPS

Reductions in Port State Control examinations and streamlined inspection procedures are among the rewards that await the owners of non-U.S. registered commercial ships who call on U. S. ports -- if they measure up in a new quality incentive program announced by the U.S. Coast Guard.

Rear Adm. Robert North, Assistant Coast Guard Commandant for Marine Safety and Environmental Protection, announced the program Monday afternoon in Athens, Greece (5:30 p.m. local time in Athens) at a shipping industry conference, "Shipping Risk Management Forum 2000." Dubbed "QUALSHIP 21," the program is part of the U. S. Coast Guard's effort to eliminate substandard shipping and reward high-quality vessels. A similar program is being considered for U. S. registered vessels.

In the past, the U. S. Coast Guard has aggressively enforced safety standards with a primary focus on identifying poor-quality vessels. This strict enforcement will continue and has paid off. Coast Guard safety experts say the quality of vessels visiting U.S. ports has improved over the last six years. In fact, hundreds of vessels are typically found with few or no deficiencies. QUALSHIP 21 is intended to reward such high-quality ships and provide incentives to others to improve.

Some of the QUALSHIP 21 criteria are, the vessel:

- Must be a non-U.S. flagged ship;
- Must have no substandard vessel detentions in the U.S. within previous 36 months;
- Must have no marine violations or serious marine casualties, and no more than one ticket in the U. S. within the previous 36 months;
- Must have a successful Port State Control (PSC) exam within previous 12 months;
- Must not be owned or operated by any company that has been associated with any PSC detention in U.S. waters within the previous 24 months;
- Must not be classed by, or have their statutory Convention Certificate issued by, a targeted class society;
- Must not be registered with a Flag State that has a detention ratio more than 1/3 of the overall U.S. detention ratio and the vessel's Flag State must have at least 10 distinct arrivals in each of the previous 3 years;
- The vessel's Flag State must have submitted their Self-Assessment of Flag State Performance to the IMO and provided

a copy to the U. S. Coast Guard.

* Incentives for QUALSHIP 21 vessels include:

ALL SHIPS

- A U. S. Coast Guard QUALSHIP 21 Certificate;
- Vessel names posted on U.S. Coast Guard's Port State Control Website;

TANK SHIPS

- U. S. Certificate of Compliance will be valid for two years;
- Less thorough mid-period exam will replace the annual tank ship exam;
- Increased flexibility for tanker owners with two-year certificates;

FREIGHT SHIPS

- Two years of limited Port State Control oversight;

PASSENGER VESSELS

- No reduced Port State Control exams, but will receive QUALSHIP 21 Certificates and recognition on a U. S. Coast Guard QUALSHIP 21 web page.

Vessel owners will not need to apply for QUALSHIP 21 designation. The U. S. Coast Guard will develop a preliminary list of eligible vessels and send letters to those vessel owners to notify them of this initiative and their opportunity to participate. Vessel owners that believe that they have ships eligible for designation, but do not see their vessels on the QUALSHIP 21 Web Page (to be posted March 2001) should notify the Coast Guard.

For additional information on QUALSHIP 21 please contact: Commandant (G-MOC-2), U. S. Coast Guard, 2100 Second Street SW, Washington DC 20593. Phone 202 267-2978. Email fldr-G-MOC@comdt.uscg.mil

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Prevention Measures	Fishing Vessels	Fish Processors	General Cargo	Cruise Ships	Container Ships			
Emergency towline or dedicated mooring line with on-board means for deployment								
Emergency on-board dewatering or petroleum pumps								
On-board storage bladder or dedicated tank								
Non-contiguous tank location on vessel								
Redundant propulsion systems								
Redundant/integrated navigation systems								
Use of an Alaska marine pilot when not otherwise required by law								
Maintaining a transponder, AIS or other vessel location/identification technology onboard								
Use of advanced anchoring systems or placement of mooring buoys								
Use of routes that avoid proximity to shoreline hazards and env. sensitive areas								
Vetting program								

Prevention Measures	Fishing Vessels	Fish Processors	General Cargo	Cruise Ships	Container Ships			
Compliance with bridge safety management practices, meeting International Safety Management Code (ISMC) requirements before July 2002, licensing, certification, training beyond fed/Intl. requirements								
Participation in risk assessment process for operations								
Membership in a marine safety organization								
Tugboats staged/on standby								
Additional staged equipment onshore to improve RPS								
Weather/oceanographic equipment and systems								
Enhanced maintenance								
Ice classification								
Specialized onboard training programs in prevention and response								

Prevention Work Group
September 27, 2000 Meeting Summary
Anchorage Legislative Information Office
10:00 - 12:00, 1:00 - 4:00

Task Force members present: Prevention Work Group Co-chairs Eric Britten, Heather McCarty, and Mike O'Hara; and members Sen. Drue Pearce, Jim Carter, Scott Carter, Doug Lentsch, Charlotte MacCay, Stephanie Madsen, Jeff Thompson, and Lurilla Lee (for Kris Mullan)

USCG representatives: Capt. William J. Hutmacher, Lt. Commander Al Echols

DEC staff: Larry Dietrick, Susan Harvey, Holly Hill, and Asst. Attorney General Breck Tostevin

Task Force Facilitation: Brian Rogers, Judy Erickson

Task Force Technical Assistance: Paul Fuhs

Members of the public also attended

Recommendations to the Task Force

The Prevention Work Group reached consensus on recommendations for a prevention credit program for nontank vessels, but left the decision of how and whether to implement a program up to the full Task Force. These recommendations do not apply to tank vessels; the work group reached consensus that such programs for tank vessels are outside the purview of the Task Force on Motorized Oil Transport.

1. Reduction in civil penalties for oil spills: The work group recommends that a prevention credit program provide for a reduction in per-gallon statutory civil penalties for nontank vessel and the Alaska Railroad as a reward for adopting prevention measures approved under the program.

2. C-Plan review: The work group recommends that a prevention credit program provide for a reduction in the frequency that the Dept. of Environmental Conservation (DEC) reviews nontank vessel contingency plans as a reward for adopting prevention measures approved under the program.

3. Full Deployment spill drills: If full-deployment spills drills are required under the nontank program, the work group recommends that DEC reduce the number of these drills for operators who adopt prevention measures approved under the program.

4. Tax Credits: The work group recommends the Task Force consider a prevention credit program that includes tax credits against the state motor fuel, fisheries business and fisheries landing taxes. Any prevention program tax credit against the fisheries business and fisheries landing taxes should only apply to the state's share of those taxes, and should not result in any reduction in revenue to local governments. If tax credits are a part of a prevention credit program, the work group recommends a reduction in the insurance premium tax be considered as part of the program, provided that the insurance industry is willing to reduce insurance premiums for operators adopting prevention measures approved under the program.

5. Reduction in the response planning standard: At this time the Prevention Work Group does not recommend that DEC consider any reduction in the response planning standard in a prevention credit program for nontank vessels or the Alaska Railroad. The work group recommends, however, that DEC revisit this issue in the future.

6. Recommended prevention measures by vessel type: The work group recommends that the voluntary prevention measures listed in the table below be considered for approval for the type of vessels indicated. A measure added by the work group allows industry to propose additional prevention measures to DEC.

7. Clear definitions of prevention measures: Work Group members recommend that each approved prevention measure be clearly defined in regulation.

8. Liability issues: The work group recommends the Department of Law draft and the Task Force recommend to the Legislature statutory language insuring that failure to adopt any of the voluntary prevention measures could not be used against a vessel owner in a state legal proceeding.

9. Inspection: The work group recommends that seeking a prevention credit from the state for prevention measures associated with a vessel, grants the state the right to inspect that vessel to insure compliance.

10. Penalty for fraud: The work group recommends that a vessel owner that misrepresents prevention measures in an affidavit for prevention credits be subject to prosecution by the state.

11. Review of Task Force recommendations: The Prevention Work Group recommends that all Task Force recommendations be reviewed periodically by the Department of Environmental Conservation.

Work in progress:

Voyage charters: A prevention credit program might not be practical to implement for the voyage charter industry because each individual vessel calls at Alaska ports infrequently. Charlotte MacCay, the Task Force member representing voyage charter interests, will report back to the full Task Force on whether the industry wishes to be included in a prevention credit program.

Insurance reductions: Insurance industry representatives have been asked to report to the Task Force on the potential for a formalized reduction in insurance premiums based on prevention measures.

State Recognition Program: The Work Group discussed creation of a state program to recognize companies that adopt prevention measures above and beyond compliance with federal and international law. No consensus was reached on a program for nontank vessels. The facilitation team will draft a proposal for a state recognition program and present it to the Task Force on November 6.

Federal Vessel Standards: At its September 1 meeting, the Prevention Work Group adopted a recommendation to the Task Force that all affected nontank vessels must comply with existing federal and international requirements. That recommendation was presented to the Task Force at its September 20 meeting.

At its September 27 meeting, the Work Group discussed whether federal vessel requirements should be adopted as state law. Asst. Attorney General Breck Tostevin explained that if the state adopts the federal requirements, they can be enforced under state law as well as federal law. Alternatively, he said the state can require that vessel owners simply certify that they meet the federal requirements. Under this second proposal, if the state finds a vessel owner in violation of federal requirements, the violation could be forwarded to the U.S. Coast Guard for prosecution. The Work Group did not reach consensus on this issue and will forward it to the Task Force for resolution.

Implementation of a prevention credit program: The Work Group asked the facilitation team to consider three specific proposals for implementing a prevention credit program, and to prepare information on how each could be implemented for the November 6 Task Force meeting.

The proposals are:

• ***A Tiered System:*** Task Force member Gene Burden submitted a proposal to the Prevention Work Group for a system that would extend credits for recognized prevention measures commensurate with the projected spill risk reduction. Burden's proposal included "rewards or incentives" based on three tiers of risk reduction—10 to 30 percent, 30 to 60 percent, and greater than 60 percent reduction. This proposal requires that each voluntary prevention measure be evaluated for how much it is expected to reduce the risk of a spill, and that a schedule of risk-reduction percentages be adopted.

• ***Single Trigger System:*** This proposal would allow for a prevention credit if a vessel owner adopted the required number of approved prevention measures. This system could also be tiered, allowing a larger credit for a vessel owner that implements a greater number of prevention measures.

• ***Specified Five Measure System:*** Under this proposal, the top five prevention measures for each vessel type would be identified. This list would exclude those measures that could only be achieved in new vessel construction, such as prevention measures 4, 5, 6, 9 (advanced anchoring systems), and 19. A prevention credit would be granted to a vessel owner that adopted all five of the measures. Under this proposal, a company constructing a new vessel that included the five prevention measures plus additional measures could negotiate with DEC for a greater prevention credit.

	Prevention Measures	Fishing Vessels	Fish Processors Tenders	General Cargo	Cruise Ships	Container Ships	Voyage Charters *
1	Emergency towline or dedicated mooring line with on-board means for deployment	Yes	Yes	Yes	Yes	Yes	
2	Emergency on-board dewatering or petroleum pumps	Yes	Yes	Yes	Yes	Yes	
3	On-board storage bladder or dedicated tank	Yes	Yes	Yes	Yes	Yes	
4	Non-contiguous tank location on vessel	No	No	Yes	Yes	Yes	
5	Redundant propulsion systems	Yes	Yes	Yes	Yes	Yes	
6	Redundant/integrated navigation systems	Yes	Yes	Yes	Yes	Yes	
7	Use of an Alaska marine pilot when not otherwise required by law	No	No	Yes	Yes	Yes	
8	Maintaining a transponder, AIDIS or other vessel location/identification technology onboard	Yes	No	Yes	Yes	Yes	
9	Use of advanced anchoring systems or placement of mooring buoys	No	Yes	Yes	Yes	Yes	
10	Compliance with bridge safety management practices, meeting International Safety Management Code (ISMC) requirements before July 2002, licensing, certification, training beyond fed/Intl. requirements	No	No	Yes	Yes	Yes	
11	Participation in risk assessment process for operations	Yes	Yes	Yes	Yes	Yes	
12	Membership in a marine safety organization	Yes	Yes	Yes	Yes	Yes	
13	Tugboats staged/on standby	No	No	No	Yes	Yes	
14	Additional staged equipment onshore to improve RPS	Yes	Yes	Yes	Yes	Yes	
15	Weather/oceanographic equipment and systems	No	No	Yes	Yes	Yes	
16	Enhanced maintenance	Yes	Yes	Yes	Yes	Yes	
17	Ice classification	No	No	Yes	Yes	Yes	
18	Specialized onboard training programs in prevention and response	Yes	Yes	Yes	Yes	Yes	
19	Mooring plan	No	Yes	Yes	Yes	Yes	
20	Others as proposed by operators						Yes
	Yes = applicable to this category of vessels						
	No = Not applicable to this category of vessels						
	* See text for discussion of voyage charters						

Prevention Work Group Draft Report

I. Goals: To determine a prevention program for nontank vessels in Alaska and whether a system of credits is feasible.

II. Identification of factors contributing to a spill. The prevention work group discussed at some length what factors can lead to an oil spill. Among the factors identified, human error was considered to be the most likely cause of a spill. Human error factors include fatigue; lack of established procedures, inexperience; lack of training; and lack of awareness of weather or sea conditions. Mechanical errors that could contribute to a spill include running aground; loss of steering; collision and poor vessel maintenance.

III. Issues surrounding prevention measures. As in all aspects of the work of this Task Force, the broad spectrum of entities covered by the legislation raised concerns. In talking about requiring prevention measures, concern was raised that the cost of prevention measures would be harder for some entities to bear than others. Similarly, concern was raised that should a voluntary system of rating and awards be adopted, the respective ease or difficulty with which various groups could gain points might reflect badly on certain industries. There was discussion about some equipment that might be useful for prevention but which might better be required as response equipment.

IV. Current prevention requirements. MARPOL (The International Convention for the Prevention of Pollution from Ships, requires vessels to have an International Oil Pollution Prevention Certificate (IOPP). This certificate requires an oil/water separator for the discharge of bilge. The International Safety of Life at Sea (SOLAS) safety requirements include fire prevention and control measures that can relate to oil spill prevention. The Standards of Training, Certification & Watchkeeping (STCW) require standard training for crew of international vessels. Coast Guard navigation safety regulations have certain requirements for vessels above a certain size, including requiring radar, and certain maneuverability capabilities.

V. The *Intertanko* decision limits permissible prevention requirements. The group discussed the fact that federal pre-emption limitations on state regulation of vessels (as discussed in the recent so-called *Intertanko* decision, *U.S. v. Locke*, ___ US ___ (March 6, 2000)) restrict a state's ability to require many prevention measures. The Attorney General's office reported that the decision may provide some latitude in enacting some requirements, particularly those related to the unique circumstances of particular waterways (such as Prince William Sound). But the decision specifically rejected other measures such as manning and training requirements. Presumably, under the decision, voluntary measures could be adopted as could a system of public recognition (awards) for use of voluntary measures.

VI. The Prevention Work Group recommends only one mandatory prevention measure. The work group recommends that: "All affected nontank vessels must comply with existing federal and international requirements." The work group recommends that existing federal and international requirements be adopted by reference in state law and regulations. The recommendation recognizes that more extensive mandatory provisions might run up against the *Intertanko* decision. This recommendation would allow the state to take action for violation of federal or international requirements.

VII. The Prevention Work Group approved the following list of recommended prevention measures for nontank vessels.

These prevention measures would be voluntary:

- emergency towline or dedicated mooring line with on-board means of deployment
- emergency on-board dewatering or petroleum pumps
- on-board storage bladder
- non-contiguous tank location used on vessel
- redundant propulsion systems
- redundant navigation systems
- use of an Alaska marine pilot when not otherwise required by law
- maintaining a transponder, AIDS (automated identification system) or other vessel location/identification technology on-board
- use of advanced anchoring systems or placement of mooring buoys
- use of routes that avoid proximity to shoreline hazards and environmentally sensitive areas
- vetting program
- compliance with bridge safety management practices, meeting International Safety Management Code (ISMC) requirements before July 2002, licensing/certification/training beyond federal/international requirements
- participation in risk assessment process for operations
- membership in marine safety organization

VIII. The Prevention Work Group reviewed the recommended measures.

A subcommittee of the Prevention Work Group reviewed the list suggested prevention measures. In recognition of the differences among nontank vessels, the group discussed the feasibility of each measure for each of five classes of vessel: catcher boats, processors, cargo ships (including bulk ships, "reefers" and specialty ships such as LNG ships); cruise ships and container ships. The subcommittee suggested three additional possible prevention measures: ice classification; personnel training; and maintenance. Each class of vessel was asked to review these lists and report back to the committee with recommendations.

IX. The subcommittee reviewed issues of liability.

Many members of the subcommittee expressed continuing concern about issues of liability. DEC and the Attorney General's office requested that members put their questions in writing so that the AG's office could be asked to answer them.

X. The subcommittee recommends that the Task Force's report to the Legislature recognize recent progress in prevention and safety measures.

Members of the subcommittee related that the public impression that rogue ships endanger the waters is a misconception. There have been many changes in the last few years, such as the Port State Control Program. These improvements should be noted in the Task Force's report.

XI. The Work Group and the subcommittee explored several ways to provide incentives for adopting prevention measures.

- The reduction of insurance rates; perhaps accomplished by state tax credits to insurers that provide lower rates to vessels that adopt prevention measures. Credits would be against the Insurance Premium Tax
- The reduction of co-op fees
- Tax credits against taxes (other than the Insurance Premium Tax) paid by members of the group.
- Awards for adoption of prevention measures -- like United States Coast Guard's five star program
- Reduction in penalties for a spill
- Reduction in the response planning standard

Of these, an award or recognition for the adoption of measures was viewed as most realistic and Above and Beyond Compliance.

XII. Prevention measures should be self-reported.

The subcommittee envisioned a self-assessing or self-reporting system whereby vessels would report to DEC (and perhaps the Coast Guard) the prevention measures they had adopted. While there would be no direct certification system, spot checks could be made and the Coast Guard could verify that the measures were in place during routine inspections.

Prevention Work Group

Recommendations: Nontank Vessel Prevention Credit Program

On September 27, the Prevention Work Group reached consensus on recommendations for a prevention credit program for nontank vessels, but left the decision of how and whether to implement a program up to the full Task Force. These recommendations do not apply to tank vessels; the work group reached consensus that such programs for tank vessels are outside the purview of the Task Force on Motorized Oil Transport.

1. Reduction in civil penalties for oil spills: The Prevention Work Group recommends that a prevention credit program provide for a reduction in per-gallon statutory civil penalties for nontank vessel as a reward for adopting prevention measures approved under the program.

2. C-Plan review: The work group recommends that a prevention credit program provide for a reduction in the frequency that the Dept. of Environmental Conservation (DEC) reviews nontank vessel contingency plans as a reward for adopting prevention measures approved under the program.

3. Full Deployment spill drills: If full-deployment spills drills are required under the nontank program, the work group recommends that DEC reduce the number of these drills for operators who adopt prevention measures approved under the program.

4. Tax Credits: The work group recommends the Task Force consider a prevention credit program that includes tax credits against the state motor fuel, fisheries business and fisheries landing taxes. Any prevention program tax credit against the fisheries business and fisheries landing taxes should only apply to the state's share of those taxes, and should not result in any reduction in revenue to local governments. If tax credits are a part of a prevention credit program, the work group recommends a reduction in the insurance premium tax be considered as part of the program, provided that the insurance industry is willing to reduce insurance premiums for operators adopting prevention measures approved under the program.

5. Recommended prevention measures by vessel type: The work group recommends that the voluntary prevention measures listed in the table below be considered for approval for the type of vessels indicated. A measure added by the work group allows industry to propose additional prevention measures to DEC.

6. Clear definitions of prevention measures: Work Group members recommend that each approved prevention measure be clearly defined in regulation.

7. Liability issues: The work group recommends the Department of Law draft and the Task Force recommend to the Legislature statutory language insuring that failure to adopt any of the voluntary prevention measures could not be used against a vessel owner in a state legal proceeding.

8. Inspections: The work group recommends that seeking a prevention credit from the state for prevention measures associated with a vessel, grants the state the right to inspect that vessel to insure compliance.

9. Penalty for fraud: The work group recommends that a vessel owner that misrepresents prevention measures in an affidavit for prevention credits be subject to prosecution by the state.

The Work Group requested that the facilitation team staff consider three specific proposals for implementing a prevention credit program and prepare information on how each could be implemented. Facilitation staff met with representatives of DEC and with technical staff, and developed the programs outlined below. The Prevention Work Group asked that the proposals be presented to the Task Force as a whole, which would decide which program, if any, should be adopted, and whether any modifications should be made to a system that is adopted.

Staff was asked to develop proposals to implement the following prevention credit approaches.

- **A Tiered System:** Task Force member Gene Burden submitted a proposal to the Prevention Work Group for a system that would extend credits for recognized prevention measures commensurate with the projected spill risk reduction. Burden's proposal includes "incentives or rewards": based on three tiers of risk reduction—10 to 30 percent, 30 to 60 percent, and greater than 60 percent reduction.

- **Single Trigger System:** This proposal would allow for a prevention credit if a vessel owner adopts the required number of approved prevention measures.

- **Specified Five Measure System:** Under this proposal, the top five prevention measures for each vessel type would be identified. This list would exclude those measures that could only be achieved in new vessel construction. Prevention incentives would be granted to vessel owner that adopts all five of the measures. The owner of a new vessel that includes the five prevention measures plus additional measures could negotiate with DEC for a greater prevention credit.

Components of a Prevention Credits Program

1. **Assigning a relative weight to the proposed prevention measures.** Staff reviewed the 20 prevention measures identified by the Prevention Work Group, and assigned each a relative weight from 1 to 3 points, with one point being the least significant and 3 points being the most significant. Staff concluded that it was not practicable or possible to determine the actual reduction in the risk of a spill that would result from the adoption of a measure (as suggested in the proposal for a tiered system), but that the comparative importance of the measures could be identified. The proposed relative weight of each measure is set out in the table below; a vessel that achieves all of the measures would attain 33 points.
2. **Determining the "Top Five" measures.** Staff looked at the measures with a weight of 2 or 3. After eliminating those measures that could only be achieved in a new vessel (measures 4, 5, and 17) and those measures that were inapplicable to some classes of vessels (measures 7, 8, and 13), there were five remaining measures with a weight of 2 or higher. Those measures, numbers 1, 2, 3, 11 and 18, were identified as the "Top Five."
3. **Applying the weighted measures to the classes of vessel.** The work group had analyzed the applicability of each measure to each class of vessel (see recommendation 5 above). The table below shows the available points for each class of vessel.

Prevention Measures - Weight and Applicability

	Relative Weight	Fishing Vessels		Fish Processors & Tenders		General Cargo		Cruise Ships		Container Ships	
		Appli-cable?	Weight	Appli-cable?	Weight	Appli-cable?	Weight	Appli-cable?	Weight	Appli-cable?	Weight
1 <i>Emergency towline or dedicated mooring line with on-board means for deployment</i>	2	Yes	2	Yes	2	Yes	2	Yes	2	Yes	2
2 <i>Emergency on-board dewatering or petroleum pumps</i>	2	Yes	2	Yes	2	Yes	2	Yes	2	Yes	2
3 <i>On-board storage bladder or dedicated tank</i>	2	Yes	2	Yes	2	Yes	2	Yes	2	Yes	2
4 Non-contiguous tank location on vessel	3	No	0	No	0	Yes	3	Yes	3	Yes	3
5 Redundant propulsion systems	3	Yes	3	Yes	3	Yes	3	Yes	3	Yes	3
6 Redundant/integrated navigation systems	1	Yes	1	Yes	1	Yes	1	Yes	1	Yes	1
7 Use of an Alaska marine pilot when not otherwise required by law	2	No	0	No	0	Yes	2	Yes	2	Yes	2
8 Maintaining a transponder, AIS or other vessel location/ident. technology onboard	2	Yes	2	No	0	Yes	2	Yes	2	Yes	2
9 Use of advanced anchoring systems or placement of mooring buoys	1	No	0	Yes	1	Yes	1	Yes	1	Yes	1
10 Comply with bridge safety management practices; meet ISMC requirements before 7/02; licensing, certification, training beyond fed/intl. requirements	1	No	0	No	0	Yes	1	Yes	1	Yes	1
11 <i>Participation in risk assessment process for operations</i>	2	Yes	2	Yes	2	Yes	2	Yes	2	Yes	2
12 Membership in a marine safety organization	1	Yes	1	Yes	1	Yes	1	Yes	1	Yes	1
13 Tugboats staged/on standby	2	No	0	No	0	No	0	Yes	2	Yes	2
14 Additional staged equipment onshore to improve RPS	1	Yes	1	Yes	1	Yes	1	Yes	1	Yes	1
15 Weather/oceanographic equipment and systems	1	No	0	No	0	Yes	1	Yes	1	Yes	1
16 Enhanced maintenance	1	Yes	1	Yes	1	Yes	1	Yes	1	Yes	1
17 Ice classification	2	No	0	No	0	Yes	2	Yes	2	Yes	2
18 <i>Specialized onboard training programs in prevention and response</i>	2	Yes	2	Yes	2	Yes	2	Yes	2	Yes	2
19 Mooring plan	1	No	0	Yes	1	Yes	1	Yes	1	Yes	1
20 Others as proposed by operators	1	Yes	1	Yes	1	Yes	1	Yes	1	Yes	1
Total possible score for category	33		20		20		31		33		33

• *Italics* indicates the measure is included in "Top Five"

4. Determining point level needed for each alternative. Staff suggest the levels of points that would be necessary for each tier of the tiered system and for the single trigger system as set out in the following table.

Alternative Point Systems for Prevention Measures

Any Vessel	Fishing Vessels	Fish Processors & Tenders	General Cargo	Cruise Ships	Container Ships
33 points maximum	20 points maximum	20 points maximum	31 points maximum	33 points maximum	33 points maximum

Three Tiered System:

Tier I - 20%	7 points	4 points	4 points	6 points	7 points	7 points
Tier II - 40%	13 points	8 points	8 points	12 points	13 points	13 points
Tier III - 60%	20 points	12 points	12 points	18 points	20 points	20 points

Single Trigger System - 50%:

17 points	10 points	10 points	16 points	17 points	17 points
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Top Five Measures* System:

All five	All five	All five	All five	All five	All five
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*"Top five" measures do not include those that could only be built into a new ship. The "top five" are measures 1, 2, 3, 11 & 18.

5. Procedural provisions of a credit system; applying for and receiving a prevention certificate.

- A nontank vessel owner or the owner's representative will submit an affidavit to the Department of Environmental Conservation, attesting to the existence of prevention measures with respect to a particular vessel. The initial affidavit may be filed at any time. Subsequent affidavits may be required at the time the vessel's contingency plan is reviewed.

- The affidavit must contain a statement that the vessel and its crew comply with all applicable federal and international law. In addition to any other penalty that would apply under those laws, the failure to comply with those laws with respect to the vessel would result in the revocation of any prevention credit granted to the owner of the vessel. *Note:* The affirmation of compliance with federal and international law is being proposed to the Task Force as a required component of a C-plan application. Since all vessels will be required to have C-plans, the Task Force may decide that the provision is not needed as a part of the prevention program.

- By applying for prevention credits, the vessel owner consents to inspection, by the state or the Coast Guard, of the vessel for the existence of prevention equipment and of the owner's records pertaining to the prevention equipment or prevention procedures. The vessel owner must retain those records for at least three years after any tax credit or refund is claimed.

- The DEC will issue a numbered certificate for the vessel that will identify the class of vessel for which the certificate is issued, and list the prevention measures that have been claimed by the owner. The certificate will state the tax and/or penalty reductions to which the owner is entitled pursuant to those measures, according to the schedule set out in law. [See table below setting out the benefits available in each of the three alternative systems.]

• The certificate is valid until the contingency plan under which the vessel operates expires. The certificate will be reviewed when the contingency plan is reviewed, and a new certificate will be issued when the new contingency plan is approved.

Prevention Measure Tax Credit and Penalty Reductions

**Reduction in
Spill Penalty**

**Motor Fuel Tax
Refund**

**Fisheries Tax
Credit**

Three Tiered System:

Tier I	10% off penalty	\$.005 per gallon	10% of liability
Tier II	30% off penalty	\$.015 per gallon	30% of liability
Tier III	50% off penalty	\$.025 per gallon	50% of liability

Single Trigger System - 50%:

30% off penalty	\$.015 per gallon	30% of liability
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Top Five Measures* System:

30% off penalty	\$.015 per gallon	30% of liability
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**"Top Five" measures do not include those that could only be built into a new ship.

6. Substantive provision for penalty reduction. A vessel that has been issued a current prevention measure certificate is entitled to a reduction in the statutory penalty for a discharge of oil in the amount stated on the certificate.

7. Substantive provisions for tax credits.

• **Motor Fuel Tax refund.** The owner of a vessel with a current prevention measures certificate is entitled to a refund of Alaska motor fuel taxes in the amount stated on the certificate for Alaska motor fuel tax previously paid (by the distributor or vendor) on the fuel. The vessel owner may claim a refund of motor fuel taxes by submitting invoices for fuel and a copy of the prevention measures certificate to the Department of Revenue within one year of the fuel purchase.

• **Fisheries Business Tax, Fisheries Business Landing Tax credits.** The owner of a vessel that has had a prevention measures certificate in effect for the entire tax year is entitled to a credit, in the amount stated on the certificate, against the fisheries business tax due as a result of the fisheries resource processed or landed by that vessel. The amount of tax shared with a municipality will not be affected by this provision. **Note :** The maximum fisheries tax credit is 50 percent of the liability; under existing law, any credit up to 50 percent will automatically come exclusively from the state's share of these taxes because the municipalities are entitled to 50 percent of the tax liability.

8. Reduction in frequency of C-plan review. The same structure set out above could be used to provide a prevention incentive of a longer contingency plan review cycle. Under such a system, the

normal three-year C-plan review cycle for a nontank vessel could be extended to four years for a "Tier 1" vessel; five years for a "Tier 2" vessel; and six years for a "Tier 3" vessel.

Under the "Single Trigger" system, a vessel with the required points would have its contingency plan reviewed every five years.

Under the "Top Five" system, a vessel with all five measures would have its contingency plan reviewed every five years.

Note: The DEC requested that a prevention certification system be in conjunction with C-plan review to economize on staff time and cost. As a result, lengthening the C-plan review period could have the unfortunate result of providing a disincentive to adopt new or additional prevention measures. A vessel could only receive credit for a measure when the C-plan was reissued, and on a five or six year review cycle there would be little incentive to adopt prevention measures significantly in advance of the review date.

9. Alaska Blue Star Award Program "Protecting Alaska's Waters"). Staff also propose an award system as a DEC function. The DEC would publish a list of the vessels meeting the requirements under one of the systems discussed above.

- For example, under the tiered approach, a vessel meeting the first tier would get one blue star; a vessel reaching tier two would get two stars; and one reaching tier three would get three stars. Under the single trigger approach, those vessels meeting the trigger would get the Blue Star Award. Under the five measure program, those vessels meeting the five prevention measures would get the Blue Star Award.

- Companies could use the Blue Star Award logo in their company advertising, similar to DEC's existing successful Green Star Program.

- DEC could also promote the program through publication of the list of award winners in departmental newsletters and web sites, sending copies of the list to Alaskan and maritime publications, holding awards banquets, etc.

- This program would complement the tax credit program. While the implementation of the RPS portion of the proposed legislation on nontank vessels is expected to take two years, there is no reason this program could not be authorized upon the effective date of the legislation and implemented quickly.

Outstanding Issues

- 1. Voyage/Spot Charters.** Should a prevention credits program be available to spot charters?
- 2. Should the frequency of spill drills be reduced as a prevention incentive?**