SCOMM

123:5

TASK FORCE ON MOTORIZED OIL TRANSPORT
Revised Draft Agenda - November 6, 2000
8:30 a.m.—5:00 p.m. (note: meeting will be extended into evening hours if necessary)
Anchorage Legislative Information Office
716 West Fourth Avenue – 2nd floor conference room

I. Welcome from Task Force Chair, DEC Commissioner Michele Brown and Steering Committee Members Senator Drue Pearce and Representative Pete Kott

II. Presentation by Brian Rogers, facilitator
   A. Review Task Force decision-making process and meeting logistics
   B. Update on activities since 9/20/00 Task Force meeting
   C. Review of all recommendations on Consent Agenda

III. Public Comment on Agenda Items (limited to 3 minutes)

IV. Consent Agenda

Response Planning Standard Work Group

1. *The RPS wave height planning standard is 3 feet. (Task Force adopted 9/20)*
2. *The APD&T equipment schedule is sufficiently rapid to meet the non-tank vessel program needs. (Task Force adopted 9/20)*
3. *The control and containment equipment required for a nontank vessel is containment boom sufficient to extend three times the length of the vessel and an appropriate deployment system. (Task Force adopted 9/20)*
4. Control and containment equipment required to meet the response planning standard (RPS) for a nontank vessel must be stationed within the vessel's subarea of operation.
5. The required cleanup equipment is skimming capacity capable of cleaning up 15% of the maximum capacity of a vessel within 5 days and storage capacity equal to the daily recovery capacity. The skimmer must be appropriate for the type of oil.
6. To meet the RPS requirement of "cleanup of the discharge within the shortest possible time consistent with minimizing damage to the environment," a nontank vessel must either:
   - Position the required skimming and storage capacity within its subarea of operation; or
   - Reasonably demonstrate to the Dept. of Environmental Conservation the ability to position equipment in the subarea of operation within 24 hours.
7. Nontank vessels will be allowed two years from the adoption of regulations implementing SB 273 to have in place the skimmer(s) and associated storage capacity described in their contingency plan.

Contingency Plan Work Group

8. Nontank vessel contingency plans shall only be required for vessel operation in state waters, (generally within three miles of shore).
9. DEC shall establish a streamlined process for submission and approval of contingency plans for nontank vessels, consisting of a response action plan, financial responsibility, and prevention plan.
10. DEC shall establish three alternative options for nontank vessel contingency plans (C-plans), allowing use of established PRACS (including spill response cooperatives and IMTs) , equivalent response resources, or a combination of the two. All three options will be available for plans covering single vessels or fleets.
11. DEC will complete its review of initial applications within 15 days for applicants using cooperatives, and within 45 to 90 days for applicants using equivalent response

resources. DEC will complete its review of applications for adding a vessel to an already-approved fleet plan within 5 days.

12. A response plan facilitator (RPF), acting as an agent for a vessel(s), can develop and ~~hold~~ a generic contingency plan that is activated by signature of a responsible party (RP). The plan will contain all the elements of a streamlined contingency plan.
13. ~~Specifications for the requirements for qualification as an incident management team (IMT) will be developed and adopted.~~ [Removed from Consent Agenda]
14. Nontank vessel contingency plans will be due to DEC within 180 days of adoption of the contingency plan regulations. DEC will conditionally approve initial contingency plans that are submitted on time. Conditional approval will remain in effect until DEC has completed review of a plan. Nontank vessel contingency plans will be reviewed by DEC every three years. DEC will stagger the initial review process.
15. "Spot charter vessel" shall be defined as a "vessel contracted to lift a specific cargo on a one time, periodic, non-scheduled or tramp basis."
16. DEC shall electronically post a listing of nontank vessel contingency plan applications and review schedules.
17. The public review process in DEC's review process for contingency plans found in 18 AAC 75.455 and 75.415 will be used as the model for review of generic contingency plans and plans using equivalent resources.
18. ~~DEC shall have statutory authority to inspect nontank vessels for C-plan compliance.~~ [Removed from Consent Agenda]
19. ~~The frequency and type of required contingency plan spill drills DEC may require of nontank vessels is one tabletop drill annually for cooperative members and no more than one full deployment drill and one tabletop drill for contingency plan holders providing equivalent resources. DEC may drill spill response cooperatives that provide services exclusively to nontank vessels a maximum of two times per year.~~ [Removed from Consent Agenda]

Prevention Work Group

20. *All affected nontank vessels must comply with applicable federal and international requirements. (Task Force adopted 9/20)*
21. A reduction in the response planning standard should not be considered in a prevention credit program for nontank vessels.

Alaska Railroad Subcommittee

22. *The Alaska Railroad will undergo a contingency and prevention plan review under the rigor of existing law for currently regulated industry. (Task Force adopted 9/20)*
23. *The Alaska Railroad risk assessment process is endorsed as a prevention measure for the Alaska Railroad. (Task Force adopted 9/20)*
24. *The Alaska Railroad should follow the RPS methodology developed by the Task Force, designed to meet a response planning standard of 15% of the maximum fuel carried. (Task Force adopted 9/20)*

Prevention Work Group (affects all recommendations)

25. DEC will periodically review all Task Force recommendations with the regulated community.

V. Discussion and Action on Recommendations Removed from Consent Agenda

13. Specifications for the requirements for qualification as an incident management team (IMT) will be developed and adopted.
18. DEC shall have statutory authority to inspect nontank vessels for C-plan compliance.
19. The frequency and type of required contingency plan spill drills DEC may require of nontank vessels is one tabletop drill annually for cooperative members and no more than

one full deployment drill and one tabletop drill for contingency plan holders providing equivalent resources. DEC may drill spill response cooperatives that provide services exclusively to nontank vessels a maximum of two times per year.

VI. Contractor Report
- A. Discussion of final report outline and elements
- B. Timetable for action on final report
  1. Revised draft report due out to Task Force members and public Nov. 13
     - Comments by Task Force members and public due Nov. 20
  2. Complete draft report with appendices due out to Task Force members and public Nov. 21
     - Comments by Task Force members and public due Nov. 27
  3. Revised draft legislation and draft regulation memo due out to Task Force members and public Nov. 20
     - Comments by Task Force members and public due Nov. 27
  4. Final report, including draft legislation & regulations memo due out to Task Force members and public – Nov. 29
  5. Task Force – Teleconference adoption – Dec.1

VII. Railroad presentation (scheduled for 11:30 a.m.)
- A. Progress on the Risk Assessment process
- B. Proposed timetable for Contingency and Prevention plan review.

VIII. Attorney General's office report on legal issues
- A. Legal Issues Memorandum
- B. Task Force Draft Legislation

IX. Discussion and Action on Unresolved Issues
- A. Contingency Plan Issues:
  1. Response Planning Facilitator as response action contractor
  2. Definition of qualified individual
- B. Prevention Issues:
  1. Adoption of federal/international mandatory requirements as state law
  2. Adoption of Prevention Credit Program for voluntary measures
     - Recommended prevention measures by vessel type
     - Options for what should be offered in a prevention credit program
       a. Reduction in civil penalties
       b. C-plan review
       c. Tax credits
     - Liability issues
     - Inspections
     - Penalties for fraud
  3. Implementation of prevention credit program for voluntary measures
     - Three options: applicability to work group recommendations
     - Applicability to spot charter industry
  4. Blue Star Vessel Award Program for voluntary measures
- C. Funding for DEC administration of Nontank vessel program

X. Final task force member and public comments

INCIDENT COMMAND SYSTEM

Webmaster	Coast Guard Marine Environmental Protection	National Oceanic and Atmospheric Administration

INCIDENT COMMAND SYSTEM

LINKS

- Field Operations Guide (Adobe Acrobat PDF File)
- Electronic ICS Forms
- Basic Organizational Charts and Diagrams
- ICS Training and Course Work
  - National Wild Fire Coordination
  - NEOTEC, LLC
- National Response Team

COAST GUARD ADOPTION OF ICS

The United States Coast Guard initially adopted the National Interagency Incident Management System (NIIMS) based Incident Command System (ICS) for response to oil and hazardous substance releases on February 9, 1996 (COMMANDANT INSTRUCTION 16471.1) On August 28, 1998 the Coast Guard adopted the use of ICS Coast Guard wide in order provide a standardized response management system for all Coast Guard response operations (COMMANDANT INSTRUCTION 3120.14).

WHAT IS ICS?

NIIMS ICS is standardized response management system. It is an "all hazard – all risk" approach to managing crisis response operations as well as non-crisis events. NIIMS was originally designed by a group of local, state, and federal agencies with wild- land fire protection responsibilities, to improve the ability of fire forces to respond to any type of emergency. A new training curriculum was completed in 1994 to better reflect the "All Hazard – All Risk" capability of NIIMS (floods, earth quakes, oil spills, fires, planned events etc..). It is organizationally flexible and capable of expanding and contracting to accommodate responses or events of varying size or complexity.

NIIMS consists of 5 major subsystems that collectively provide a total systems approach to all-risk incident management. These five subsystems are: Incident Command System, Training, Qualifications and Certification, Publication Management and Supporting Technology

BENEFITS OF ICS

The adoption of NIIMS ICS provides many advantages:

1. A flexible, standardized response management system that will allow for the cultivation of response management expertise at all echelons of Coast Guard command.
2. Provides for an increased support of trained personnel during major incidents.
3. NIIMS is a "public domain" system that allows unrestricted distribution by commanding officers to improve the capabilities of, and unify the local response community into a more effective organization.

Nontank Vessel Inspection Authority

- The proposed legislation does not create or make any new activities subject to inspection but simply extends existing authority to nontank vessels and the railroad.

- The existing language was included in the oil spill legislation passed in 1990.

- The existing inspection language allows DEC to continue to focus its inspection activities on prevention and response capability.

- The existing inspection language is not in conflict with the recent U. S. Supreme Court's decision which allows states to verify and have continued oversight for oil spill contingency plans and proof of financial responsibility.

- The Department of Environmental Conservation and the United States Coast Guard operate under a formal Memorandum of Agreement that explicitly outlines their respective roles for vessel inspection activities to ensure coordination, eliminate duplication, prevent overlap and avoid any jurisdictional conflicts under state, federal or international laws or agreements.

- All DEC staff conducting vessel inspection activitieshave appropriate training or extensive prior experience conducting vessel inspection work for the United States Coast Guard.

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MEMORANDUM OF AGREEMENT

ON

OIL AND HAZARDOUS SUBSTANCE POLLUTION PREVENTION AND RESPONSE

BETWEEN

THE COMMANDER, SEVENTEENTH COAST GUARD DISTRICT

AND

THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

WHEREAS, the United States Coast Guard and the State of Alaska share a common interest and responsibility for protecting the waters of Alaska and have determined that their cooperative response to large oil spills such as the EXXON VALDEZ oil spill has permitted the State and the Coast Guard to leverage available resources, which in turn has led to better protection of our environment; and

WHEREAS, the United States Coast Guard and the State of Alaska find efficiency in government is important to the public they serve and that entering into a Memorandum of Agreement that builds upon present close working relationships and identifies areas for expanded interaction will lead to increased protection of Alaska's marine environment at greater efficiency; and

WHEREAS, the authority for the USCG to enter into this Agreement can be found in 14 U.S.C. § 141.

WHEREAS, Congress enacted the Oil Pollution Act of 1990 (OPA 90) to protect the waters of the United States from oil pollution and to plan for the effective and immediate response in the event of an oil spill, and the President subsequently designated the Coast Guard as the Federal On-Scene Coordinator (FOSC) within the Alaska coastal zone; and

WHEREAS, Congress has decided in a number of enactments, including OPA 90, not to preempt the various States from regulating certain matters associated with the protection of waters within their jurisdiction from oil pollution, which matters are also subject to regulation by the Coast Guard under OPA 90 and other statutes; and

WHEREAS, Congress explicitly provided the provisions of OPA 90 do not: (1) preempt or affect the authority of any state to impose additional liability or requirements regarding oil discharges or other oil pollution within such a state or removal activities in connection with such a discharge; (2) affect the authority of any state to establish a fund to pay for oil pollution or the substantial threat of oil pollution costs or damages, or to require any person to contribute to such a fund; or (3) affect the authority of any state to impose any fine or penalty for violation of law relating to a discharge; and

VI

PREVENTION OF OIL SPILLS

A. Cooperative Implementation: The Parties are coordinating their efforts to prevent oil spills in the marine environment.

To the extent permitted under applicable laws, the Parties agree to cooperate in the execution of their respective regulatory responsibilities to minimize duplication of effort. The Parties will also seek to identify opportunities for innovative implementation of vessel and facility prevention plans. Both Parties recognize the importance of encouraging cross-training in each other's regulations and rules including the areas of inspection and response.

B. Vessel Inspections: Each Party recognizes they may elect to independently exercise their respective examination responsibilities in accordance with applicable law, regulations and policies. The Coast Guard conducts inspection programs for the purpose of enforcing both international agreements and domestic law aboard United States and foreign-flagged vessels. The State has authority to conduct inspections for the purpose of ensuring compliance with state laws and regulations and can participate in joint examinations with federal agencies. Further, either Party may evaluate the inspection process and make recommendations for improvement or perform its own inspections in accordance with applicable laws.

1. The Parties agree to work together to avoid inconsistent requirements and to find ways to conduct vessel inspections in such a way that disruption to the industry is minimized and efficiency and safety maximized. To this end, the Parties will endeavor to exchange information and conduct joint inspections or may pursue agreements under which a single inspection may fulfill both state and federal requirements.

2. In implementing any State examination programs, the State agrees to avoid conflicts and unnecessary duplication in reviewing Federal inspection programs by on-going consultation with the Coast Guard.

3. Review of inspection records: The Parties each agree to make inspection records available to the other and to cooperatively review inspection results, subject to applicable laws, regulations, and procedures.

4. The State shall report recognized discrepancies in meeting the requirements of international agreements believed to exist aboard United States and foreign-flagged vessels to the responsible Officer in Charge, Marine Inspection (OCMI).

5. Requirements in State Waters: The Parties will cooperate to establish consistent pollution prevention requirements, and to cooperatively monitor, examine and exchange information relative to those requirements, for vessels to operate in State waters.

6. The State will promptly inform the cognizant OCMI and the Coast Guard will promptly inform the ADEC Industry Preparedness and Pipeline Program's Marine Vessel Section Manager of any situation or circumstance relative to a vessel whose condition or equipment may significantly increase the potential for an unauthorized discharge or create an unusual or an unacceptable risk to public health and safety, or the safety of navigation. Both Parties also agree to ensure joint notification when an initial report is received from Alyeska SERVS regarding any irregularity or indication of a problem which threatens a tanker or its cargo (including ballast water) as well as situations where a tanker leaves both the U.S. Coast Guard designated Prince William Sound and Valdez Arm traffic lanes (except when an outbound tanker leaves the lanes at the Hinchinbrook Entrance terminus).

7. Both Parties agree to share all applicable information obtained from their respective vessel inspections.

C. **Vessel Screening:** The Coast Guard, under federal law, through the District Commander and the Captain of the Port (COTP), has the authority to regulate the entry of vessels into the COTP zone, including those determined to be a threat to the environment. The State may establish the means by which it can determine whether tank vessels entering the waters of the State pose a substantial risk of harm to the public health and safety and the environment.

When the State determines that a particular vessel or vessels pose a substantial risk, that determination will be forwarded to the cognizant Captain of the Port (COTP). The COTP shall consider that information in making a determination under federal law as to appropriate action to be taken, if any, including the possibility of denial of entry.

D. **Tank Vessel Crewing:** The Coast Guard establishes and enforces requirements for crewing, competence, and documentation of personnel aboard vessels.

1. The Coast Guard will consult with the State, to the extent practicable, in its evaluation and implementation of additional requirements for crewing, training, and qualification requirements through the crewing standards process.

2. The Parties agree to actively promote and coordinate research projects to identify human factors which need to be regulated to prevent pollution incidents.

E. **Tank Vessel Transfer Operations:** Monitoring tank vessel transfer operations has been identified as an effective pollution prevention action.

The Parties will cooperate to monitor transfer operations involving tank vessels (as well as cruise ships, fish processors, fishing vessels, etc.), including, but not limited to, dockside transfer at facilities, lightering and bunkering operations. Each party will advise the other of violations observed.

I. EXECUTIVE SUMMARY

Financial responsibility and oil spill response planning requirements have long been in place for tank vessels carrying petroleum as their principal cargo. Senate Bill 273, enacted by the 2000 Alaska Legislature, established similar requirements for nontank vessels of more than 400 gross tons, and for railroad tank cars.

The new law establishes a response planning standard (RPS) for "containment and control of 15 percent of the maximum oil capacity" of the nontank vessel or railroad train within 48 hours. Cleanup is required "within the shortest possible time consistent with minimizing damage to the environment."

The bill established the Task Force on Motorized Oil Transport and charged the Task Force with determining how to implement the response planning standard.

The Task Force recommends implementing the standard with a process that is:

- **Realistic**, capable of being implemented with available technology and expertise;
- **Effective,** providing real protection to the environment;
- **Economically feasible,** capable of being implemented without unreasonable costs;
- **Flexible,** providing a wide variety of options and choices for vessel owners and shippers to meet the requirements of the law.

The Task Force recommendations implement the response planning standard in full recognition of all federal pre-emption. They provide alternative means of implementing the response planning standard that include fleet plans, vessel agents, a streamlined contingency planning process, and voluntary spill prevention measures.

The recommendations recognize the existing framework of response planning requirements for tank vessels while providing opportunities for vessel owners to determine their most efficient means of meeting the standard. The Task Force envisions that market forces will for most vessel owners yield several alternative compliance choices.

The requirements of these recommendations apply only to vessels in state waters, generally within three miles of shore.

Summary - Response Planning Standard

The Task Force recommends the response planning standard be based on a three foot wave height.

Control and containment equipment, including sufficient boom to extend three times the length of the vessel, must be stationed within a vessel's area of operation, or be able to reach the area within 24 hours. Skimming equipment for cleanup must be able to clean up 15 percent of the maximum capacity of the vessel within five days.

Summary - Contingency Plans

For a vessel owner, compliance with contingency plans for meeting the response planning standard is a streamlined process that includes demonstration that the vessel

- meets the financial responsibility requirements of state law;
- has designated an individual who is qualified to make decisions about a spill on behalf of the vessel owner, has a response action plan that includes

1. initial notification procedures such as those contained in the shipboard oil pollution emergency plan;
2. a contract with a primary response action contractor or use of equivalent resources, to contain and control 15 percent of the maximum capacity of the vessel; and
3. a contract with an incident management team or equivalent resources

- meets applicable federal and International Maritime Organization requirements

A vessel owner can demonstrate a vessel plan through three options:

I. By contracting with a primary response action contractor for containment, control and cleanup, and by contracting with a primary response action contractor for incident management;

II. By demonstrating to the department equivalent resources for containment, control, cleanup and incident management; or

III. By a combination of A and B.

A vessel fleet, operated by a single owner or by a group of independent owners, can prepare a plan for a group of vessels, demonstrating to the department the fleet's plan using any of the three options. Vessels can be added to the fleet through a simple fleet plan amendment process. Vessel agents, acting as response plan facilitators, can prepare generic contingency plans, designed to be activated by vessels entering state waters on short notice.

The Task Force recommends that Department of Environmental Conservation act upon contingency plans under tight timeframes, provided that sufficient funding is provided for adequate staff. Public review opportunities continue to exist through review of primary response action contractor plans and by electronic posting of a listing of contingency plan filings.

The Task Force recommends a simple schedule of tabletop drills for vessels contracting with primary response action contractors and full deployment drills for vessels using alternative resources.

Summary – Prevention

The Task Force recommends that all affected nontank vessels comply with applicable federal and international requirements.

The Task Force does not recommend any reduction in the response planning standard be part of a prevention credit program.

More to come? . . .

Summary – Alaska Railroad

The Task Force endorses the Alaska Railroad Risk Assessment proce[illegible], and recommends the process be followed through to completion. The Alaska Railroad should undergo a Contingency and Prevention Plan review under the rigor of existing law for currently regulated industry.

The Task Force on Motorized Oil Transport believes its recommendations meet the Alaska Legislature's request for implementation of the Response Planning Standard set forth in SB 273 and SCR 1, providing increased protection of the environment at a reasonable cost to affected shippers.

Alaska Department of Environmental Conservation

Alaska's Oil Spill Safety Net

Task Force on Motorized Oil Transport

DRAFT

REPORT

October 30, 2000

information insights

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TASK FORCE ON MOTORIZED OIL TRANSPORT

STEERING COMMITTEE

Commissioner Michele Brown, Chair
Representative Pete Kott
Senator Drue Pearce

TASK FORCE MEMBERS

Eric Britten, Container Ship Industry
Gene Burden, Noncrude Industry
Jim Carter, Regional Citizens' Advisory Council
Scott Carter, Spot Charter
Larry Dietrick, Director, Division of Spill Prevention and Response, DEC
Lee Egland, Alaska Petroleum Distributors & Transporters
John Hansen, Cruise Ship Industry
Rick Harris, Spot Charter
Bob Heavilin, Alaska Chadux Corporation
Lurilla Lee, Fishing Industry
Doug Lentsch, Cook Inlet Spill Prevention & Response Inc.
Simon Lisiecki, Crude Industry
Charlotte MacCay, Spot Charter
Stephanie Madsen, Seafood Processing Industry
Heather McCarty, Fishing Industry
Mike O'Hara, Marine Pilots
David Owings, Southeast Alaska Petroleum Resource Organization
Ed Page, United States Coast Guard
Ernie Piper, Alaska Rail Road
Jeff Thompson, Shipping Agent

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Brian Rogers, Information Insights, Inc.
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Accomplishing the Recommendations

Required Statutes and Regulations

This table represents an analysis by staff of one way to approach the need for statutes and/or regulations to accomplish the Task Force's recommendations. It is intended to give an overview of a framework; the Alaska Department of Law will, of course, determine when statutory authority is necessary for particular provisions.

Generally, staff recommend the adoption of broad statutes granting statutory authority to the Department to adopt regulations, with the more specific material being set out in regulation. This format will allow more flexibility as circumstances change over the years.

Staff recommends that a Letter of Intent be drafted that would incorporate the report of the Task Force into legislative intent. In this way, a somewhat formal mechanism would exist to provide guidance to the Department of Environmental Conservation when drafting regulations. A legislative sponsor would need to be found -- perhaps Senator Pearce.

If the Task Force adopts prevention incentive measures such as tax credits or a reduction in the penalties for a spill, these provisions would have to be in statute.

A=approved by Task Force Y=Yes; N=No;
CA=on consent agenda for 11/6 meeting SA=Should be broad Statutory Authority

MARINE VESSEL RECOMMENDATIONS

Status	Recommendation	Reg	Stat	Comment
	A. General Recommendations			
A	1. ***Wave height planning standard. The Task Force adopted, and recommends that others adopt, a response planning standard wave height of 3 feet or less.*** [		Y	Should be in statute.
A	2. ***Schedule for acquiring new equipment. The Task Force recommends that schedule established under the tank vessel program for the APD&T group to acquire new equipment and place it in service is sufficiently rapid for the additional equipment required to implement the non-tank program.***	N	N	Concept should be covered in letter of intent; specifics will be reflected in C-plan approval process.

B. Control and containment recommendations

A	3. ***Required control and containment equipment. The control and containment equipment required for a nontank vessel to meet its response planning standard (RPS) is containment boom sufficient to extend three times the length of the vessel and an appropriate means for deploying the containment boom.***	**Y**	**N; SA**	
CA	4. **Stationing of control and containment equipment. Control and containment equipment required for a nontank vessel to meet its response planning standard (RPS) must be stationed within the subarea of the vessel's operation.**	**Y**	**N**	

C. Cleanup Recommendations

CA	5. **Required cleanup equipment. The cleanup equipment required for a nontank vessels to meet its RPS includes skimming capacity capable of cleaning up 15 percent of the maximum capacity of the vessel within five days and storage capacity that equals the daily recovery capacity of the chosen skimmer. The skimmer chosen must be appropriate for the type of oil carried by the vessel.** [This is a modification of a previous RPS recommendation approved by the Task Force on September 20.]	**Y**	**SA**	
CA	6. **Stationing of cleanup equipment. To meet the RPS requirement of "cleanup of the discharge within the shortest possible time consistent with minimizing damage to the environment," a nontank vessel must either (a) position the required skimming and storage capacity within its subarea of operation; or (b)**	**Y**	**SA**	

	reasonably demonstrate to DEC the ability to position equipment in its subarea of operation within 24 hours. [This is a modification of a recommendation approved by the Task Force on September 20.]			
CA	7. **Schedule for acquiring new cleanup equipment. Nontank vessels shall be allowed two years from the adoption of regulations implementing SB 273 to have in place the skimmer(s) and associated storage capacity described in their contingency plan.**	**Y**	**SA**	

D. Contingency planning recommendations

CA	8. **Vessel operation outside of state waters. Nontank vessel contingency plans (C-plans) shall only be required for vessel operations in state waters, within three miles of shore.**			
CA	9. **Streamlined Contingency Plan process. DEC shall establish a streamlined process for submission and approval of contingency plans for nontank vessels. Under the streamlined process a contingency plan submission shall consist of:** **i) vessel-specific information,** **ii) a response action plan consisting of** **a) initial notification procedures such as those contained in the shipboard oil pollution emergency plan (SOPEP),** **b) certification that the applicant is a member of a spill response cooperative that is a primary response action contractor (PRAC) with a response action plan approved by DEC under requirements similar to that currently required for existing plan**	**Y**	**SA**	A general statute should cover contingency plan requirements for non-tank vessels, including reference to a streamlined process when RAC's are used; an alternative process for others; quick turn-around; fleet plans, the use of a response plan facilitator and the like.

	holders, and **c) certification that the applicant has contracted with an incident management team (IMT) approved as a primary response action contractor under 18 AAC 75.550. Evidence demonstrating equivalent capability may be submitted in lieu of (b) or (c).** **iii) a prevention plan certification stating that the applicant vessel complies with applicable federal and International Maritime Organization requirements.**			
CA	**10. <u>Alternative Contingency Plan options</u>. DEC shall establish three alternative options for nontank vessel contingency plans (C-plans):** **a) C-Plan Option I: using co-op membership,** **b) C-Plan Option II: developing equivalent response resources, or** **c) C-Plan Option III: using a combination of equivalent resources and primary response action contractors.**	**Y**	**SA**	See above.
CA	11. **<u>Action on Contingency Plans</u>. DEC will complete its review of applications for the addition of a vessel to an already approved fleet plan within 5 days. DEC will review an initial full application submitted under C-plan Option I within 15 days of receiving the application; in the event of extenuating circumstances the review will be completed within 5 days. Initial full applications submitted under C-plan Options II or III will be reviewed by DEC within 45 to 90 days. DEC will establish these timeframes for review of contingency plans in regulation.**	**Y**	**SA**	See above.

CA	12. **Response plan facilitator. A response plan facilitator (RPF), acting as an agent for a vessel or vessels, may develop and hold a generic contingency plan that is activated by signature of an RP. The RPF will submit a generic plan for a specified area of operation to DEC for approval. This plan will contain all the elements of a contingency plan, except the vessel-specific information, the initial notification procedures or the SOPEP, and the prevention certification stating that the applicant vessel complies with applicable federal and IMO requirements.**	**Y**	**SA**	See above.
CA	13. **Incident management team qualification. DEC shall specify the requirements for qualification as an incident management team (IMT).**	**Y**	**SA**	See above.
CA	14. **Application timeframes. Nontank vessel contingency plans shall be due to DEC within 180 days of adoption of the contingency plan regulations. DEC will give conditional approval to all plans submitted on time. Conditional approval will remain in effect until DEC has completed review of a plan. Nontank vessel contingency plans will be reviewed by DEC every three years. DEC will stagger the initial review process so that all nontank vessel contingency plans do not come up for review in the same year.**	**Y**	**SA**	See above.
CA	15. **Spot charter vessels. Should the term "spot charter" need to be defined in future regulations or legislation, the Task Force recommends that the state adopt the definition of proposed by the Task Force members representing the spot charter industry, i.e., a "vessel contracted to lift a specific cargo on a one-time, periodic, non-scheduled or tramp basis."**	**Y**	**N**	

CA	16. **C-plan electronic postings. The Task Force recommends that DEC electronically post a listing of nontank vessel contingency plan applications and review schedules.**	**N**	**N**	
CA	17. **Public notice process. The Task Force endorses the public notice process in DEC's review process for contingency plans found in 18 AAC 75.415 and 75.455.**	**Y**	**SA**	
CA	18. **DEC authority to inspect. The Task Force recommends legislation to give DEC statutory authority to inspect nontank vessels for C-plan compliance.**	**N**	**Y**	
CA	19. **Drills. The Task Force recommends that the frequency and type of contingency plan spill drills required of nontank vessels be based on the nontank vessel contingency plan option. Under C-Plan Option I, a maximum of one tabletop spill drill may be required annually. Under C-Plan Options II and III, a maximum of one full deployment drill and one tabletop drill may be required during a three-year C-plan review cycle. The Task Force recommends that a spill response cooperative that provides services exclusively to nontank vessels be drilled a maximum of two times a year by DEC.**	**Y**	**SA**	See above.

E. Prevention recommendation

CA	20. **Mandatory prevention measures. All affected nontank vessels must comply with applicable federal and international requirements.**		**?**	The Task Force was to discuss whether to put this requirement in statute.
CA	21. **Reduction in the response**			

	planning standard. The Task Force does not now recommend inclusion in any nontank vessel prevention credit program any incentive based on the reduction of the response planning standard.	**N**	**N**	

ALASKA RAILROAD RECOMMENDATIONS

Status	Recommendation	Reg	Stat	Comment
A	22. ***ARR review under rigor of existing law. The Task Force recommends the Alaska Railroad undergo a contingency and prevention plan review under the rigor of existing law for currently regulated industry.***	**Y**	**Y**	
A	***ARR risk assessment process. The Task Force endorses the Alaska Railroad risk assessment process, and recommends the process be followed through to completion.***	**N**	**N**	
A	23. **Railroad RPS. The Task Force recommends the Alaska Railroad follow the response planning standard methodology developed by the Task Force, designed to meet an RPS of 15 percent of maximum fuel carried.**	**Y**	**Y**	

TASK FORCE ON MOTORIZED OIL TRANSPORT FINAL REPORT

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I. EXECUTIVE SUMMARY

[to be distributed prior to 11/6 Task Force meeting]

II. TASK FORCE AND WORK GROUP PROCESS

Financial responsibility and oil spill response planning requirements have long been in place for tank vessels carrying petroleum as their principal cargo. Senate Bill 273 enacted by the 2000 Alaska Legislature established similar requirements for nontank vessels of more than 400 gross tons, and for railroad tank cars.

The new law establishes a response planning standard (RPS) for "containment and control of 15 percent of the maximum oil capacity" of the nontank vessel or railroad train within 48 hours. Cleanup is required "within the shortest possible time consistent with minimizing damage to the environment."

The bill established the Task Force on Motorized Oil Transport and charged the Task Force with determining how to implement the response planning standard. The Task Force is to report its recommendations to the Legislature on or before the first day of the 2001 session. The Task Force decided to finalize its report by December 1, 2000.

Also approved by the 2000 Legislature was SCR 1, a resolution directing the Task Force to address several specific issues in its report. SB 273 and SCR 1 are found in Appendix A.

At its first meeting, on July 11, 2000, the Task Force decided to accomplish its work by establishing several work groups, including the Response Planning Work Group, Prevention Work Group and Contingency Plan Work Group. The Task Force hired contractors to facilitate the process and to provide specialized expertise to the Task Force and work groups. DEC established a project website to provide public information about the Task Force and notice of Task Force and work group meetings (http://www.state.ak.us/dec/nontank).

The three work groups held a series of public meetings, using expertise from the Task Force membership, the facilitators and contractors, and members of the public. Each meeting agenda and a summary of actions was posted to the project website.

Recommendations of the work groups were forwarded to the Task Force, which decided on recommendations to the Legislature.

At its second meeting, the Task Force reached consensus that it would task itself to recommend *realistic*, *effective*, *economically feasible* and *flexible* response strategies to achieve the response planning standard required by SB 273.

1. *Realistic* means capable of being implemented with available technology and expertise within a reasonable timeframe.
2. *Effective* means providing real protection to the environment at the level required by the law, not just the appearance of protection.
3. *Economically feasible* means capable of being implemented without bankrupting shippers or imposing unreasonable cost increases on their customers.

4. *Flexible* means providing for improvements and changes in methods and requirements to reflect changes in technology, the volume of vessel or Railroad tankcar trade, expertise, and other parameters.

At its second meeting, the Task Force heard reports from the work groups, adopted initial recommendations guiding completion of the work group efforts, determined the structure of the Task Force report to the Legislature, and set a timetable for project completion.

In the third meeting, the Task Force decided on recommendations forwarded from the work groups, and dealt with recommendations for which the work groups had not reached consensus.

III. MARINE VESSEL RECOMMENDATIONS

The Task Force adopted the following recommendations relating to how nontank vessels exceeding 400 gross registered tons will meet the requirements enacted in SB 273.

A. Response Planning Standard Work Group

General recommendations

1. ***Wave height planning standard. The Task Force adopted, and recommends that others adopt, a response planning standard wave height of 3 feet or less.*** [Already approved by Task Force.]

The state of the sea is an important variable in the technical feasibility of containment, control and recovery operations. As wave heights increase, recovery becomes problematic, and eventually impossible. The 3-foot-or-less wave height planning standard adopted by the Task Force is the same standard as was approved by DEC for tank vessel oil spill response planning by the Alaska Petroleum Distributors and Transporters (APD&T), a group formed by the major Alaska barge transporters of non-persistent fuel oil.

2. ***Schedule for acquiring new equipment. The Task Force recommends that schedule established under the tank vessel program for the APD&T group to acquire new equipment and place it in service is sufficiently rapid for the additional equipment required to implement the non-tank program.*** [Already approved by Task Force.]

The Task Force reviewed the schedules established by the U.S. Coast Guard (USCG) and the Department of Environmental Conservation (DEC) for the acquisition of new equipment by APD&T under the federal Oil Pollution Act of 1990. The potential spill volumes under the APD&T agreement are generally larger than the likely spill amounts under the non-tank program. Moreover, it would be manifestly unfair to require non-tank vessels brought under regulation only this year to meet schedules faster than those approved for vessels that have been regulated since 1990. Under the agreement with APD&T, additional equipment must be sited at Dillingham by July 2001, Bethel by July 2002, Nome by July 2002, and the North Slope by July 2003.

Control and containment recommendations

3. ***Required control and containment equipment. The control and containment equipment required for a nontank vessel to meet its response planning standard (RPS) is containment boom sufficient to extend three times the length of the vessel and an appropriate means for deploying the containment boom.*** [Already approved by Task Force.]

The Task Force determined that the immediate response requirements of containment and control of an oil spill within 48 hours can be met with containment boom sufficient to extend three times the length of a regulated vessel, together with an appropriate means for deploying the containment boom.

4. **Stationing of control and containment equipment. Control and containment equipment required for a nontank vessel to meet its response planning standard (RPS) must be stationed within the subarea of the vessel's operation.** [Recommended by RPS Work Group and placed on the Nov. 6 consent agenda.]

A map showing the ten Alaska subareas is found in Appendix ***. A table, "Regional Containment and Clean-up Planning Summary," showing current equipment available in each subarea is found in Appendix ***. The schedule for control and containment equipment will be either immediate or, at the latest, on the APDT schedule.

Cleanup recommendations

5. **Required cleanup equipment. The cleanup equipment required for a nontank vessels to meet its RPS includes skimming capacity capable of cleaning up 15 percent of the maximum capacity of the vessel within five days and storage capacity that equals the daily recovery capacity of the chosen skimmer. The skimmer chosen must be appropriate for the type of oil carried by the vessel.** [Recommended by RPS Work Group and placed on the Nov. 6 consent agenda; this is a modification of a previous RPS recommendation approved by the Task Force on September 20.]

For example, if the nontank vessel carries 10,000 barrels of fuel, the RPS quantity is 1500 barrels. To meet the RPS, a nontank vessel must have skimming capacity capable of cleaning up 300 barrels of spilled fuel per day. With a skimmer that recovers 80 percent fuel and 20 percent water, temporary storage capacity must be provided that will hold 360 barrels of liquid per day (300 barrels of fuel and 60 barrels of water).

Acquisition of additional persistent and non-persistent skimming capacity, and additional storage will likely be necessary to meet the Task Force recommendation on required cleanup equipment.

6. **Stationing of cleanup equipment. To meet the RPS requirement of "cleanup of the discharge within the shortest possible time consistent with minimizing damage to the environment," a nontank vessel must either (a) position the required skimming and storage capacity within its subarea of operation; or (b) reasonably demonstrate to DEC the ability to position equipment in its subarea of operation within 24 hours.** [Recommended by RPS Work Group and placed on the Nov. 6 consent agenda; this is a modification of a recommendation approved by the Task Force on September 20.]

Placement of skimming and storage capacity within a subarea ensures that the equipment will be readily available for response. Exceptions to this requirement may be granted if it can be demonstrated that the equipment can be available in the subarea within 24 hours.

The Task Force expects that efficiency and cost factors will influence the non-tank vessel regulated community to move toward centralized positioning of the required skimming and storage capacity. These resources would then be cascaded to the site of a spill as needed. The success of this strategy depends on mobility. Equipment will need to be designed to fit in a type of aircraft that is usually available. Unless Hercules-type aircraft can be shown to be generally

accessible, equipment to be cascaded will probably need to be designed to fit in a DC-6.

7. **Schedule for acquiring new cleanup equipment. Nontank vessels shall be allowed two years from the adoption of regulations implementing SB 273 to have in place the skimmer(s) and associated storage capacity described in their contingency plan.** [Recommended by RPS Work Group and placed on the Nov. 6 consent agenda.]

This implementation schedule compares favorably with the APD&T schedule described above (see discussion following recommendation 2). It gives the regulated vessels time to amortize costs of containment and control equipment prior to acquiring new cleanup equipment.

B. Contingency planning work group

8. **Vessel operation outside of state waters. Nontank vessel contingency plans (C-plans) shall only be required for vessel operations in state waters (generally within three miles of shore).**)[Recommended by C-plan Work Group and placed on the Nov. 6 consent agenda.]

The exemption is expected to induce some vessels to remain outside of state waters. The Task Force concurs with DEC officials who say that keeping vessels outside state waters will substantially reduce the risks of spills, and contribute to protecting the state's environment. For example, some vessels that call at Dutch Harbor and file a C-plan for that region may choose to remain outside state waters when transiting or working in other subareas, thus avoiding the need to file C-plans covering operations in those areas.

9. **Streamlined Contingency Plan process. DEC shall establish a streamlined process for submission and approval of contingency plans for nontank vessels. Under the streamlined process a contingency plan submission shall consist of:**

   i) **vessel-specific information,**

   ii) **a response action plan consisting of**

      a) **initial notification procedures such as those contained in the shipboard oil pollution emergency plan (SOPEP),**

      b) **certification that the applicant is a member of a spill response cooperative that is a primary response action contractor (PRAC) with a response action plan approved by DEC under requirements similar to that currently required for existing plan holders, and**

      c) **certification that the applicant has contracted with an incident management team (IMT) approved as a primary response action contractor under 18 AAC 75.500-580.**

      Evidence demonstrating equivalent capability may be submitted in lieu of (b) or (c).

   iii) **a prevention plan certification stating that the applicant vessel complies with applicable federal and International Maritime Organization requirements.**

[Recommended by C-plan Work Group and placed on the Nov. 6 consent agenda.]

Much of the vessel-specific information is already contained in the financial responsibility application required to be filed by regulated vessels.

10. Alternative Contingency Plan options. DEC shall establish three alternative options for nontank vessel contingency plans (C-plans):

a) C-Plan Option I: Contract out all duties to PRACs,

b) C-Plan Option II: developing equivalent response resources, or

c) C-Plan Option III: using a combination of equivalent resources and primary response action contractors.

[Recommended by C-plan Work Group and placed on the Nov. 6 consent agenda.]

Under C-Plan Option I, a responsible party (RP) contracts with a spill response cooperative that is a primary response action contractor with a response action plan approved by DEC, and contracts with an incident management team (IMT) that is an approved PRAC under 18 AAC 75.500-580. Under C-Plan Option II, an RP elects to meet its RPS by providing equivalent spill response resources as those provided by a co-op and IMT. RPs could choose a hybrid approach C-Plan Option III, using PRACs for some services while providing some services themselves. Applicants will be allowed to choose from among the three options, provided they meet the requirements of the chosen option. Each of the three options can be used for plans covering single vessels or fleets.

11. Action on Contingency Plans. DEC will complete its review of applications for the addition of a vessel to an already approved fleet plan within 5 days. DEC will review an initial full application submitted under C-plan Option I within 15 days of receiving the application; in the event of extenuating circumstances the review will be completed within 5 days. Initial full applications submitted under C-plan Options II or III will be reviewed by DEC within 45 to 90 days. DEC will establish these timeframes for review of contingency plans in regulation. [Recommended by C-plan Work Group and placed on the Nov. 6 consent agenda.]

Because the timeframes for DEC review of nontank vessel contingency plans are critical to the regulated community, the Task Force decided to address this issue in a specific recommendation. DEC will require adequate funding for staff to effect this recommendation.

12. Response plan facilitator. A response plan facilitator (RPF), acting as an agent for a vessel or vessels, may develop a generic contingency plan that is activated by signature of an RP. The RPF will submit a generic plan for a specified area of operation to DEC for approval. This plan will contain all the elements of a contingency plan, except the vessel-specific information, the initial notification procedures or the SOPEP, and the prevention certification stating that the applicant vessel complies with applicable federal and IMO requirements. [Recommended by C-plan Work Group and placed on the Nov. 6 consent agenda.]

A vessel may not enter into Alaska waters until the vessel-specific information, initial notification procedures and prevention certification is added to the plan, the plan is signed by the RP, and DEC has approved it.

An RPF could be a maritime agent, co-op, or specialized agent. An RPF could prepare geographic areawide C-plans covering operations in specified areas, coordinate associated paperwork, communicate necessary documents back and forth between vessels and DEC, and assist the vessel in arranging the initial response of a response action contractor in the event of a spill. No certificate is issued to the RPF, only to the planholder.

13. <u>Incident management team qualification</u>. DEC shall specify the requirements for qualification as an incident management team (IMT). [Recommended by C-plan Work Group and placed on the Nov. 6 consent agenda.]

Use of an Incident Management Team contractor is anticipated under the recommendations adopted by the C-Plan Work Group. There are no current regulations regarding requirements for, or qualifications of, IMT contractors. DEC has recommended that the NIIMS ICS model be used to standardize Incident Command positions, and recommends the following IMT structure as follows:

Potential Requirements for IMT capabilities for Non-tank Vessels

(This is a minimum planning requirement only.)

RPS Volume (Barrels) Persistent	**RPS Volume** (Barrels) Non-Persistent	**ICS positions required**
0-5,000	0-10,000	Incident Commander, Qualified Individual (as defined by 33 CFR 155.1026)
5,001+	10,001+	Incident Commander, Finance Chief, Planning Chief, Operations Chief, Logistics Chief, Qualified Individual (as defined by 33 CFR 155.1026)

It is assumed that all other command staff positions such as the safety officer, public information officer, etc., and supporting ICS positions would be accessible and available as needed to meet the requirements of the incident in a timely manner.

14. Application timeframes. Nontank vessel contingency plans shall be due to DEC within 180 days of adoption of the contingency plan regulations. DEC will give conditional approval to all plans submitted on time. Conditional approval will remain in effect until DEC has completed review of a plan. Nontank vessel contingency plans will be reviewed by DEC every three years. DEC will stagger the initial review process so that all nontank vessel contingency plans do not come up for review in the same year. [Recommended by C-plan Work Group and placed on the Nov. 6 consent agenda.]

In choosing a 180-day timeframe, the Task Force considered the need for appropriate evaluation of C-plan alternatives, implementation planning, and the coordination within the regulated community that will be necessary to establish efficient and cost-effective control, containment and cleanup mechanisms. Regulated entities will be required to state in the C-plan their plans for the ordering and taking delivery of required new equipment

15. Spot charter vessels. Should the term "spot charter" need to be defined in future regulations or legislation, the Task Force recommends that the state adopt the definition of proposed by the Task Force members representing the spot charter industry, i.e., a "vessel contracted to lift a specific cargo on a one-time, periodic, non-scheduled or tramp basis." [Recommended by C-plan Work Group and placed on the Nov. 6 consent agenda.]

There is no definition of "spot charter" in current regulations or legislation. If a definition is required, the Task Force recommends this definition.

16. C-plan electronic postings. The Task Force recommends that DEC electronically post a listing of nontank vessel contingency plan applications and review schedules. [Recommended by C-plan Work Group and placed on the Nov. 6 consent agenda.]

Under the streamlined C-Plan process, public notice is required for new contingency plans that do not use co-ops, or for generic contingency plans. Applications for adding vessels to existing approved plans, for activating generic contingency plans, or for vessels that use co-ops will be acted upon in short timeframes. Electronic posting provides an opportunity for the public to know what vessels are activating C-plans. DEC will require adequate funding for staff to effect this recommendation.

17. Public review process. The Task Force endorses the public review process in DEC's review process for tank vessel contingency plans found in 18 AAC 75.415 and 75.455. [Recommended by C-plan Work Group and placed on the Nov. 6 consent agenda.]

Section 415 describes routine amendments to C-plans and provides that such amendments will be reviewed within 30 days of submission, unless there is an addition to a pre-existing C-plan in which case the review period is five days. Section 455 provides the procedures to be followed in processing new applications and non-routine amendments.

18. DEC authority to inspect. The Task Force recommends legislation to give DEC statutory authority to inspect nontank vessels for C-plan compliance. [Recommended by C-plan Work Group and placed on the Nov. 6 consent agenda.]

In the case of a contingency plan under C-plan Option I, the department would inspect a nontank vessel to verify quantity of fuel, a contract with a spill response cooperative and with an IMT, and that a SOPEP and certificate of financial responsibility (COFR) are onboard the vessel. For C-plan Options II and III, the department would also inspect to verify contracts and equipment listed in the plan.

19. Drills. The Task Force recommends that the frequency and type of contingency plan spill drills required of nontank vessels be based on the nontank vessel contingency plan option. Under C-Plan Option I, a maximum of one tabletop spill drill may be required annually. Under C-Plan Options II and III, a maximum of one full deployment drill and one tabletop drill may be required during a three-year C-plan review cycle. The Task Force recommends that a spill response cooperative that provides services exclusively to nontank vessels be drilled a maximum of two times a year by DEC. [Recommended by C-plan Work Group and placed on the Nov. 6 consent agenda.]

Spill drills are currently conducted in the tank vessel regulated community for responsible parties with contingency plans. The current tank vessel drill program must be modified to fit the circumstances of the nontank vessels. The Task Force recommends a schedule that gives DEC an opportunity to conduct drills at a frequency similar to that of tank vessels for nontank vessels not using co-ops, and less intensive tabletop drill for nontank vessels using coops.

C. Prevention Work Group

The Task Force's recommendations related to prevention and prevention credit programs were restricted to how those programs relate to non-tank vessels. Prevention credit programs for tank vessels are outside the purview of the Task Force on Motorized Oil Transport.

20. Mandatory prevention measures. All affected nontank vessels must comply with applicable federal and international requirements. [Recommended by Prevention Work Group and placed on the Nov. 6 consent agenda.]

The Task Force discussed whether federal vessel requirements should be adopted as state law. A Department of Law attorney 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.

21. Reduction in the response planning standard. The Task Force does not now recommend inclusion in any nontank vessel prevention credit program any incentive based on the reduction of the response planning standard. [Recommended by Prevention Work Group and placed on the Nov. 6 consent agenda.]

It is possible that prevention credit issues could evolve over the years, perhaps in unforeseen ways. The affected industries and DEC should be prepared to review these issues periodically, as needed.

IV. ALASKA RAILROAD RECOMMENDATIONS

22. *ARR review under rigor of existing law.* The Task Force recommends the Alaska Railroad undergo a contingency and prevention plan review under the rigor of existing law for currently regulated industry. [Already approved by Task Force.]

All currently regulated facilities are required to file a C-plan consisting of four elements: a response action plan, prevention plan, supplemental information, and a best-available-technology review. Details of what is required in each of these elements differ depending on the kind of facility—pipeline, refinery, etc. Railroads are not currently included in this list; from the standpoint of applying the existing regulation, the railroad probably bears the closest affinity to pipelines. Not all of the facilities where the railroad loads and unloads petroleum are currently required to file C-plans.

23. *ARR risk assessment process. The Task Force endorses the Alaska Railroad risk assessment process, and recommends the process be followed through to completion.* [Already approved by Task Force.]

The Alaska Railroad's risk assessment process provides the railroad with substantial information about the line risks that could lead to oil spills from railroad tank cars. As such, this process can be a strong oil spill prevention program if carried through to completion, and the recommendations are implemented. It covers issues including track/engineering issues, mechanical issues, operating issues, determination of critical track segments for possible adverse train dynamics, identifies possible adverse track geometry locations, reviews highway crossing protection issues, reviews derailment and operating safety incidents, reviews rule and efficiency testing data, and evaluates susceptibility to L/V derailments.

24. *Railroad RPS. The Task Force recommends the Alaska Railroad follow the response planning standard methodology developed by the Task Force, designed to meet an RPS of 15 percent of maximum fuel carried.* [Already approved by Task Force.]

The Alaska Railroad operates within two separate subareas. The railroad's RPS standard of 15 percent in 48 hours was established in SB 273. This differs from the standards for other upland facilities such as pipelines, which generally (with exceptions) must plan for cleaning up 100 percent of the discharge, but need not plan to accomplish this in a specific time frame.

Prevention work group – recommendation affecting all areas

25. Periodic Review . The Task Force recommends that the Department of Environmental Conservation review all recommendations with the regulated community on a periodic basis. [Recommended by the Prevention Work Group and placed on the Nov. 6 consent agenda.]

V. PROPOSED LEGISLATION

To be distributed 11/6 Task Force meeting

This draft legislation will be revised following the 11/6 Task Force meeting and distributed to Task Force Members and the public on 11/20.

VI. DRAFT MEMORANDUM DESCRIBING REGULATIONS

To be completed following 11/6 Task Force meeting and distributed to Task Force Members and the public on 11/20.

VII. APPENDICES

To be completed following 11/6 Task Force meeting and distributed to Task Force Members and the public on 11/20.

I. Response planning standard supporting data

1. Vessel size and maximum size spill table

2. Schedule of new response hubs (APD&T)

3. Map of subareas

4. RPS comparison

5. Table of equipment costs

6. Alaska Approved PRACs

ii. Contingency plan supporting data

1. DEC Streamlined C-plan exhibits

iii. Prevention plan supporting data

1. Federal/International Pollution Regulations

2. Table of voluntary prevention measures

iv. Alaska Railroad supporting data

1. System risk assessment

2. RPS and C-Plan plan schedule

v. Bibliography of supporting information

Prevention Credit Scheme

Draft, October 11

Department of Environmental Conservation provisions.

I. Application for prevention credits.

a. Submit signed affidavit.

The owner of a vessel may apply to the department for a certificate evidencing the existence of certain prevention measures with respect to that vessel. The application must include an affidavit signed by the vessel owner or an authorized representative of the vessel owner attesting to the measures. The owner of more than one vessel may submit a single affidavit for a fleet of vessels, but the affidavit must indicate which measures apply to all of the vessels and, if applicable, the additional measures that apply to individual vessels in the fleet.

b. Records and inspection.

An application for the certification of prevention measures constitutes the granting of consent by the vessel owner to a search, by the state or the Coast Guard, of the vessel to verify the existence of prevention equipment, and consent to access by the state to records of the owner pertaining to the equipment and any prevention procedures. An owner who requests certification of a prevention measure must retain written records pertaining to that measure for at least three years after the expiration of any tax credit or penalty reduction granted as a consequence of that measure.

c. Compliance with federal and international law. **[Do the committee members recommend that this be part of the prevention credits scheme?]**

The affidavit must contain a statement by the owner or authorized representative that the vessel for which certification is sought complies with applicable federal and international requirements for vessels. **[and crew?]**

II. Issuance of Certificate

A separate numbered certificate will be issued for each vessel. The certificate, or a copy of the certificate, must be carried on the vessel. The certificate will be issued based solely upon information in the affidavit.

The certificate will list the prevention measures that have been claimed for the vessel.

The certificate is valid for one year.

III. [Tiered system] Tax and penalty reduction.

The certificate will indicate whether the vessel is a Tier 1, Tier 2 or Tier 3 vessel, according to the schedule set out ..... The owner of the vessel is eligible for a reduction in the state penalties for a spill, and (or?) for a refund of state motor fuel tax [and (or?) for a reduction in the fisheries business tax or fisheries business landing tax] with respect to that vessel as set out in the following table:

	Reduction in penalty for spill	Motor fuel tax	Fisheries business tax or landing tax
Tier 1	Penalty X 0.9	Refund of 25% of taxes paid for that vessel (or $.012 per gallon)	? Credit of ?% of tax due on fish landed/caught/processed by vessel - or - Credit not to exceed $____
Tier 2	Penalty X 0.7	Refund of 50% of taxes paid for that vessel (or $.025 per gallon)	? Credit of ?% of tax due on fish landed/caught/processed by vessel - or - Credit not to exceed $_____
Tier 3	Penalty X 0.5	Refund of 75% of taxes paid for that vessel (or $.037 per gallon)	? Credit of ?% of tax due on fish landed/caught/processed by vessel - or - Credit not to exceed $_____

III. [Single trigger system] Tax and penalty reduction.
The certificate will indicate whether the owner of the vessel has adopted the requisite number of prevention measures to be entitled to a reduction in the state penalties for a spill, and (or?) for a refund of state motor fuel tax [and (or?) for a reduction in the fisheries business tax or fisheries business landing tax] with respect to that vessel. The reduction or credit is set out in the following table:

	Reduction in penalty for spill	Motor fuel tax	Fisheries business tax or landing tax
Prevention Measures Certificate	Penalty X 0.?	Refund of ?% of taxes paid for that vessel (or $.? per gallon)	? Credit of ?% of tax due on fish landed/caught/processed by vessel - or - Credit not to exceed $_____
Enhanced Prevention Measures Certificate	Penalty X 0.?	Refund of ?% of taxes paid for that vessel (or $.? per gallon)	? Credit of ?% of tax due on fish landed/caught/processed by vessel - or - Credit not to exceed $_____
Etc.			

III. (Specified Five Measures) Tax and penalty reduction
The certificate will indicate whether the owner of the vessel has adopted the prevention measures necessary to be entitled to a reduction in the state penalties for a spill, and (or?) for a refund of state motor fuel tax [and (or?) for a reduction in the fisheries business tax or fisheries business landing tax] with respect to that vessel. The reduction or credit is set out in the following table:

	Reduction in penalty for spill	Motor fuel tax	Fisheries business tax or landing tax
Prevention Measures Certificate	Penalty X 0.?	Refund of ?% of taxes paid for that vessel (or $.? per gallon)	? Credit of ?% of tax due on fish landed/caught/processed by vessel - or - Credit not to exceed $_____

IV. Reissuance of a certificate.

A certificate will be reissued for subsequent years upon the vessel owner's submission of a statement indicating the owner's continued eligibility for the certificate. The statement must indicate whether there is any change in the prevention equipment or procedures for a vessel. If prevention measures have been added, the statement of the owner or authorized representative must be notarized. If prevention measures have been discontinued or added, the department will reassess the owner's eligibility for the certificate.

V. Reduction in penalties for a spill.

A person who is liable to the state for stipulated penalties for the discharge of oil **[which definition includes all petroleum products but excludes crude oil]** may reduce those penalties by showing that the vessel from which the oil was spilled had a valid, current prevention measure certificate at the time of the spill.

Department of Revenue provisions

VI. Motor Fuel Tax refunds

a. The owner of a vessel that has been issued a prevention measure certificate under _____ may apply for a refund of motor fuel taxes on fuel purchased for that vessel if the motor fuel tax has been paid on the fuel;

b. The amount of the refund is $.0? per gallon of fuel; **[or a percentage of the taxes paid]**[1]

c. The vessel owner may apply for the refund at any time but not more than frequently than [quarterly; annually;], on a form provided by the department. A copy of the prevention measures certificate must accompany the request for a refund.

d. A vessel owner claiming a refund under this section is a taxpayer for purposes of the administrative and penalty provisions applying to taxpayers. If a taxpayer penalty is based upon the amount of the tax, a prevention tax credit penalty will be based upon the amount of the refund requested.

VII. Fisheries Business Tax

a. A taxpayer who is the owner of a vessel that has been issued a prevention measure certificate under ____ may claim as a credit ____% of the fisheries business tax due on the fisheries resources processed by that vessel.[2]

VIII. Fisheries Business Landing Tax credits.

A taxpayer who is the owner of a vessel that has been issued a prevention measure certificate under ____ may claim as a credit ____% of the fisheries business landing tax due on the fisheries resources landed by that vessel.[2]

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[1] It makes more sense to express the amount as cents per gallon, since that is how the tax is levied. Presumably the vessel owner will have receipts for gallons of fuel purchased; he would add them up and multiply by -- for example -- $.02. For a percentage reduction, the taxpayer would have to first multiply $.05 times the number of gallons (the tax paid), then calculate -- for example -- 25% of that amount.

[2] It is not necessary to amend the statute if the Task Force recommends that the credit for fisheries taxes come out of the state's share, and not the share of the municipalities. The current statutes provide that 50% of the fisheries taxes collected will be shared with the municipalities.

[2]

TASK FORCE ON MOTORIZED OIL TRANSPORT

TASK FORCE MEETING

November 6, 2000
8:30 A.M.

Held at
Legislative Information Office
716 West Fourth Avenue, 2nd Floor
Anchorage, Alaska

Brian Rogers, Facilitator

Steering Committee:

Senator Drue Pearce
Representative Pete Kott
Commissioner Michele Brown, Chair

Task Force members present:

Ed Page
Bob Heavilin
Lee Egland
Jeff Thompson
Charlotte MacCay
Scott Carter
Stephanie Madsen
Gene Burden
Simon Lisiecki
Mike O'Hara
Jim Carter
Ernie Piper
Heather McCarty
Eric Britten
John Hansen
Rick Harris
Sandra Jackson (alternate for Dave Owings)
Lurilla Lee

ANCHORAGE, ALASKA; NOVEMBER 6, 2000

DEC TASK FORCE ON MOTORIZED OIL TRANSPORT

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COMMISSIONER MICHELE BROWN: Can we bring this meeting to order? We have a very aggressive schedule today, and Brian's got his facilitator. We're going to get this done.

There are packets of information at the entrance there. As usual, I want to thank everybody for the incredible amount of work that's gone into getting us ready for this meeting, which we hope will be our final major meeting. And so, since we have such an aggressive schedule, I won't do much more talking.

Maybe Senator Pearce would like to say something.

SENATOR DRUE PEARCE: Welcome.

PETE KOTT: I'll echo what you've already said. I think it's been an incredible process up to this point. It's involved the public, it's posted on the website, and I think the chair and the committee members have done just a remarkable job. And so far I think we're right on track. We can accomplish our agenda today. Thanks.

COMMISSIONER MICHELE BROWN: Thank you.

I'll turn it over to you, Brian.

BRIAN ROGERS: Okay. First, can I ask who is on line on teleconference.

CHRIS NORRIS: Chris Norris, Icicle Seafoods in Petersburg.

BRIAN ROGERS: Anyone else?

Okay. I'm going to start with a brief Power Point presentation here. And, Chris, I guess we have not faxed a copy of that to the -- oh, you have it. Okay.

JUDY ERICKSON: It's coming.

BRIAN ROGERS: It's coming to you.

So we have a revised draft agenda, and so what I want to do is walk through that agenda -- Judy, can you turn the lights down? And then review some of our decision-making process, our meeting logistics, et cetera.

Today's agenda will start with my report, followed by public comment. This will be an opportunity for anyone not a member of the Task Force to speak on any of the agenda items. We'll follow that with a consent agenda.

And the way we've set up the agenda is that all of the Task Force recommendations are laid out on this agenda. Anything that anyone disagrees with, you think needs more discussion or you want to have a separate

vote on, will come off the consent agenda and be discussed separately. So far, three items have been asked by members of the Task Force to be removed from the consent agenda, and so the revised agenda that you have moves items 13, 18, and 19 down for discussion. When we get to the consent agenda, any member of the Task Force can move any of the other items that have not been adopted by the Task Force off the consent agenda and for discussion. We'll then by single motion adopt all of the recommendations that have no dissenting opinions. And this was an attempt to try to speed our way through that portion of the agenda.

We'll then have discussion and action on any of the 25 recommendations that have been pulled from the consent agenda and we'll go through those one at a time.

We'll then discuss the report, the final report of the Task Force. We'll have a presentation by the Alaska Railroad, as requested at our prior meeting that they brief us on their risk assessment process and where they are. We've scheduled that for 11:30, for an hour.

We'll then cover legal issues, and so the Alaska Railroad may go earlier or later in this agenda. We did want to give their contractor a fixed time. Breck Tostevin from the attorney general's office is here to discuss the legal issues that were raised.

And then we have the unresolved issues, those that have been forwarded by the work groups to the full Task Force.

A little bit on decision-making today. As I said, we've got public comment at the beginning of the agenda. In order -- given the length of the agenda, we have only Task Force members speaking during the discussion and action portion of the agenda, but Task Force members can request any expertise from nonmembers of the Task Force. This is a departure from the way we've done the work groups where we allowed everyone to speak throughout the agenda, and basically this is the portion where we're trying to contain and control the length of the agenda.

We'll have voting by Task Force members on the issues, and then currently scheduled for December 1 for a final report.

A couple of other things on meeting logistics. I'd ask that each individual identify yourself prior to speaking. This is both for the transcript and for -- so that anyone who is on the teleconference knows who is speaking. The transcripts are an important part of this process because they will be entered into the regulatory record at the point that the regulatory process starts.

And let me discuss that for just a minute.

Wait, before I get there, if there are copies that we -- if we've made insufficient copies of any document, you need another copy, we'll make them during the breaks.

There is a signup sheet for lunch going around. We're going to fax in an order to have lunch brought in.

And let's see. We've got two -- we have one new member of the Task Force. Lurilla Lee replaces Kris Mullan on the Task Force, and Sandra Jackson is sitting in for Dave Owings today.

I want to review briefly what the public input opportunities will be during this process. They don't end with the Task Force. We do have public comment at the beginning and at the end of today's agenda. We have -- there will be public communication, anything received will be sent out to all Task Force members between now and the scheduled December 1st report adoption. We would also have public comment at the December 1st teleconference. And then any legislation that's recommended, of course, through the normal legislative process, there would be hearings as part of the legislative deliberations.

And finally, and perhaps most important, the actual adoption of the regulations. The language we're adopting here is not the final regulatory language. That will not be written until after the legislature

adopts whatever is there, but this is intended to guide those regulations and to determine the issues that are laid out in the regulations. And as a result, all the Task Force transcripts, all of the reports would be entered into that regulatory process to make it clear what your intent is in the regulations. And so, that's -- really the final opportunity, then, is the standard procedure for adoption of administrative regulations.

Let me stop there and ask if there are any questions about the agenda or the process from here. If there aren't any, I'll go quickly then through the activity since the last meeting. We've had meetings of the Response Planning Standard Work Group. The Contingency Plan Work Group had a meeting and some staff work, and some of that staff work is reflected in the report that came to you. The Prevention Work Group had a meeting and there's also some staff work there. And finally, a fairly substantial legal analysis of the issues raised by members of the Task Force that will be reported later in the day.

You've also received a facilitator's report and a two-page draft executive summary of that this morning.

With that, I'm going to proceed then to a review of the recommendations that are contained on

today's agenda. The first three were adopted in your meeting on September 20th. And I would say I've tried to do some of these in shorthand on the agenda. The actual recommendation is the item in bold in the report. So where there's a little difference between the two, your adoption would adopt the recommendation as stated in bold type in the report, rather than in this shorter form on the agenda.

The three you've already adopted are that the RPS wave height planning standard is three feet or less, seas of three feet or less; that the APD&T equipment schedule is sufficiently rapid to meet the nontank vessel program needs; and finally, control and containment equipment required for a nontank vessel is containment boom sufficient to extend three times the length of the vessel, and an appropriate deployment system. Those are the initial recommendations that you adopted at the last meeting.

The fourth, coming from the RPS Work Group, is control and containment equipment for a nontank vessel must be stationed within the vessel's subarea of operation. And I would note that there have been a couple questions about this one. If there is some discussion needed on this one, we need to pull this one from the consent agenda.

The fifth, that the required cleanup equipment is skimming capacity capable of cleaning up 15 percent of the maximum capacity of a vessel within five days, and storage capacity equal to the daily recovery capacity, and that the skimmer must be appropriate for the type of oil.

I've had one suggestion -- and I'm not sure if people would feel this needs to be pulled from the consent agenda or not -- and that was the skimmer's operating capacity, adding the word "operating" to make it clear. And when we get to the consent agenda, if anyone feels that making that technical change is substantive, then we should pull that from the consent agenda.

The sixth, to meet the RPS requirement of cleanup of the discharge within the shortest possible time consistent with minimizing damage to the environment, the vessel has to either position the required skimming and storage capacity within its subarea of operation; or reasonably demonstrate to the department the ability to position the equipment in the subarea of operation within 24 hours. What Larry calls the 24-hour shock clock. If it's not there, you have to demonstrate you can get it there within 24 hours.

The seventh item, nontank vessels will be

allowed two years from the adoption of the regulations to have in place the skimmers and associated storage capacity as described in the contingency plan.

The eighth -- and that one goes on to C-plan, we're in C-plan at this point -- nontank vessel contingency plans only required for vessel operations in state water, which is generally defined as within three miles of shore. This is a major issue in terms of allowing certain vessels to position themselves outside state waters for portions of their operation in order to effectively meet the requirements of the law, is to not be covered by the requirements of the law.

The ninth, DEC establishing a streamlined process for contingency plans, consisting of a response action plan, financial responsibility, and a prevention plan. And that's detailed in more depth in the actual recommendation.

The tenth, three alternative options for those C-plans. First, allowing use of established primary response action contractors, such as spill response cooperatives and IMT contractors, or equivalent response resources demonstrated to the department, or a combination of the two. And each of those options is available for plans either covering a single vessel or a fleet, a fleet plan.

The 11th is the time tables, that initial applications for vessels would be adopted within 15 days for applicants that use cooperatives; primary response action contractors, within 45 to 90 days on equivalent response; and adding a vessel to an already approved fleet plan within five days.

Now, as noted by DEC, this is really -- this requires sufficient financial resources to be able to process within that time, and so that's assumed by this recommendation. But we do have the issue of dealing with their fiscal issues or the costs on today's agenda.

The 12th is creating, as a type of primary response action contractor, the response plan facilitator. The response plan facilitator, generally a vessel agent, can develop -- and this is a typo on my part here -- the "and hold" should not be there. The response plan facilitator develops a generic contingency plan that is activated by the signature of a responsible party. The responsible party is the holder of the plan. That plan contains all the elements of a streamlined contingency plan, and this is really designed to be the method by which a spot charter or other vessel coming on short notice, that the response plan facilitator has lined everything up in advance so that that vessel can meet the requirements of the law on short notice.

The 13th -- and this has been removed from the consent agenda -- as worded, specifications for the requirements for qualification for incident management team will be developed and adopted. In the report, it lists something that had not been before the committee, DEC's recommendation for levels -- levels of determination as to what's required for an IMT. That's an issue that we will be discussing past the consent agenda.

More on the recommendations. On time lines, the nontank vessel C-plans are due to DEC within 180 days of adoption of the regulations. That 180 days was chosen as sufficient time following the regulations, and rather than setting a hard date, since we don't know when those regs will be adopted, so it's tied to that date. DEC would conditionally approve the initial C-plans that are submitted on time, and that conditional approval would remain in effect until DEC completes the review of the plan. DEC would stagger the initial review process so that they don't all come at once, and the C-plans would be reviewed by DEC every three years. There is another recommendation in the prevention that could extend that three-year period to a longer period, but that would be subject to whatever you decide on prevention credits.

The 15th defines spot charter vessel as a vessel contracted to lift a specific cargo on a one-time periodic, nonscheduled or tramp basis. And that recommendation, should a definition be needed in either the statutory or regulatory process, this is the definition that the work group recommends.

The group recommends DEC electronically post a listing of the C-plan applications and review schedules, so that there's opportunity for public knowledge of what vessels are being added to fleet plans, what vessels -- because it's a very expedited review process, the idea was electronically posting of the listing -- not the whole application but a listing, would assist in public review. Again, there are cost features of that recommendation.

Continuing a public review. The public review process, currently contained in the DEC review process in 18 AAC 75.455 and 415 would be used as the model for review of the generic contingency plans and the plans using equivalent resources. This will require adoption of a new regulation, but the idea is using the same regulation as a model for the C-plans, that would be held by the response that would be developed by the response planning facilitators, the generic plans, and for anyone not using primary response action contractors

as response and incident management.

The next item has also been removed from the consent agenda. Statutory authority for inspection of vessels for C-plan compliance.

Number 19, also removed from the consent agenda, is drills. And this has to do with the frequency and type of C-plan drills. For those, under the proposal that came forth from the C-plan Work Group, it would be up to one tabletop drill each year for a responsible party who is a co-op member, and no more than one full deployment and one tabletop drill for C-plan holders that provide equivalent resources.

Basically, the discussion on that was that the cooperatives are already drilled as part of the tank vessel plan, and so -- and they're not actually -- I'm sorry. They're not drilled themselves, but the responsible parties are drilled. But that involves the cooperatives in the drill and therefore there was not the same level of review required for those who are co-op members.

There was a potential for a sort of hole in the process, and that is if a new cooperative came into existence that wasn't serving nontank vessels, there needed to be authority to drill that new cooperative, and that's the two times a year requirement in the last

sentence here.

Again, this one was developed very late in the meeting. I think several people felt that this one needs a little more discussion, and there was a little confusion over this one. Therefore, I had multiple requests to move this one off the agenda -- off the consent agenda.

In the Prevention Work Group, you've already adopted number 20, that affected nontank vessels must be comply with applicable federal and international requirements.

Number 21, the recommendation is that a reduction in the response planning standard should not be considered in a prevention credit program. Now, what should be considered is before you, late in the agenda, is something that the Prevention Work Group did not agree on a specific recommendation, but basically developed options and forwarded those options to the full Task Force.

The three recommendations on the Alaska Railroad you adopted on the 20th of September. That the railroad would undergo a C-plan and prevention plan review under the rigor of existing law for currently regulated industry; that their risk assessment process was endorsed as a prevention measure; and that they

should follow the same RPS methodology designed to meet the response planning standard 15 percent of maximum fuel carried.

Finally, coming from the Prevention Work Group, a recommendation that really affects all of the other 24 recommendations, and that is that DEC would periodically review the recommendations with the affected community to see if any changes are required.

That completes the outline of the recommendations, which would bring us to public comment for anyone not a member of the Task Force, and then we'll go through and see which items you want to strike from the agenda.

Is there anyone that didn't get signed up for lunch that wants to have lunch brought in for them?

So, are there any members of the -- nonmembers of the Task Force who would like to speak on the recommendations? There's one empty seat at the table, you can come to the table. And we've asked people to limit their comments to five minutes.

Joe.

JOE LeBEAU: Senator Pearce, Commissioner Brown --

BRIAN ROGERS: Come up to the table so they can catch you.

JOE LeBEAU: Okay.

Senator Pearce, Commissioner Brown, I'm Joe LeBeau, and I work for the Alaska Center for the Environment. And I would like to thank you, all the members of the work groups, for having come together and worked hard to get to this point. You've done well, and I really appreciate all the work that you've done. You've worked really hard at this.

One of the things that I wanted to point out is that we really appreciate -- I work in the Valley, in the Mat Valley, and we are particularly concerned with the railroad, and the railroad's capacity to respond to spills and to be able to address spills of hazardous substances as well.

And we have obtained signatures on 1200 postcards from people that live all throughout Alaska, and I wanted to make you aware of it, that those were available at some point. And I have some examples, blank postcards that I can pass around, so that you'll have an idea what they look like.

And thank you very much. I really appreciate all the hard work that everybody's done. And it's admirable to sit here and watch the process. And I'm not happy with the small response planning standard but, you know, what can I say? We have a response planning

standard and that's terrific. Thanks.

COMMISSIONER MICHELE BROWN: Thank you, Joe. Thank you for all your participation.

JOE LeBEAU: Thanks.

BRIAN ROGERS: Anyone else? We may get out of here on time today.

So, that would bring us to the consent agenda. At this point, as shown on the revised agenda, we've removed item 13, which is the IMT; item 18, which is inspections; and item 19, which is drills.

Looking at the first seven items coming from the Response Planning Standard Work Group, does anyone wish to remove any of those other items for discussion from the consent agenda?

Charlotte.

CHARLOTTE MacCAY: We're just making minor corrections?

BRIAN ROGERS: I guess I'll leave that up to the group. If people are comfortable allowing what might be minor or technical as part of this process, I would accept that, but I guess if it involves extended discussion, then we ought to put it off until the next agenda item.

CHARLOTTE MacCAY: Okay.

BRIAN ROGERS: So why don't you try it. If

there's unanimous consent, then we'll accept it, if it's just a technical amendment.

CHARLOTTE MacCAY: When?

BRIAN ROGERS: Now.

CHARLOTTE MacCAY: Okay. On number 6, on the second bullet, reasonably demonstrate to the department the ability to position equipment in the subarea, I think at that point you wanted to say at the site.

BRIAN ROGERS: Pardon?

CHARLOTTE MacCAY: I think you wanted to say "at the site." That you either had to have it in the subarea ahead time or you needed to show in 24 hours that you could get it to the site, not to the subarea. You may be able to get it to Nome in 24 hours, but that doesn't mean that they'll get it to Red Dog in 24 hours.

BRIAN ROGERS: Is everyone comfortable with that, that that's the correct -- and we had it wrong?

And there was a suggestion that I mentioned earlier on number 5, in the third line it would be 15 percent of the maximum operating capacity.

Any other technical amendments? John.

JOHN HANSEN: Brian, I have a question about number 5, more clarification.

I recall some discussion we had in an earlier meeting that had to do with a definition of what was the

actual fuel carried, or expected to be carried, and would never be exceeded on certain vessels, as opposed to the total tankage. In some cases, large ships, for example, you may have tankage that could accommodate 3,000 tons, where in fact these ships may never carry more than 1500. So, I recall the discussion that we had on that had to do with whether or not there was flexibility within the process for DEC to issue a certificate of some kind to those ships who would never be exceeding a certain amount of tonnage of fuel carried.

Now, is that a technical question, or just something that would require further discussion for number 5?

BRIAN ROGERS: I think that that's probably more than a technical, and I guess -- one could either pull number 5 from the consent agenda, or offer as a recommendation number 26, a definition of maximum capacity, since that does come from the statute. So, I guess I'd offer you either of those alternatives.

Lee.

LEE EGLAND: Yeah. This is Lee Egland.

I think from a cost standpoint, this is the largest cost item on the consent agenda, and I might suggest we just pull it for a little further discussion

before we just --

BRIAN ROGERS: Okay. Let's do that.

LEE EGLAND: -- approve it, so that everybody understands what the implications are.

BRIAN ROGERS: Okay. Number 5 has been pulled from the consent agenda.

Anything else on the first seven that form the Response Planning Standard Work Group? Yes.

BOB HEAVILIN: Bob Heavilin.

On number 4, when we're talking about the equipment must be stationed within the vessel's subarea of operation, is that the same thing as the DEC region?

BRIAN ROGERS: Larry, do you want to --

LARRY DIETRICK: Larry Dietrick, DEC.

Those were the ten subareas that we adopted that currently exist in the state as the planning subareas.

BOB HEAVILIN: And I guess the comment is that if it's maybe confusing to some of us, is it going to be confusing to the legislature? I'm just trying to make sure that -- you know, that whatever -- we're trying to make this as clear as possible, so when it gets to them they understand exactly what we're talking about. I think that there are several areas where maybe we might want to make sure that -- you know, we've gone over this

stuff quite a bit, some of it probably isn't still real clear to everybody here, and if it isn't real clear to everybody here and we're going to send it on, we just want to make sure that -- so I don't know whether we just call them DEC regions or is it still appropriate then to call them the subareas.

LARRY DIETRICK: Larry Dietrick with DEC.

Yeah, these ten subareas that we've been talking about -- which I believe, Brian, you were going to include the map actually --

BRIAN ROGERS: Yes.

LARRY DIETRICK: -- in the full draft report -- are actually established in existing regulations and are a part of the unified plan for the oil storage plan for Alaska. They've been adopted by both state and federal.

BOB HEAVILIN: I just didn't know whether we just called -- I guess I just call them regions, but --

LARRY DIETRICK: Yeah, it's semantics.

BOB HEAVILIN: -- they're actually subareas.

LARRY DIETRICK: Technically called subareas. The reason they were called subareas is because under the national contingency plan it's an area contingency plan, and the state and federal government of Alaska has called one area contingency plan for the whole state, under federal law there's a master plan of state law, so

they call it a unified plan. There's one area plan, and because our state is so large it's actually broken up into ten subareas under that single area plan.

BRIAN ROGERS: That was the reason for using the terminology "subarea," but in the text we'll add that those are commonly known as the DEC regions, and maybe that would be explanatory.

Eric, and then Captain Page.

ERIC BRITTEN: Eric Britten.

I think this is just a point of clarification here. I didn't attend the meeting where this was discussed. And it says "the nontank vessel" -- I'm assuming somewhere in here there's a reference to the fact that PRAC can be substituted for "the vessel," or is this saying that it remains the responsibility of the individual vessel to ensure that cleanup equipment is properly positioned, as opposed to the PRAC?

BRIAN ROGERS: The vessel has the responsibility to ensure that the equipment is there. One of the ways the vessel does that is by having a PRAC under contract that has the equipment there.

ERIC BRITTEN: Great. Okay.

BRIAN ROGERS: Captain Page.

CAPTAIN ED PAGE: Ed Page, Coast Guard.

I just want to clarify when we talk about the

passage of skimmers, whatever, that we discussed this. Are we referring to a D-rated capacity, or the nameplate capacity? I'm sure some of you folks who were involved at that meeting probably deliberated on that very issue, I suspect.

There's a big difference. I know national standards we look at, nameplate is if you're running the thing 24 hours a day and constantly in oil. As a practical matter, there's nighttime, there's not counting oil, they're shutting down to the pump, what have you, so as a practical matter, the reality is it's operating about 20 percent of the time to its capacity. So therefore we normally look at that as a -- there's a nameplate capacity and then there's actually D-rated capacity, which is, I believe, adopted by the state also. I know it's a federal criteria, but I know that -- that should be clarified to some extent.

BRIAN ROGERS: Larry Dietrick.

LARRY DIETRICK: Yeah. Larry Dietrick of DEC.

I'd prefer the Task Force were working off the annotated list here that Brian mentioned here, so some of these things I would just suggest people look in the draft report for the full language.

And, Ed, what we did on that, we included the nameplate under number 5, which I think makes that

pretty clear now. If not --

CAPTAIN ED PAGE: You said you are adopting the nameplate or adopting the D-rated capacity? Because the nameplate normally would be four times higher, five times higher.

LARRY DIETRICK: Right. It's taken into account in number 5 in the example that's given.

BRIAN ROGERS: Does anyone need a copy of the draft report here that didn't have one?

Yes, Senator Pearce.

SENATOR DRUE PEARCE: We had many of these like discussions back when we were doing 567 and put the standards in for the oil tankers. We ended up using nameplate capacity because, to speak to Bob's point, it was something at least everybody understood where you went and found that.

CAPTAIN ED PAGE: I wasn't clear on that. As long as you're using that, that's fine.

SENATOR DRUE PEARCE: It was a battle because it is understood that a skimmer never operates 24 hours a day. But it was something that you can point to and both sides would understand exactly what the number was. So, I think we should be consistent, is my point.

CAPTAIN ED PAGE: That's fine. I wasn't sure you had adopted.

SENATOR DRUE PEARCE: If the regs adopted something different in 567, then perhaps we just need to make sure in our recommendations that we say that the statutes should be consistent from one to the next.

BRIAN ROGERS: Are there any further issues on the response? Yes, Jim.

JIM CARTER: Jim Carter.

In the last paragraph of 6, in the middle where we say the success of this strategy depends on mobility, what follows doesn't seem to fit in with the success of the strategy. And what I mean by that, where we say type of aircraft that is usually available or generally accessible, it seems to me we ought to have some kind of language that says readily available or something similar to that. Because the way that it follows doesn't fit in with the strategy depends on mobility.

BRIAN ROGERS: So are you asking that that item be pulled for further --

JIM CARTER: If you don't want to make a word change. In other words, where it says "usually available," you could say "readily available." Or "available," or whatever.

BRIAN ROGERS: Does anyone object to that? It's a technical, taking out the "usually."

Okay, let's look at the items under the C-plan

Work Group. That's items 8 through 19, of which three have been pulled so far, items 13, 18 and 19.

Charlotte.

CHARLOTTE MacCAY: On number 9, in the verbiage that's in the report, under sub letter D, required certification that applicant is a member of a spill response cooperative, could we add the words "or has a contract with"? Spot charters may have a contract instead of a membership.

BRIAN ROGERS: Does anyone see that as anything other than a technical amendment? "...or has a contract with." "...is a member or has a contract with."

CHARLOTTE MacCAY: And then further down it says, evidence demonstrating equivalent capacity may be submitted in lieu of B or C. Can you, just for clarification, add the words "to meet your RPS."

BRIAN ROGERS: "To meet the vessel RPS."

CHARLOTTE MacCAY: Yes.

BRIAN ROGERS: Again, does anyone think that's other than technical?

BOB HEAVILIN: Well -- Bob Heavilin.

I think also if you're going to do, talking about the evidence, that probably maybe should incorporate that into the list as D.

CHARLOTTE MacCAY: Oh, okay.

BOB HEAVILIN: It seems like it's a comment on that instead of specifically.

BRIAN ROGERS: The concern there is that that would then say you need a response plan consisting of evidence, because that A, B, C and D are what you need to show in your response plan. That was the reason for not listing it as a D, because then it would --

CHARLOTTE MacCAY: You need A, B and C.

BRIAN ROGERS: You need A, B and C. Do people want to pull this for further discussion? No, okay.

HEATHER McCARTY: Maybe the last, evidence demonstrating, should be at the end of B and/or C. Because it could also be submitted in lieu of B and C, could it not?

BRIAN ROGERS: Yes.

HEATHER McCARTY: Okay.

BRIAN ROGERS: So that's B and/or C.

Any other item -- any other technical amendments before we move from C-plan to prevention?

And again, item 13 has been pulled, item 18 and 19.

Okay, Prevention Work Group, item 20, has already been adopted. Twenty-one, any questions on that one? The railroad ones have been approved. So that would leave 25. Anyone want to pull that one?

So, at this point, we would have a single motion that would adopt all of the recommendations except 5, 13, 18 and 19, with the following technical amendments having been accepted by the group.

On number 6, under B, "position equipment at the site of operation," instead of in its subarea. And deletion of the word "usually" in the text.

Under item 9, sub 2-B, "member of or has a contract with." And evidence in lieu of B and/or C to meet the vessel RPS.

Does any member of the Task Force wish to make any other changes before you adopt the motion?

Captain Page.

CAPTAIN ED PAGE: Ed Page here.

I'm just curious, is that what you want to say on number 6, is the position at the site of operation or actually at the spill site, because the site of operation might be a facility, but the spill might have happened ten miles out of that area. I'm trying to get a feel for -- a subarea would be generic, see, that's generally where it operates in. If you want to get to the site, it's a different issue altogether.

BRIAN ROGERS: And the reason that the spill site wasn't chosen is because this is before a spill has happened that you're trying to demonstrate something.

CAPTAIN ED PAGE: Okay.

BOB HEAVILIN: Bob Heavilin.

That last sentence on number 6, equipment designed to fit in a DC-6.

It just seems like -- I don't know why that's so necessary to have that in there. I mean, everybody looks to Lynden for being the one that has to provide the Hercs, and I think they have five worldwide and two, I think, in Alaska operating. But it seems to me that if things get bad, all you have to do is look across the runway at the Air National Guard, and I counted seven of them yesterday. Seven Hercs. You know, so to say that you're going to require the co-ops now to start packaging everything to go in a DC-6, you know, I think that should really be up to us to be able to work with the vendors and the expertise that we have to do logistics and to -- if you want it, we'll get it, and we'll get it there. But to say specifically that we should start configuring things to go into a DC-6, I don't know if that's appropriate.

BRIAN ROGERS: Does anyone object to striking the last sentence?

RICK HARRIS: I would actually back up a little further and strike from the success of this strategy. Just strike the whole thing from that point.

BRIAN ROGERS: Is there any objection?

HEATHER McCARTY: Starting with that sentence?

BRIAN ROGERS: Starting with "success."

Yes.

STEPHANIE MADSEN: I'd like to back up just for a second here. And if you could explain to me -- this is Stephanie Madsen.

I know that it was suggested that we go from subarea to area of operation. What is going to be the definition of area of operation? I thought I understood subregion, and if we're going to have to demonstrate that the equipment can be available --

BRIAN ROGERS: Item number 6 is off the consent agenda.

Any other items to remove for further discussion? Commissioner.

COMMISSIONER MICHELE BROWN: This is Michele Brown.

Brian, we need to clarify on 12, the edit that you did when you talked about it, because if we're going to -- to make sure -- can develop and hold, you said "and hold"?

BRIAN ROGERS: Yes. Is "hold" still in there?

COMMISSIONER MICHELE BROWN: It's in the short version.

BRIAN ROGERS: It's in the short version, but the controlling document is the boldfaced type in the report. And I caught it there -- trying to keep these two documents in sync over the last two weeks was a challenge, and I didn't hold that one through the two versions.

John Hansen.

JOHN HANSEN: John Hansen.

Brian, I have a question about number 3. I know we're past number 3 in many ways, but I'd like to just -- maybe this is not the right time, but I would like to raise a question about the explanation in the draft report.

This has to do with the amount of boom material. And in the recommendation we have boom material to extend three times the length of the vessel. And then, if you look at the interpretation of this, in the subsection under 3, it talks about boom sufficient to extend three times around the length of the regulated vessel.

BRIAN ROGERS: That's a typo.

JOHN HANSEN: I believe that.

BRIAN ROGERS: It's three times the length of the vessel in the explanation as well.

JUDY ERICKSON: Just one thing. The reports I

handed out today to people have that corrected, John.

This is Judy Erickson.

So that was corrected. It was an error.

JOHN HANSEN: Thank you.

BRIAN ROGERS: Thank you. And again, we have -- correct is three times the length of the vessel.

Yeah, we didn't double that. That was an error on my part. Thank you for raising that. That's one of the advantages of having a record of this proceeding.

Are you ready?

HEATHER McCARTY: Can I ask a question?

BRIAN ROGERS: Yes.

HEATHER McCARTY: This is Heather McCarty.

I didn't understand the comment on 12 and what the actual wording is supposed to be. I'm sorry.

BRIAN ROGERS: The word "and hold" is not part of -- the response plan facilitator does not hold a C-plan. Only the responsible party holds a C-plan.

Are you ready for the question? The question would be adoption of the remaining recommendations, excluding the five that have been pulled from the consent agenda.

GENE BURDEN: I'd make that motion.

HEATHER McCARTY: Second it.

BRIAN ROGERS: Moved and seconded to adopt the

consent agenda items. Is there objection?

Hearing no objection, we've adopted 20 of the 25 recommendations. And we're only an hour into the meeting.

Okay. Let's go through them in order. We'll begin then with recommendation number 5, required cleanup equipment. And so far we've accepted a technical amendment on that one to state that it's 15 percent of the maximum operating capacity of the vessel that the skimmer has to be able to clean up.

The example, then, if we're dealing with a nontank vessel with 10,000 barrels of fuel, the RPS is 1500 barrels, so the skimmer has to have a capacity capable of cleaning up 300 barrels of spilled fuel a day.

Now, depending on the type of skimmer being used, that may be a skimmer with a capacity 20 percent more than that or 80 percent more than that, depending on the type. And in addition, we have required storage capacity sufficient to meet the daily recovery capacity of that skimmer.

That was the discussion in the RPS Work Group. There actually is a chart in there, summary that shows what that means.

I don't recall who pulled this one for further

discussion.

LEE EGLAND: I did. Lee Egland.

BRIAN ROGERS: Okay. Lee.

LEE EGLAND: I just might defer to Terry Murphy. Obviously, my concern here is that everybody understand how much money we're talking about potentially to cover this particular line item. For example, just so, for round number purposes, we're using in this example 10,000-barrel operating capacity vessel, correct?

BRIAN ROGERS: Correct.

LEE EGLAND: From a cooperative standpoint, or if someone -- you know, how the cooperatives work is they have to build their response capability to the worst case. Okay. So what is the worst case planning standard volume that we've got out there? Is it 50,000 barrels of operating capacity?

BRIAN ROGERS: Dutch, it's 62,100.

LEE EGLAND: Okay. So for round numbers, let's just make it 60,000 barrels, right? So the RPS is 15 percent of that. So that's 9,000, right? So, for 9,000 barrel RPS -- the biggest nut to crack here, and this is going to defer maybe back to Larry with DEC, is that you're talking somewhere estimating -- because there's lots of different ways to do this -- is if we're saying

that we have to show in a cleanup capability, that's skimming and storage to clean this up in five days, basically you're looking at 9,000, plus the water, and the storage we're looking at is roughly $100,000 per 500 barrels. So, that's about $1.8 million; is that right? If my math is correct, what's -- wait a second.

BRIAN ROGERS: You're saying storage is -- so you need 1800 barrels a day worth of skimming capacity.

LEE EGLAND: Let's just do the storage, because that's the big number.

BRIAN ROGERS: Okay.

LEE EGLAND: If our storage is running $100,000 per 500 barrels -- so there's $400,000 for storage. Taking a capacity of 60,000 in Dutch Harbor, and that's the only place that has it that high, 9,000-barrel RPS, which is 1800 barrels a day, divided by a 500-barrel storage capacity, $100,000 would be 400,000 -- if I did my math right. Am I missing something?

TERRY MURPHY: Where did you get your 9,000 from?

BRIAN ROGERS: The 9,000 is 15 percent of 60,000.

TERRY MURPHY: Fifteen percent.

LEE EGLAND: Okay. So you've got roughly, in the order of magnitude, $400,000 worth of storage.

That's the total amount.

BRIAN ROGERS: That's the total required.

LEE EGLAND: That's the total, plus the additional water. So let's just go another -- let's say it's $500,000, depending on what kind of skimmer you got for storage, and then we've got the skimmers on top of that from a cost standpoint.

So, Terry, from a skimming -- for Terry Murphy in the audience for --

TERRY MURPHY: Yes.

LEE EGLAND: So in order to meet the 9,000 barrels of RPS, if we -- let's just forget the water for a minute. I mean, how many skimmers is it going to take? What type of skimmers were you looking at?

TERRY MURPHY: The Lamors and the Loris. You can do one skimmer, will do that capacity and still be the size that's transportable.

CHARLOTTE MacCAY: At a cost of what?

TERRY MURPHY: About 60 to 70,000.

LEE EGLAND: So what is the -- we're talking about what's the nameplate capacity of the skimmer now, then, I guess.

TERRY MURPHY: The nameplate? In a day it's about 3,020 barrels.

LEE EGLAND: 3,020 a day. So in five days,

obviously you've made that, right?

BRIAN ROGERS: Senator Pearce.

SENATOR DRUE PEARCE: Well, I have a question, Lee.

You're assuming that there's no storage out there presently, and there must be because of the tank vessel regs, and there's no reason why you'd have to have all new storage capacity. Or am I missing something?

LEE EGLAND: I think -- and correct me if I'm wrong, Larry. I'm thinking about if we're saying we have to demonstrate the capability to get this out to the site within 24 hours, that there is -- that could be anywhere.

SENATOR DRUE PEARCE. I understand that. I understand that.

LEE EGLAND: So I'm assuming that we would have to plan for -- to have all of the storage, and that there would -- you know, there's going to be places where you may go that DEC may say, well, there isn't any storage out there, that you're going to have to buy -- you're going to have to purchase all that storage. Again, looking at the highest common denominator of the worst case.

SENATOR DRUE PEARCE: And I understand what

you're saying. But this should not be a higher standard than what the present contingency plan is for the fuel vessels that they are already meeting. So they're -- somehow they've managed to say they had storage capacity that they could get to a site within 24 hours under their present contingency plans. Am I correct?

BRIAN ROGERS: Gene, and then Lee.

GENE BURDEN: Just a comment, Lee.

We co-chaired the RPS, and this was discussed, as you recall, extensively, and we went through all sorts of scenarios as far as the geographic locations of vessel traffic, the sizes of vessels, where we'd have to have it, and correlation with existing storage facilities, particularly in Dutch Harbor. And I guess -- we reached consensus on this item within RPS, after an awful lot of time talking about it. And I guess my question is, what area in this specifically has raised the flag that's contrary to what we agreed to do in RPS? Because I don't want to go through the whole thing again.

LEE EGLAND: Well, I think -- this is Lee Egland here.

I think it's important that we understand the dollars involved with it, because that's where the rubber is going to hit the road. Because following the

meeting, I sat down and thought, tried to re -- hash out what we agreed to and, as I understood it -- and that's why we came up with this formula, was that that is the amount, total amount of storage and skimming that was going to have to be to show that you have to have in there within 24 hours, if you take the worst case.

And I just want to make sure -- that's why I've asked to pull it, so that it's really crystal clear here as to what the expectation is. Because after having some further discussions with a few people, I think the expectation is, is that whomever it is, whether it's a co-op or someone else, is going to have to probably have that much storage and that much skimming capacity readily available to move into a region to meet this requirement. Because, let's face it, wherever you go, even let's say Dutch Harbor, get outside of Dutch Harbor, most -- all that's fixed storage out there.

GENE BURDEN: This is Gene Burden.

But I think the issue that I'm concerned about is I don't want there to be anything confused that would suggest that there has to be a 60,000-barrel planning standard throughout all the subregions. It's very specifically tailored, and intended to be tailored, to those areas where that size vessel traffics. No place else. So, if you're out in western Alaska, and the

largest cargo you've got is 20,000 barrels of fuel, DEC is not going to be coming in and saying we want it to be -- just in case you ever do have a 60,000-barrel vessel go there, we want to see a half million dollars worth of storage equipment. And that was my understanding. So if that's --

LEE EGLAND: But correct me if I'm wrong, Gene. What's going to happen here is, let's say a cooperative -- if a cooperative is going to provide that level of response, that cost, regardless if you're a 10,000-barrel vessel or the 60,000-barrel, all that -- that number is going to go into the cost of the cooperative, which is going to end up being shared by everyone, regardless if you have a 10,000-barrel standard or a 60,000-barrel standard.

All I'm saying is, is that from a co-op expense standpoint, I want to make sure -- and that's the discussion point -- that we understand what the cost, because this is -- this is where the rubber hits the road -- as far as what the additional major costs are going to be for the cooperatives.

And you're right, we talked about this a lot, but I don't think it's still clear, Gene, in my mind as to what the expectation is.

GENE BURDEN: Well, one last comment. I mean,

this issue of co-op sharing costs -- and fortunately in Alaska for the nontank vessels, the traffic in the large volume vessels is pretty limited, at least the information that we've seen in terms of geographics; and fortunately, also, it's in areas where there are already contingency plans in place for tank vessels that have sufficient -- extraordinarily much more requirements for spill response and have storage capabilities, like in Dutch Harbor.

But I agree with your comment, I mean, and it's true for oil shippers as well, is that the co-ops and how they organize their payment schedules, it's inherent there's going to be a sharing of costs among members. How they do that may well be based on volume or some other measure, but that's going to be part of the responsibilities of this, no question.

LEE EGLAND: Right.

BRIAN ROGERS: Stephanie and then Rick and then Heather.

STEPHANIE MADSEN: This is Stephanie Madsen.

And I know that it's been talked about that the storage already exists in some of the ports where tank vessels go, but for the nontank vessels, we're not necessarily in those ports.

And so, is the storage capacity in Dutch fixed

storage so that it would be very difficult to move them off-site? And if so, then I guess it needs to be understood that this is going to be a different kind of storage capability that will have to be mobile than what is currently available in a lot of the ports. And that could significantly increase the costs when you talk about, you know, what is duplicative and what is going to need to be purchased. And it sounds like, to me, that it's fixed storage and that there will be a capital cost up front; however, we have to deal with the mobile storage.

And I guess that goes back to my concern about when we talk about subregion or area of operation, to me that's two different things. And I think we're going to talk about that under 6, but I hope that that carries through all the way, that a subarea is quite a bit different from the subregion -- or from the area of operations at times. And if we're allowed to use the storage in the subregion, is that going to suffice if it's fixed and not mobile? I mean, I guess I hadn't heard this kind of discussion before. We talked about storage but we didn't talk about storage on-site of the spill, or on-site, you know, in the subregion. So in my mind this is a little bit different twist than what we have talked about in the subcommittees before.

BRIAN ROGERS: Rick, and then Heather.

RICK HARRIS: Thank you. Rick Harris.

The concern that I had is I started -- I'm with the spot charter group, and as we started looking at the amount of spot charter and what kind of -- what was their capacity and how much fuel they actually had on board when they came into the star region -- in this case it was Southeast -- we saw that the amount of fuel that they had was substantially less than their maximum operating capacity. So we are planning for something which is very likely not to occur; in other words, the 15 percent of the maximum capacity when they just don't carry that amount of fuel. And then as we go on in dealing with the cooperatives, of course, they're going to say we have a response standard for you that's this, here is the typical response capacity. So we've had to gear up to this level when, in fact, we never get there. We're about half the capacity or less, because we don't take -- those types of vessels don't take too long in Alaska, and generally when they're here they're substantially below their maximum capacity.

So I'm hoping we can create some kind of an opportunity to open the door to say if a vessel, or if it can be shown that the type of vessel that we're dealing with does not carry that level of fuel, then we

can have a slightly different -- it's really how we define the maximum operating capacity or the operating capacity.

BRIAN ROGERS: Heather.

HEATHER McCARTY: I'd like to go back -- this is Heather McCarty.

I'd like to go back to what Stephanie was saying in terms of the stationing of the storage capacity. It appears to me that under 5 in the full Task Force report we're talking about temporary storage capacity in the paragraph below the bold paragraph. So I would ask that somebody from that subgroup explain whether that was what they were talking about at that time, whether it was temporary -- if it was temporary, clearly it would have to be mobile, one would assume. And it seems to me that any storage capacity on the site of the spill would have to be pretty mobile, because there may not be the ability to carry the picked-up fuel and oil to the site of the storage capacity. Do you see what I mean? I wasn't there for that discussion, so I'm just assuming all of those things. So, therefore I'm assuming that the storage capacity has to be mobile.

Am I wrong on that? That's my first question.

BRIAN ROGERS: Larry Dietrick, and then Gene Burden.

LARRY DIETRICK: Yeah, Larry Dietrick, DEC.

My recollection of that, when we're talking about the storage capacity, Terry Murphy had provided us with cost figures for bladders, and our discussion, as I recall, was always in the context of the bladders.

GENE BURDEN: This is Gene Burden.

There's also the possibility of using vessels for storage, barges, or, for a shore-based spill, being able to use shore-based tankage to move product into. So it's, you know, a combination of items that could be used.

BRIAN ROGERS: Heather.

HEATHER McCARTY: And just as a follow-up, then. If it has to be mobile, for anything other than a shore spill, then one would hope that perhaps all of that storage capacity wouldn't have to be within that site, at that site, within the 24 hours; that it could be brought in, as needed, on a daily basis. That's just a thought, that you don't have to have all the storage capacity there all at once. You could assume that that storage capacity could be cycled in and out, particularly if it was a vessel type of storage capacity, or even if it was bladders. I don't know how those work really -- but that's one comment.

And I also would like to ask if this standard

is indeed higher than the standard for the fuel-carrying vessels, the tank vessels. Is it, or is it the same? That was brought up, and I didn't get an answer.

LEE EGLAND: It's the same. This is Lee Egland.

It's the same, but one of the major ways that the tank barge industry meets their storage requirements is with the vessel itself and in agreement with the other vessels to use their equipment as a storage receptacle. So while we have the same RPS, we meet it in a little bit different way, to where as I don't believe a lot of the nontank vessels -- some of them may, you know, have a significant amount of available storage capacity on board. Maybe some of them do, that you could, you know, try and bring that number down.

BRIAN ROGERS: Heather.

HEATHER McCARTY: Follow-up then.

Is that why then you're saying that the available storage, mobile or otherwise, doesn't exist even though the standard is the same?

LEE EGLAND: I'm just saying that --

BRIAN ROGERS: Lee Egland.

LEE EGLAND: I'm sorry. Lee Egland again.

I'm saying that's why I suggested to pull it, so that it's really, really, really clear as to what DEC

is going to require somebody -- a response contractor, a cooperative -- somebody to have to meet this requirement. Because I walked home -- walked out after our meeting last time, and it wasn't real clear to me what the expectation was.

And Gene Burden was correct. We talked about this for an extensive amount of time, but I still don't think it's very clear, because what -- at the end of the day, the fine senator is going to ask the question again, you know, on behalf of these nontank vessel potential regulated entities, is how much is it going to cost them. And they're going to be looking at these cooperatives and saying, okay, what are you going to charge them. And we want to make sure we know, they know what the list is as far as their worst case. What are they going to have to change -- in capital equipment and potential operating costs, that they're going to have to step up and potentially purchase and take on to come up with a rate. So I just want to make sure that we all know what that is.

BRIAN ROGERS: Charlotte?

CHARLOTTE MacCAY: I'm going back and forth whether or not I want to ask this.

And this is specifically for spot charters probably. But if a spot charter comes in and is doing

the C-plan for this trip, and it has two empty tanks of some sort, do they come out of capacity? If they're only going to be here for three days, even though they have the potential to have that much fuel, those tanks become dedicated storage for those three days?

BRIAN ROGERS: I think that Charlotte's raised an important issue that the group needs to address, and that is -- actually, there are two parts to that. One, can unused capacity be used as storage capacity; and, two, the issue that was raised earlier of what is the capacity of a vessel, particularly one carrying -- let's say, carrying bunker that it's not getting in Alaska, therefore it has to have burned some of it before getting to Alaska, what is the maximum capacity of that vessel. And I don't sense that you have consensus on what that is, or what their process would be for DEC to say that the maximum capacity is something other than whatever it can hold.

Senator?

SENATOR DRUE PEARCE: Well, if the spot charters have an application process that works like the oil spot charters where it's a 24-hour turnaround -- or whatever you all end up with, but some sort of a form that gets filled out -- they can put what their approximate volume of fuel is when they sail into our

waters because the ships would know that coming. And then you could use that as the capacity, as opposed to using the total possible capacity. Because Charlotte's right, they probably do often come in with much less.

BRIAN ROGERS: Larry Dietrick.

LARRY DIETRICK: Yeah, Larry Dietrick with DEC.

Yes, traditionally the way the department has dealt with this capacity issue, because this is not the first time it's come up -- we've dealt with crude tankers, we deal with it with shore-based storage tank farms on a routine basis. And typically, yeah, we count the full physical volume of all tanks. And when we get into whether or not you can count a lesser volume, it it's unverifiable. And that's been the problem in the past. For example, with crude tank vessels, you take the rated volume that's done by -- well, it's either the American Bureau of Shipping or certificate of inspection is one that -- that's the documentation we receive to verify the volume that's on board.

And we got into this during some of the committee discussions of the bill, well, how do you figure out the volume. Well, that can be a very complicated thing when you board a vessel. And we made a conscious decision that we don't want -- we, the department, didn't want to get into that business of

verifying the volume on board, and that we would take the certificated volume that's already prepared as the volume that we would accept, and that would be used as the basis in the deed for purposes of financial responsibility for nontank vessels. That's what we've done, is the full physical volume of all tanks, and we haven't gotten into measuring tank sizes and getting into that game, and I'm not sure we want to.

So, it's a fair question to ask as to how we might apply it here, and it's not only verifying the volumes of the tanks, just the physical volume, but then also if you get into the game, then, of it's half full or -- I mean, how do you verify that and should we verify it or not.

BRIAN ROGERS: Charlotte, and then Jeff.

CHARLOTTE MacCAY: This is Charlotte MacCay.

But if you have -- and in this type of shell plan, so the C-plan for this vessel is really for these next five days, and they have an empty tank that usually they may put fuel in, but it is empty right now, can they not claim that as dedicated storage then for that trip, for the length and life of that C-plan?

LARRY DIETRICK: Larry Dietrick.

Yeah, we actually -- I don't recall in the work group session taking this issue on --

CHARLOTTE MacCAY: We did.

LARRY DIETRICK: -- and making a decision on it, so this is probably the first time the question of whether we can use or count void space, if you will, or empty tanks, and include that in the definition of maximum storage capacity.

Again, for purposes of financial responsibility, the definition we came up with was the full volume as represented by APS or whatever of all tanks. So what you're proposing here now is to do it a different way now for purposes of calculating the volume for the response planning standard.

BRIAN ROGERS: Charlotte, I'll let you respond to that, and then we'll go to Jeff and then to Captain Page.

CHARLOTTE MacCAY: And that may be because when we did the financial responsibility we hadn't hit upon the shell, idea of a C-plan shell that you entered into only for limited days. So it kind of comes back, we have a new alternative way of C-planning, which then opens the door to do this. That was not so easily done in other circumstances.

LARRY DIETRICK: But that would be a second definition, if you will.

BRIAN ROGERS: Jeff Thompson.

JEFF THOMPSON: Jeff Thompson.

That's basically -- to follow up with Charlotte's inquiry, Larry, is when we come to do the C-plan with you, for a shell plan, and we're offering as storage, potential storage capacity, the vessel currently has as much bunker in these tanks, and these other tanks are empty and we want to use those tanks as potential storage capacity in our plan.

I can understand that you need a standard as far as a total capacity on board; in other words, an absolute that you can refer to and not have -- and is verifiable. But by the same token, also it would seem to me it would not be inconsistent to consider that some of those spaces are going to be empty and therefore would be available for storage in the event of an incident. And that, I think that seems consistent to me in terms of the ability when we submit a plan, that we can, you know, under the response planning standard that we then demonstrate that there is storage available.

BRIAN ROGERS: Larry, a response.

LARRY DIETRICK: Yeah, Larry Dietrick.

Maybe Lee can help out here in terms of how the companies manage that with the noncrude barges in terms of managing your inventories and your tanks such that any vessel has always got a certain amount of void

space. Is there some approach or methodology that you're all using there?

BRIAN ROGERS: Lee.

LEE EGLAND: Yeah, this is Lee Egland.

Two ways. Obviously, the tank barges have a maximum operating capacity which is based on the load line marks of the vessel, the ABS marks on the side of the vessel. Depending upon the time of year, we can only put so much weight on that vessel. So, for example -- I'm trying to do this real simple -- one of our large barges, okay, 150,000 barrels of cubic capacity. That's how big this shoe box is. Okay? In the summertime we can only put 16,200 tons of cargo on it. If it's gasoline cargo, which is the lightest product we haul, out of that 150,000 barrels of cubic capacity, we probably put about 135,000 barrels of gasoline. Okay? So, that actually leaves, you know, 15,000 barrels of cubic capacity that's available. So, if we put a diesel fuel on it, instead of 135, maybe it's 128,000 barrels. So then, obviously, the void space, the cubic capacity goes up depending upon the type of product that we use.

But at no time can we go more than 95 percent full. Okay? So, there is always additional room in the cubic capacity of the vessel; that is, the empty shoe

box, as opposed to what we normally would load on a vessel.

Does that answer the question?

LARRY DIETRICK: Yeah. So you're running less than full in your tanks --

LEE EGLAND: Always.

LARRY DIETRICK: -- to be able to accommodate a certain volume in the event of a spill?

LEE EGLAND: Yes.

BRIAN ROGERS: Ed Page, then Stephanie, Charlotte and Gene.

CAPTAIN ED PAGE: I hate to rain on the party a little bit, but I'm just looking back at the history of cases like the New Carissa and the Kuroshima, Hyundai 12, Taiwan 603, All Alaskan, all vessels that had problems. In none of those cases did we ever consider moving oil within the open voids in those tanks. It's a viable option in tankers and tank barges because of the pumping systems and you do have dedicated tanks. You have that flexibility. But I think when you look at this other type of vessel, I've never known of a case where we've been moving them around from tank to tank. It could potentially be done, if you've got valves involved and you've got green pumps real quickly that can access the tanks, which -- double-bottom tanks,

which are under the cargo, which aren't easy access, it's heavy oil, may be heated. There's a plethora of problems that come up with this. So I just think we need to be realistic as far as when we start talking about these capacities.

The other thing, as Lee has mentioned, you're talking about the capacity and what you really sail with versus your total capacity. The issue still comes up again that if Sea-Land says we will never sail with more than 30,000 barrels going to Dutch Harbor, that's great, you can plan for that. But if they say, well, this trip we're going 60,000 barrels, well, then everything gets ratcheted up to deal with the worst case scenario. So you really have to make sure that that is the upper limit, because you don't have much flexibility capacity. You could -- I mean, you could say, well, now this week we'll have a higher-level spill response capability in Dutch Harbor because Sea-Land decided to buy some fuel and it's cheaper somewhere, to top off -- I suppose you could do that.

But if they provide some affidavit that our plan is we will never sail with more as a practical matter, and we sign a dotted line and we'll notify you otherwise, we'll ramp up if we carry more than 30,000 barrels of oil to Dutch Harbor, then I think that's

really risk management. There's less oil on board this vessel, less stuff potentially going in the water, and that's probably the type of thing we're looking at, anything to mitigate or manage the risk or reduce the risk is probably worthwhile. And then, of course, you can have your planning standards adjusted accordingly to deal with that lower risk. Lower risk, lower response capability.

So, those are the two points I had just on the -- before we go too far in counting the capacity of a spill response, recognize the limitation that it's not the panacea, or at least in the past it hasn't been. And then also, the point is that you really have to kind of -- it's not just a one-trip type thing. You have to look at consistently what's the max exposure you have to a particular harbor, and that's what you have to gear for.

BRIAN ROGERS: Stephanie?

STEPHANIE MADSEN: This is Stephanie Madsen. I guess my question is for DEC.

On the cleanup requirement, the cleanup equipment requirement on storage, are we going to -- it doesn't say demonstrate in here, so are we nontank vessels going to have the flexibility that it sounds like the tank vessels have had in demonstrating their

storage? That it could be a mixture of temporary storage, with a demonstration that we can get that temporary storage to a fixed tank and empty it and bring the temporary storage back, that we could bring a vessel out, and that we had a contract with the vessel that could respond? I mean, do we need to clearly state in here that the actual equipment, storage equipment is not the end-all; that we have the ability to demonstrate other options for storage?

BRIAN ROGERS: Larry.

LARRY DIETRICK: Larry Dietrick with DEC.

Yeah, in my mind -- well, first of all, we should -- I think we've all agreed and achieved a consensus on it would be no more stringent than the APD&T approach, okay, and that's why I asked Lee that question, to see how they were managing in that capacity, because I knew they were providing some capacity on their barges as part of the solution for the storage.

So, with regard to the second part of your question, I think I -- how can you satisfy the storage -- you can satisfy the storage in multiple ways, and any legitimate ways of satisfying the storage. I mean, we were focused on bladders because I think we're talking about the 24-hour shock clock and fly boom

coming out of Anchorage and stuff. But, yeah, it can be met in any one of a number of different ways.

BRIAN ROGERS: Go ahead, follow-up.

STEPHANIE MADSEN: You know, I just -- in a lot of the other things we talk about demonstrating the availability of it, and we don't talk about demonstration here; we just talk about storage. And so, if it's a Task Force understanding that we have the flexibility to demonstrate a variety of means for storage, and it doesn't have to be clearly stated, I'll accept that. But, you know, I'd almost feel more comfortable if there was a little description in here that says that we have the ability to demonstrate a variety of ways to comply with the storage and needs, and it's not just having bladders available, period.

BRIAN ROGERS: So, if we add in the explanatory language something about being able to demonstrate that, does that satisfy that --

STEPHANIE MADSEN: It would make me feel better, yeah.

BRIAN ROGERS: Okay. Larry and then Charlotte.

LARRY DIETRICK: Larry Dietrick with DEC.

And I'd just like to clarify it. I mean, there's two questions here. One is whether or not to alter the definition for maximum storage capacity, which

is not the question you're asking right now.

STEPHANIE MADSEN: No, no.

BRIAN ROGERS: Charlotte. And then I've got Gene, Rick and Eric.

CHARLOTTE MacCAY: And I'll drop it after this, but I think the point I was making is kind of getting strewn out to a variety of things. I was talking about these short-term C-plans, where our C-plan is only four or five days. And it may be on some of those spot charters that are not necessarily needing to pump fuel into the void of another tank, but you have a completely empty tank or a hold, a cargo hold that they're not planning on filling until they go to their next stop. And I don't know how well they do or do not hold oil, but if they do, it would seem you ought to be able to -- if you can show in a fairly simple manner that you have something that is already empty that can contain it, that will be there for the length and the life of this C-plan for this vessel.

BRIAN ROGERS: Gene.

GENE BURDEN: Okay. Well, just I view this section right here as certainly one that we spent probably the most time on in our group, and probably is the heart of recommendations as far as guidance to this. And I think it's important -- a couple things. We did

talk about the costs of the storage equipment, and that was a concern to all of us, as to dropping the shoe and saying, day one, you've got to be able to have the skimmer -- I mean, the bladders in each of the locations, or some other equipment in the location.

And that's part of the reason that we also recommended that there not be a requirement that these things be in place until, as I recall, it was, what, two years after, was to enable an orderly phase-in. And on top of the orderly phase-in, there were already some indications, certainly from some of the co-ops, that they already have this equipment on hand, the bladders, and/or vessels that they have access to that could serve to take this.

So, I mean, when you look at the standard that's been suggested, and the phase-in period that we're talking about, yeah, there are costs, but I think everybody knew there were going to be costs in coming up with response capability in this arena.

Another area that we did talk about, too, was the alternatives on skimmers, and Chadux was very helpful on that in pointing out that -- we did a cost comparison of -- I'm not a response planning or response specialist, so there's one skimmer that had a capacity of 20, 30 percent oil, and would generate a lot of

water, and we looked at the cost of bladders or temporary storage related to that. And then the less expensive alternative, which was the skimmer that I think that Chadux would be using, that gets 80 percent, and dramatically decreases the volumes that you need to have for temporary storage. And doing that cost comparison, we came up with that as being the most economical.

Also, one issue that hasn't -- that we may want to clarify is that we learned in this process that certain vessels came in with both persistent and nonpersistent fuel, or oil, on the vessel. And, for example, you might have a vessel that had 50,000 -- just for discussion purposes, 50,000 barrels of fuel that maybe is nonpersistent, and yet still has maybe 10,000 barrels of persistent oil, or 5,000 barrels of persistent oils, probably lubricating oils. And as I recall, we said the planning standard would be based on that larger volume that the vessel would have. And I don't know if anybody wants to comment on that, but I think that was -- and that's not really reflected here. I don't know that it needs to be, but maybe for the record that could sort of document that.

But anyway, in a nutshell, I think you have to look at -- I think 5 is very important to this overall

set of recommendations, and the phase-in period was set at two years after the final regulations, which we put out on a chart that may be, what, four years, or five years, I think, from now. It's not like you're going to spend a half million dollars on bladders tomorrow. It's something that's going to be phased in over potentially a five-year period, where you're going to be able to prioritize locations that you want to have this, and take advantage of the existing inventory of spill co-ops, those parties who use the co-ops.

So rather than throw the baby out with the bath water, if that's a problem, I'd rather -- I'd suggest an alternative that we look at is two years after the adoption of the regulations, the date that we want to use, or should we be using three years after the date, if that's -- if cost is so much of a concern.

BRIAN ROGERS: I've got Rick and Eric, but I want to just intervene with -- going back to this issue, it's only Sea-Land in Dutch that drives this number.

PAUL FUHS: APL.

BRIAN ROGERS: Excuse me. APL that drives that. And if they're not topping off in Dutch, they're never going to have 60,000 barrels. So if there were an alternative that says that it's based on the maximum that is realistically going to be -- and I'm not sure

how you'd word that, but realistically carried, you're going to be below 50,000 barrels and maybe even below 40,000 barrels for Dutch. That one shipper drives the maximum here, and that's going to make perhaps 100,000 to $200,000 difference, if you come up with a way of recognizing that these vessels coming in are not going to be full.

And I don't know what the right language is, but if you're trying to drive cost, there is an opportunity to affect the cost because, again, it's from the data -- and I've got the database and we can look at the other numbers -- but it's Dutch Harbor is the only place you've got quantities that high. So maybe someone has a way of addressing that that would work.

I've got Rick and Eric.

RICK HARRIS: Yeah. I think I want to -- I think you've captured my concern, but I want to add one small addition to it. Is that when I go to a co-op, and I say that I'm bringing in a vessel and I have, I'll say 10,000 barrels as my capacity, I never have a vessel that comes in with 10,000 barrels, it's always 5,000 barrels, we'll say as an example. The co-op is still going to say, we still have to go to this planning standard, the higher standard. So I'm in a situation of having to work with them, you know, when I contract with

them or as a member, I have to bring on that kind of capacity.

Now, Gene brought up the reason very well, because as we were sitting there listening to -- okay, skimmer, that's easy enough. Boom, that's easy enough. And all of a sudden we started talking about capacity, and I, for one, have to be honest, I had absolutely no idea of the sense or the magnitude of the problem that capacity brings in. The skimmer and everything else kind of pales in comparison to the capacity. So to that degree, although it's an introduction of an issue, it was an issue that was really, only came up in our last meeting when we began to get a true sense of the large cost. So to that extent, what I'd like to be able to do is to ensure that I'm carrying the burden for what I typically bring in, not some theoretical capacity or some design capacity of the vessel.

Larry brought up another question as well, we don't know what that number is, and I think that that's really a process question. Well, how much do these vessels typically carry when they bring in, I mean, and if we can allow flexibility to set a capacity standard for the type of vessel coming into the region, as an example, log ships or ore concentrate ships, as an example, and say this is typically what they're bringing

in, and we can use that then as the capacity, then I feel satisfied that we've addressed the issue.

Trying to extend the time, I don't -- I mean, money is money. I mean, whether I spend it this year or next year, it's still money and it's still something I've got to pay. So I don't think extending the time is really helpful. What I should be doing is really building to that capacity. As it stands right now, I don't have a 15 percent cleanup standard; I have a 30 percent, because I have -- the way it's all coming together, I'm only typically coming in with half of my vessel capacity in fuel, but I have to plan for 15, but because I only have half of that, I really have got a very large cleanup standard. So...

BRIAN ROGERS: Eric, and then Lee and then Charlotte.

ERIC BRITTEN: Just sort of beginning to answer Larry's question, you know, perhaps it is possible and it does make sense to have two different definitions as to, you know, capacity. I mean, particularly because we are focused on bucks, as Lee's very capably pointing out to us, does it make any sense to have your cleanup planning standard based on something as -- well, certainly that's textbook, you know, as carrying capacity. But I think particularly when you look at

CSX, Maersk and APL, it's probably pretty easy to document how much fuel they have on board any time that they're in Dutch Harbor.

And so, it sort of does bait the answer, particularly when we're setting the upper limit. I mean, in liability we have to look at every vessel, you know. You'd have to ask every vessel, what are you rated at and what do you really carry. But here, and also in Kodiak, you know, what we're about is just looking at the vessels that have the largest capacity, to see, you know, where we want to set the upper limit, and I think that's pretty easy to establish.

And then following up on Ed's comment -- and this gets back, we seem to be answering two questions at the same time. When we're talking about capacity, and storage capacity, the only thing that occurs to me -- and I apologize for bringing it up -- but if you have a vessel in peril that has a breach, is it not safe to assume that maybe the void tank is breached also? I mean, is it a safe assumption to say, you know, it can count as excess capacity.

BRIAN ROGERS: Lee.

LEE EGLAND: Well -- Lee Egland.

It's just that -- and I don't want to belabor the point, but I just want to go back, and let's just

say this number -- I think Gene's right. This is -- you know, maybe this isn't the right number. Okay? But just for discussion purposes, Larry -- stay with me on this -- because I think we've got the wrong number. The way that I would determine the storage dollars for that 9,000-barrel RPS would be $1.8 million. And here's how --

BRIAN ROGERS: No --

LEE EGLAND: We're saying -- wait a second. Just listen to me. If it's $100,000 per 500 barrels, we're saying that we have to show that we can clean the entire RPS up, that's 9,000 barrels in five days. Is that correct? So we have to have 9,000 barrels of storage, or show some way that you're going to discharge -- you're going to empty storage and reuse it, correct? And that's how I read what we've developed here, is -- and that's the five-day concept, right, Larry?

So what we're saying is, is that we have to show a response capability to clean up 9,000 barrels in five days. Slice and dice it however you want, that's the number. And if there were no storage available, and I had to buy it all -- okay? That may not be realistic, that may not be the number, but that's where I had to go back and ask a couple people to check my math, because

it's pretty straightforward to me -- if we're saying just general rule of thumb, that per 500 barrels of temporary storage, it's $100,000, right? So that's $2,000 per 1,000 barrels -- 200,000, excuse me -- that makes $1.8 million for 9,000 barrels of storage. Okay?

That's why I want to make sure that we understand what the expectation is, and what the number's going to be, because -- and that's not -- you know, that may be an inflated number, let's drop it half, let's say it's $900,000 plus the skimmers, I mean, if it's 30,000-barrel RPS -- or excuse me. If it's a 30,000-barrel storage, you know, a maximum operating capacity vessel, it's still a million dollars, however you slice it.

GENE BURDEN: But, Lee, the recommendation -- despite that, and what you say is factually correct, the recommendation essentially discounts that if it says it's a one-day storage capacity, where the recommendation says you've got to have a daily recovery capacity of storage, period. Even though what you say may well be the case, you may decide you want to use temporary storage for the other four days, or you may want to contract with a barge to come in to have that unloaded on a barge, I don't know, but as far as meeting DEC's requirement, if we go with this, it's a one-day'er

as far as what they can require the shipper to demonstrate.

BRIAN ROGERS: To demonstrate within 24 hours, you have to be able to demonstrate being able to get that over time.

LEE EGLAND: That's my point. That's what we need to clarify, is --

HEATHER McCARTY: It doesn't say that.

LEE EGLAND: What do we have to have?

HEATHER McCARTY: It says what you said.

GENE BURDEN: Yeah, within five days, and storage capacity that equals the daily recovery capacity of the chosen skimmer, period. And I think to the extent there's any misunderstanding on that, I'm glad you raised it, because it ought to be clear that that was definitely the recommendation. We were not recommending an RPS that you show as part of the plan five days' worth of temporary storage to DEC in order to get your plan approved. We were recommending one day temporary storage.

BRIAN ROGERS: I have Charlotte and then Captain Page.

CHARLOTTE MacCAY: If Captain Page is answering that question directly, you can go ahead, because I want to get back to the estimating the maximum capacity.

CAPTAIN ED PAGE: I was going to say that -- I know Larry Dietrick and I have been involved with bringing out this response software to the Oil Spill Recovery Institute, working with the co-ops. But I think part of the answer is once the response software gets set up, it's going to network all the response co-ops, all the equipment in Alaska, so you can cascade things in.

So, as long as you get that first day covered, I'm very confident with this new technology and networking, and we're all in this together, an injury to one is an injury to all, so to speak, the union thing, when you have an oil spill, that we're going to go run off and -- that we're all going to, through our equipment, to help the situation, and we have technology to help us identify the right equipment for the job. So the real challenge is when you're first in the breach, can you get some equipment real quickly on the scene, and then we can sort of cascade in. And that should hopefully keep costs from going out of control on this.

BRIAN ROGERS: Is everyone clear that the understanding is the capacity required is a one-day capacity? Larry.

LARRY DIETRICK: Yeah. Maybe just so you can clarify this a little more here.

What we've been trying to establish -- it's not whether you need all that storage for five days. What we're trying to define here is what's your legally-required starter kit, which is one day.

LEE EGLAND: Okay.

LARRY DIETRICK: Okay? Now, you still have to have a response action plan that we've talked about with the co-ops, that shows -- if you look at 425, it has two things in it, plans and procedures. Okay. So, in theory you're going to have a response action plan that talks about the plans and procedures for cascading in the other stuff. Because if you have one that big, yeah, you're going to need all of that stuff. But what we're trying to define here is the legally-required starter kit under 273, is what we've been --

LEE EGLAND: So it's just one day.

LARRY DIETRICK: That's what you've got to show the State. I mean, that's part of the thing here. If you really have that spill, you're really going to need all of it, but what do you have to show to the State to get your approval, it's one day.

LEE EGLAND: So these co-ops, in order to determine what's their increase in capital going to be, they're going to go back and they're going to say, again, using the example in the book -- right -- we

need, they need the capability for 360 barrels. That's all they need. They need 360 barrels of storage in their inventory, and they need a skimmer that can -- that is basically going to be able to do 300 barrels per day. Is that correct?

LARRY DIETRICK: That's correct. And that's so that their nontank vessel that they contracted with can legally meet the requirement how to implement 15 percent under SB273.

LEE EGLAND: Yeah, if their capacity is 10,000 barrels.

LARRY DIETRICK: That's correct. And that's without playing games with the volumes at all.

LEE EGLAND: Okay.

LARRY DIETRICK: That would be based on -- my understanding of that, when we had this discussion, it was the maximum storage volume as represented by the vessel documentation. So it is a new game if we're going to abandon that and start getting into this other thing.

BRIAN ROGERS: Gene.

GENE BURDEN: I don't know if we're quite finished with this, but just a comment on this other aspect. I think Charlotte still raises an issue that might be worth discussing.

I know you're not thrilled about lightering from one -- from back into a damaged tanker, but if you had separated fuel tanks and you essentially had taken one or more of those fuel tanks out of service while you're trafficking in Alaska and you certify that some way to the DEC, and have that as a contingent storage capability, you know, I mean, that might be a unique set of circumstances, but -- and you've got the equipment, the pumps and the equipment that you need to activate those tanks, you know, why not? I'd say. You know, if they could demonstrate that they do have those tanks available, there's not going to be an issue of moving fuel out of them into other tanks and they're going to be readily available.

BRIAN ROGERS: Charlotte.

CHARLOTTE MacCAY: This is Charlotte.

Everyone just wants to slam this door shut, and I'd like to crack it open and just say that, you know, capacity well in Alaskan waters would be the definition as reasonably demonstrated to DEC. And then separate from this process, that the work groups somehow come up with the policies of how you could conservatively and reasonably demonstrate what that capacity and availability of your storage is while they're in Alaskan waters. Put that in your C-plan, whether it's a fleet

plan or a shell plan. If you added a larger ship to your fleet, you would modify your C-plan. So if you're going to change your operation where you're going to start using that tank, you would modify your C-plan. And that would just be how you would accommodate the fact that maybe five years from now you decide you do need more tanks or whatever. But there should be some way that you can come in and reasonably demonstrate, have some reasonable guidelines worked out for how we could do that.

I know it's work, so I know it's unattractive, but it's -- you know, when you're talking these kinds of numbers, I think it's real important the base you start with have some availability to relate to reality.

BRIAN ROGERS: I have to correct a number that I gave earlier. That's why I've been playing with the computer here and trying to do this at the same time. I said 60,000. That is actually the weight of the -- the gross tons of those vessels. 52,000 is the largest vessel we have. That's the APL series. The second largest vessel is the President series at 42,000 barrels. Both of those are in Dutch Harbor. Outside of those vessels, the largest -- the next largest is 30,000 barrels. So, that's where -- just dealing with these two that don't come in full is going to make the biggest

difference to the total cost of this program.

Captain Page.

CAPTAIN ED PAGE: Let me get back on Gene's comment. That is a viable option in some cases. But the option I prefer is we have these portable tanks, which we've tried before, and I prefer it. A portable tank you put on one of these vessels, and then you can pump into it like a big bladder, would be a safer -- than putting into another double-bottom tank that's sitting on a reef and is breaking up and what have you. In so many cases your capacity -- not your cargo tank, you're not putting it into a cargo hold because you don't want it to exacerbate the situation. You're dealing with heavy oil, 180 in many cases unless you're -- there's some refined products, but this is for running generators, a small percentage of it is refined. Most of it's heavy oil, these large ships again. So there is an option to pump it to the vessel itself, but probably not into a fuel tank. It would be on-deck into a bladder tank. The bladder probably -- that type of system is definitely worth pursuing and it looks like the co-ops have figured that one out and have got a cache of these things anyway.

BRIAN ROGERS: Gene.

GENE BURDEN: Maybe as an option to keep the

door open, as Charlotte said, maybe there could be a recommendation by the group that the issue of on-board storage and volumes be examined by DEC and the recommendations -- or something along the line where the issue is not just totally dead, where there can be an examination of it. Maybe it's probably beyond the scope of this work group at this late stage to really get in and hash something like that out, but if we kept the issue alive, or looked at, maybe that would be a...

CHARLOTTE MacCAY: Yeah. And if the storage dies, then just creating your capacity, I think is a huge issue there.

GENE BURDEN: One comment, just to bear in mind, the thing -- I know Larry can testify to this -- we heard the same arguments from the petroleum shippers back when rulemaking took place on 567. After 567, you know, there are many of us who said, you know, hey, we never ship the full capacity, we don't want to do this on vessel size. And DEC didn't make a compelling case for the difficulties for both the department and the permit holders to try to manage dealing on a basis other than cargo volume -- or capacity.

BRIAN ROGERS: Rick Harris and then Scott, then Larry, then Captain Page.

RICK HARRIS: I tried to write something, you

know, because I'm trying to capture the concept, and I don't disagree with going ahead and initially designing for maximum capacity of the vessel and the 15 percent, but I think each of us has said there's probably some need for flexibility. So I tried to just write something, and this may or may not be right, but I said if a vessel's operating capacity while operating in Alaska is typically less than the maximum operating capacity, the vessel and their C-plan and the PRAC may propose, and DEC will accept, alternative maximum or minimum equipment to meet the cleanup requirement.

All we've done is we've shoved it all off, allowing me to work with my charters -- I charter 20 vessels a year approximately -- allow me to work with my charters to see if we can't plan their fuel capacity coming in to Alaska so that I can always keep that capacity below that level. If I can do that satisfactorily and I can show DEC satisfactorily that I've done that, then I just want the option to be able to do that. If I can't do that, then fine, we'll accept the maximum capacity. But allow the C-plan and my relationship with the PRAC and everybody else to let us work it out. So I think if we can get to that point, I'm happy.

BRIAN ROGERS: Okay. If the vessel's operating

capacity in Alaska is less than its operating capacity of the vessel, then the PRAC may propose and the DEC may approve -- what?

RICK HARRIS: I said -- I don't know if you want to change it but I said if a vessel's operating capacity while in Alaska is less than the maximum operating capacity, the vessels in their C-plan, and the PRAC may propose, and the DEC will accept, alternative minimum equipment to meet the cleanup equipment requirement. I'm sure it could be written a lot better.

I also had one other one about the storage, if we wanted to go on to that one.

BRIAN ROGERS: Okay.

RICK HARRIS: On storage, I said the storage capacity of a vessel that is void during time in Alaska can be included as part of the storage capacity as part of any capacity requirement. I've done a good job of messing that one up.

SENATOR DRUE PEARCE: Brian?

BRIAN ROGERS: Yes.

SENATOR DRUE PEARCE: I have a question. Is the amount -- we're talking just the charter vessels right now, the spot charters. Is the amount of fuel on board that ship something that's either -- you know, Jeff or, you know, Captain O'Hara, as the pilot or, you

know, as information -- as they come in, is that something we know --

MIKE O'HARA: It's something I can certainly find out if I choose to, just ask the captain.

SENATOR DRUE PEARCE: I mean before it gets here, is what I meant.

JEFF THOMPSON: Fuel quantity is a given in all port reports that agents issue to the principals and interested parties, along with drafts, times -- arrival conditions, departure conditions which are generally referred to. Generally your fuel quantities are logged at that time.

SENATOR DRUE PEARCE: Before the ship shows up?

JEFF THOMPSON: Before the ship arrives, we have arrival conditions and we're given the fuel quantity, and that could be done prearrival, and then prior to the ship's departure, so we always know basically how much fuel was consumed while the vessel was here. That's just a standard reportable item. Whereas the capacity of the vessel is not generally found in your typical vessel stats. You have to go to the ABS, or the other classification society, in order to determine that.

BRIAN ROGERS: Senator.

SENATOR DRUE PEARCE: If, when DEC establishes

this -- what did you call it -- shell, contingency plan, and if the agents know before the ship arrives how much fuel it's actually carrying on board, it would appear to me that that's the number that could follow this shell approval.

JEFF THOMPSON: Very much so, senator.

SENATOR DRUE PEARCE: There has to be a certification that that's a true number, but I suppose it won't take long to figure out the good guys versus the bad guys. Somebody would sign off, swear that that's how much fuel was really there, within tolerances but --

JEFF THOMPSON: Jeff Thompson again.

That's very doable, senator. The fact of the matter is, all owners and operators are very concerned about fuel consumption because that's one of their operating costs, so they track that very closely. And then if we can develop a mechanism to verify that to DEC's satisfaction, I think that would work very well.

BRIAN ROGERS: Scott Carter, and then Larry. Then Ed and then Charlotte.

SCOTT CARTER: Scott Carter here.

Just to be clear on that, is you would be relying -- just to point out -- this is what the vessel is saying he has, so you have a trust factor there.

There's no way to measure that before arrival. And once in port, at least at our facility, we do a light shop survey. A surveyor is on board, he is measuring ballast tanks and storage tanks. He could verify that number.

SENATOR DRUE PEARCE: You know, we've got a trust factor in shipping anyway. We trust that they've got a rudder that works and things -- sometimes it's true and sometimes it isn't. But trusting the amount of fuel in the tanks is the least of that list of my worries.

BRIAN ROGERS: Larry Dietrick. Oh, I'm sorry. Scott.

SCOTT CARTER: My other question was, I really don't see that if we're -- if we're having to do this in advance, as far as the RPS for the ships that are coming, on a spot charter basis, I don't see maybe the big benefit of -- what if we can say instead of 5,000, we have 3,000 on board? I don't see the big cost savings if we're already having to ramp up for having equipment there and ready, because we don't know. Frankly, from a spot charter market, I don't know what the ship's going to have when they're chartering, so we're going to have -- that ship may have 2,000, it may have six.

BRIAN ROGERS: Senator, response.

SENATOR DRUE PEARCE: I was actually thinking, looking at your list, knowing that at least in one region APL and President Lines are driving this, if that information was available and APL could show us that, yes, they have that capacity, but they've never had a ship come in with that amount, you could bring down your level on experience that we already have.

That's why I was --

BRIAN ROGERS: Okay. I've got Larry, then Captain Page and Charlotte and Jeff speaking. So, Larry.

LARRY DIETRICK: I've got just a couple comments. Larry Dietrick with DEC.

How we traditionally -- how the department has traditionally done this since 1990 when we run into this problem, we've actually asked for a mechanical shutoff of the tank, particularly on the shoreside tank farm, a blind plan for that kind of thing, as the unequivocal way to take that storage off line, so to speak, to get out of the validation certification process. That's just a point of information, that's how we've done it in the past.

With regard to using this as a concept for nontank vessels, I mean to the extent that this is being used for APD&T right now in terms of satisfying a

portion of their storage capacity, I think it follows, then, that the nontank vessels, you know, could do it. I will have to refresh on the procedures that they're using right now -- but I'm not sure what they are.

The last thing, on the certification, we can't certify this stuff. I mean, there's nothing we can do. I mean, short of looking at the vessel documentation to see what the maximum volume of these tanks are, or sending a guy on board, we have to accept what is represented in the paperwork that's provided by the vessel through the ship agent. You know, unless we actually get out there and physically deal with it with measurements. I don't know how else to do it. So, there is no certification. This does set up -- from my perspective, it's not -- it's becoming -- it's not a streamlined process on the state side so much anymore. I mean, now we're adding other things to a five-day and 15-day exercise here that, you know, we've been trying to keep out of there to keep this streamlined, so there's an administrative portion of this.

And last but not least, I think what Scott was touching on, I'm not sure what the significance of this is. We've already come up with a one-day requirement here on the volume to try to keep this pretty well in control. So without working through a bunch of

examples, I would agree with Scott. I'm not sure to what extent a vessel operator may want to adjust their volume because -- until you go through the RPS calculations and see what the storage is going to cost, see if it falls beyond a worst case in a particular hub or not, you may or may not want to even choose this tool. So I can't quite judge right now if this will be a significant tool that is chosen by vessel operators or not, from a cost standpoint. I'm not sure it will reduce it.

BRIAN ROGERS: Captain Page.

CAPTAIN ED PAGE: It's an old issue. We've talked about as far as leaving options. And I would agree that we should allow for flexibility on storage and look at how the vessels -- opportunities, what have you, or some other -- depending on how the vessel is configured and what type of equipment it has for pumping and maybe bladder tanks, I'm just going to endorse his suggestion to leave some flexibility there for that.

And on Larry's comments I would say that, again, this idea of changing this max capacity really only benefits if -- everyone has to pay to build a huge cache of equipment at Dutch Harbor, there's probably an easier way to deal with that, because the risk really isn't there. We're assuming there's a risk, but as a

practical matter it just isn't there because the vessels don't sail with that much oil anyway. Everyone wouldn't buy that one. And so I would urge us -- in some areas it's worth it, but it's not worth it everywhere. That's for sure.

BRIAN ROGERS: Charlotte, Jeff and then Scott.

CHARLOTTE MacCAY: It may not be worth it everywhere, and it certainly may pull you out of the streamlined process, if that's -- you know, which may be your way of keeping the frivolous ones out. But if it means a big difference in the certain cases where it is very clear and it changes the whole thing for the region, I just hate to see the door shut.

BRIAN ROGERS: Jeff.

JEFF THOMPSON: Jeff Thompson.

Just to echo that. The example we've been using is Dutch Harbor in particular. Those large APL C-10s that have that much capacity are not carrying that much oil, and by reporting the actual fuel on board from the traffic from that area would give us, over time, I think, more of an average. That may not be useful for a planning standard, but it would be useful in terms of what the realities are in terms of the quantity of fuels and then for the PRACs to plan accordingly.

Now, I don't know how you would match that up

in terms of the response action contractors plan with DEC, but it would give us more of a target of what the true quantities are out there. And then it's more equitably served in terms that the small vessels aren't paying high fees that belong to a situation in Dutch Harbor because there's one large, very large standard out there.

BRIAN ROGERS: Scott.

SCOTT CARTER: Scott Carter here.

I didn't mean to belittle the Dutch Harbor thing. That wasn't -- I was just thinking on the spot charter market and our industry. And the same reason it takes us out of the prevention credits and prevention measures, we don't have the luxury of maybe planning this like other shippers do. I think that's fantastic that that's an option for those shippers, but I don't see it as a big benefit for the spot charters.

BRIAN ROGERS: Where we are, then, is we've got the recommendation number 5, and then we've got three alternate or supplementary recommendations.

The first additional either supplementary or alternative would be to recommend that onboard storage volumes should be examined by DEC as an alternative to meet the one-day storage requirement.

The second recommendation, if a vessel's

operating capacity in Alaska is less than the maximum operating capacity for the vessel, the vessel in its C-plan and the primary response action contractor may propose, and DEC may approve, alternate minimum equipment to meet the cleanup equipment requirements.

And then the third is that the storage capacity that's void while in Alaska may be included in meeting the storage requirements of a vessel.

So those are the three additional, or three other alternatives that would -- that could be added to 5. What's the pleasure of the group? My original thought was that we take a break after this -- after we complete number 5, but I wonder if it might be useful to take a ten-minute break first. That might allow some people to huddle on some alternatives. What's the pleasure of the committee, or the Task Force? Break time now.

Ten minutes. We'll be back on at 11:00.

(Short recess.)

BRIAN ROGERS: We're ready to get started again. Let me ask who in the group came up with the magic wording on this one during the break?

CHARLOTTE MacCAY: Personally, I would --

BRIAN ROGERS: Charlotte.

CHARLOTTE MacCAY: This is Charlotte.

I would be willing to be less adamant about the onboard storage as I would be about considering the actual volume or capacity. I think that's the greater priority to me.

BRIAN ROGERS: This one here?

Well, let's discuss that one. The issue of being able to demonstrate -- and we've got two different versions of this, one says "may" and the other says "will." If the vessel operating capacity is less -- in Alaska is less than the maximum operating capacity, the ability to demonstrate to DEC that that's the case, approving alternative minimum equipment to meet the cleanup requirement.

And Eric, you had your hand up.

ERIC BRITTEN: Yeah. I guess I'm just a little confused. I know, when I was talking, basically where I was headed was I was saying maybe we could look at our regions and see which vessels are setting the upper limits of the region. Because that has a direct bearing on storage capacities and cleanup capacities, and that could lower everyone's cost if we actually went and looked at actuals versus carrying capacities. Because I, too, am a little bit confused as to what the benefit might be for a vessel that certainly would fall under that, in many cases far below that. I guess I don't

know what the benefit would be to be able to establish that.

BRIAN ROGERS: Let me see if I can capture some of the discussion of the C-plan Work Group. The group moved away from assuming that everyone is a member of a co-op serving an area, and the standard -- the C-plan requirements had to be written to allow a vessel multiple avenues. One avenue being a member of a co-op, in which case the maximum would apply; a second is being part of a fleet plan, in which case the maximum within that fleet would apply; and the third, hypothetically, a vessel could come in on, by itself.

And so all of the recommendations of the C-plan Work Group are intended to accommodate multiple avenues, leaving free market forces, really, to determine what the most effective and efficient ways are.

The earlier work sort of assumed everyone's going to be a member of one or another cooperative, and really that's the -- what I see, as a facilitator, is the biggest change in the approach now is to not, effectively not require joining a co-op.

So that's why this would make a difference even if you weren't the largest vessel. That also drove, for example, a suggestion that where there was a -- I guess a reefer that had been stationed within three miles,

might station itself outside three miles, thus lowering the RPS for a region by staying outside the waters. So, a similar kind of issue where, I guess that's similar to this large vessel driving a region.

Charlotte MacCay.

CHARLOTTE MacCAY: It may also affect actual deployment costs. The site of what you have contracted to have staged somewhere, and if you have a vessel that's only half full, you may not bother to deploy storage to replace the volume of what's in that vessel. And I don't know how much legally you're allowed to respond to what's there as to what's in your plan at the time. So there might be some other constant.

BRIAN ROGERS: Is there any further discussion on this recommendation, leaving open the issue of "will" or "may"?

Commissioner?

COMMISSIONER MICHELE BROWN: I think I just want to point out that, you know, as we trend away from the assumption that it will be co-ops and want to leave the free market forces, if we go down this route -- and I will take exception to the mandatory when we get to that. But if we go down this route, there's going to be tradeoffs in the streamlining and the administrative costs go up and, you know, it's not going to be that

simple, if we're going to tailor it to each vessel. You're getting a much more complicated C-plan and the submittals may become more complicated as well, so I want to make sure people realize that there's a tradeoff there.

BRIAN ROGERS: Rick?

RICK HARRIS: I guess I'll speak to the mandatory. But I think that we still understand the idea of trying to create as large a group as possible. I mean, I honestly don't think that we will do a lot of individual vessel. I mean, I would -- if I start chartering vessels, what I'm going to try to do is control the amount of fuel they're coming in with. The same thing, we instruct them on what is the condition of the hold as well as everything else. We also instruct them on the amount of fuel that they can plan to bring into the area. So what we're trying to do is shrink ourselves down so that we're bringing in as little fuel as possible, which fits with some of the prevention strategies.

If I can show, convincingly, that we have a good strategy, then I think that it should be mandatory. I think that DEC should accept it, and as long as I can attest to them when that vessel is coming in, just like right now that I have a C-plan and they're aware of it

and everything else, I can also attest that it has -- it meets the maximum fuel capacity that we've set, coming into the region, then I see it all being still very simple and relatively straightforward and streamlined. So I don't think it's as complicated as it may be.

But speaking to the will, I think if I can show those things, then I think that it should be something that's mandatory. I've been into the business periodically where it becomes discretionary and, you know, it's like, well, we don't have enough time, we don't have enough people, you know, we get caught into that kind of a circus, but we end up paying potentially a lot of money.

Now, if I go to -- envision yourself being a rental shop, and I go to your rental shop and I say I want to rent all the scaffolding that you've got in your shop -- I know that I'm building this building and I'm only going to use half of the scaffolding, but because of OSHA requirements I have to have all of the scaffolding, the guy that owns that scaffolding is going to say, okay, I recognize you're not taking it out of the office, maybe I'll give you a discount on it, but you're still going to have to pay me to reserve it.

And that's what I'm concerned about here, is if I have a higher cleanup standard than the amount of that

fuel that I'm really bringing in, I still am going to have to pay the co-op or someone for reserving or holding that equipment. I mean, I would charge them that. I would say you're claiming my equipment, I'm going to then charge you some rate or fee. I may not charge you the full fee because I understand you will never use it, but I will because you're claiming it and I have a right to charge you for part of it.

So, that's another reason that I think it's important that if I can control the amount of fuel coming in, and I have the flexibility then to make it happen, and then if DEC will, and under those circumstances, accept a different regulated fuel capacity -- which is kind of a term somebody passed to me which may be a term of art we want to incorporate into the definition.

BRIAN ROGERS: Captain O'Hara.

MIKE O'HARA: I like the concept of judging on available fuel capacity, not the stuff that's there.

But I'll speak from a mariner's standpoint. When you start talking about controlling the amount of fuel based on the cost of, you know, the entry fee, or the insurance fee or whatever it is, however you set it up, the weather up here is so bad that there's no way to guarantee that you won't use up that fuel between now

and the next port. You can get stuck out there for days on end. The federal law requires a 25 percent overage for what your expected trip is. So -- and that's just for that reason, if you get in bad weather.

So, I don't know -- it's very difficult for the spot charter because, you know, if they're traveling from Pakistan to Chile and they get diverted to Alaska, then they've got to get out of Alaska in the wintertime to get to their next port -- I don't know, it's just -- it's so difficult for the spot charters to figure out what their fuel capacity should be.

BRIAN ROGERS: Captain Page.

CAPTAIN ED PAGE: I've been wrestling with that myself. I was wondering if maybe we should just have some type of cap where you don't allow them to go, to reduce their capacity by more than 25 percent or something like that, so they don't get in a situation where they're doing dangerous things and compromising safety so they keep the cost down for a spill response capability.

But I'm also trying to think, is should we put that in the context of what we really have in Alaska and which ships are the really big gas guzzlers, the APL ships. They're a liner service. Spot charters are typically a lot smaller, and so they'll never really

push the whole -- unless you've got some spot charter that, you know -- but even then they're probably not, the way they're configured. So if they pushed the whole response community up because a spot charter came in with a lot of oil, I don't see that happening. But I share the same concern. I was thinking earlier that I don't want to have an undesired outcome whereby vessels are taking chances so they keep their costs down. So, I don't know how to quite incorporate that, but -- or address that. Maybe just -- you can't reduce your capacity, your maximum capacity by your operating capacity by any more than 25 percent. Excuse me.

Because clearly some of them are configured, like the APL ships, they have a lot more oil than they need and they can go -- that allows them to buy oil with the best place to go, but also I think it's historically all we have in Alaska, and that route, they have been over and over again, you know, to top off. They're not topped off when they arrive in Dutch Harbor.

BRIAN ROGERS: Charlotte, and then Gene.

CHARLOTTE MacCAY: And I expect there's a whole lot of people who won't go into this. And I think if you qualify, then it's not -- you do not belong in the streamlined process if you're going to go into that. I think that solves a lot of that.

But I think if you're -- and I think nobody out there is going to want to push the safety margin. I don't see that as an issue. But I think the safety margin gets added a percentage above what you need instead of a percent below what your total capacity is. So maybe, you know, for the trip they have planned, they need X amount plus X percent, instead of you don't ever decrease below 25 percent.

CAPTAIN ED PAGE: That's harder to compute, though. That's back to Commissioner Brown's comment, and now you've got added a level of complexity. Capacity is a real easy one. You know -- it's in documents and just 25 percent off the plan.

CHARLOTTE MacCAY: Maybe it's something that's considered to be worked out in a work group in developing policies to do this.

BRIAN ROGERS: Gene Burden and then Rick Harris.

GENE BURDEN: I think that your last comment may well be right. I think we could be talking about this for a long time, and the basic issue is what's the required cleanup equipment for that first day. And I'd hate to see us fail to really address that issue trying to solve this issue.

I would say, though, that there may well be an

opportunity for individual C-plan applicants, due to the uniqueness of their operation, perhaps they're providing response equipment themselves, to argue their case to DEC, that they either by historical measures or internal representations the corporation may make as to the maximum amount they'll carry, that they're basing their planning on their actual operations, and that that's probably okay. I mean, you know, I'm representing the noncrude shippers, and I think the -- many of the folks that ship diesel fuel and jet fuel around the state of Alaska may be interested in that also. But -- so, I mean, if you approach it in that standpoint, DEC has repeatedly said they're open to taking individual applications based on the circumstances of that applicant.

And I would pose the question to Larry and to the commissioner, you know, if somebody comes in and says we never carry any more than 50 percent of the load and we're making a corporate representation that we'll never have over 50 percent, due to the uniqueness, this won't endanger us from a safety standpoint, it's an operational practice, it's our maximum operating capacity that we're going to allow in Alaska, and that's why we're basing our standards, DEC's not going to be in a position to go out and put the dip stick in to see how

much is there. You almost have to take it at its face value. But why not, couldn't you do that?

BRIAN ROGERS: Larry Dietrick? Do you want to respond?

LARRY DIETRICK: Larry Dietrick, DEC.

Yes, this issue is a verification issue, is what it is, and that's the problem here. You're approving a plan for three years, I think it's 500 vessels here or something, so on trip A in month one of year one they can run at 50 percent, and then what about the other trips? I mean, there's legitimate reasons why vessels change their operating practices. The distance of the ports they're coming from, et cetera, where they would want to adjust those volumes. And, you know, do we want to set up a system where we're going to be tracking this now every time they come in?

I mean, somehow I think the balance we're trying to hit here, too, is administrative ease of the system here, that we have all along been trying to maintain flexibility, but also have a system that's -- you know, we don't have a bunch of do-loops in it.

And -- I don't know. We can't verify it, and that's the issue. We've taken a clear position on other regulated facilities in regard to that in the past. I mean, if it's so certain that you're going to run at 50

percent, what we've accepted in the past as a way to accommodate that, then it's actually blind-flanging off that tank. Do operators want to go that far? Are they that certain? Well, I don't know. Maybe, maybe not.

GENE BURDEN: In an effort to keep this moving, too, Larry, would the department have any problem in agreeing to meet with interested parties at a separate time to talk about maybe some of the practical C-plan applications on what Charlotte's raised here? I mean, could there be -- maybe that can be sort of a collateral recommendation of this group, that the department examine this issue in collaboration with the C-plan applicants.

LARRY DIETRICK: Oh, certainly. I mean, we're -- I mean, we're in the process of making law, not enforcing an existing law in this that applies to these vessels. So what we craft here is hopefully what the consensus of the group is. So, I mean, discussing it is okay. I'm just trying to get out what the experience has been to date with trying to manage and deal with it as a point of reference. And I don't see it easier here because it's a greater number of vessels and greater vessel types. And I mean, I suppose we could staff up and try to chase this all around, but I'm not sure that's what -- are we really trying to do that, or no?

I think we're trying to shoot for a simple system and maybe there are some ways to do that.

You know, certainly more discussion, absolutely no objection to that.

GENE BURDEN: Due to the implementation schedule that we've got recommended, there's time to have those kinds of discussions, and I would throw out sort as a straw man recommendation that we go with 5 as it's been tweaked, with a sentence indicating that the Task Force recommends that DEC meet with the affected industries within the next -- pick a number -- the next six months, 12 months, to examine the issue of cargo capacities as it relates to planning standard.

BRIAN ROGERS: Commissioner Brown.

COMMISSIONER MICHELE BROWN: I was going to suggest something fairly familiar. The issues that Larry raised, the tradeoff between trying to get a simple system for everyone involved versus making sure that it's fair for any individual company, I think since we already have the recommendation that says we have to periodically revisit this with the affected industry, it seems like we could just flag this as an issue. As we go to implementation, whether they're going to go co-op or fleet plan or whatever, we can revisit industry-specific issues probably well before any due

date happens.

BRIAN ROGERS: Rick Harris, and then Heather and then Charlotte.

RICK HARRIS: I think what I wanted to -- what I was trying to propose is to create an opening, I mean, to create an opportunity, which I think we all agree on is fine.

I'm a little concerned, commissioner, your proposal, and yours, Gene, tends to kind of water it down in a way. I would hope that we have a little bit, out of this group a little bit stronger statement of saying that if, as a class of vessels -- and it could be just all the spot charter vessels or a certain charter group that has a certain kind of predictable route -- that they can go to DEC, DEC will be receptive to that effort, and will cooperate in order to develop a different response equipment requirement.

And I would like to make sure that that language is strong enough that it's there, and if I choose not to exercise it, that's fine; I know what my standard is, it's the 15 percent of my maximum capacity. But if I think that if it's beneficial for me to work with the agency, do something different, then I want to be able to do that. I'm not going to do it on an individual vessel. I don't see that that makes a lot of

sense, that I predictably charter 15 to 20 vessels a year, and I think that I can work on developing a pretty reasonable plan, because I don't want to forgo the speed aspect of it, the ability to have quick turnaround as vessels show up. But as long as our vessels know what their requirements are, I think we can meet it.

And I agree with -- I'm sorry --

MIKE O'HARA: Mike O'Hara.

RICK HARRIS: -- Mike O'Hara. I agree with him that safety is a factor. I mean, what I want to do is not go tell them how much they can bring in; I want to go see how much they bring in and look at what that capacity is. I mean, what do we typically see onboard. I don't want to tell a vessel he has got to reduce his capacity by 10 percent or 20 percent to save some money. I just want to know what they're bringing in because, you know, they generally count it's about half their capacity. But I want to look at that in detail. And if I can prove that to Larry and everyone else that this is typically what we're bringing in, then I think we can make a fairly good program requirement.

BRIAN ROGERS: Heather and then Charlotte.

HEATHER McCARTY: Yes, this is Heather McCarty.

I see a couple of things. One, I agree with Gene in that number 5 could probably be okay the way it

is, if we pulled out this discussion that we're having now, which is really an attempt to define capacity rather than an attempt to define the equipment necessary to meet the requirements that you arrive at when you arrive at that capacity. So it's two completely different things, in a sense.

And so, 5 is really okay by itself, as long as you agree that there might be another additional recommendation that talks about what capacity is. Because the larger question, for most of us -- you know, we're not all spot charter folks -- the larger question on the capacity issue is the big boys. Where are they? There they are. And we all go into Dutch Harbor and so do these guys, and so those of us who are going to join, potentially join a co-op that deals with these folks, are going to have to deal with the expense that's required to bring up the capacity to meet their capacity, if you know what I mean. And so that's kind of the larger question for me, and I think for some of the other folks around the table. For what it's worth.

BRIAN ROGERS: Is the group comfortable in dealing with the equipment separate and then adding a new 26, which is needs to be worked on, as to the maximum capacity and regulated capacities, dividing the question into two?

With that division, are there issues still on number 5, assuming that we still have to get into a definition on this capacity issue, and recognizing that the final vote doesn't come until we have a whole package together here.

Charlotte?

CHARLOTTE MacCAY: I knew you were separating it, but -- and I think in discussing it, there's a way to find a balance that keeps some administrative ease, and this just happens -- and I'm not sure it's all that important to spot charters, but I do see it's important in some areas. But I would like to see that that discussion happened in a shorter time frame so that it could fit into the legislative process so that they could come up with a decision and it could get worked into legislation. So perhaps within the next month or so might be more productive as far as it actually getting included, than waiting.

BRIAN ROGERS: Is there further discussion on item 5, the required cleanup equipment? Again, recognizing that we have a new number 26 that's yet to write.

Heather.

HEATHER McCARTY: The only problem I can see there is that in number 5, as it stands, it talks about

maximum capacity. Maximum operating capacity. So that would be okay then if we --

BRIAN ROGERS: We would then determine, define maximum operating capacity later in the process.

HEATHER McCARTY: Okay.

BRIAN ROGERS: With that, are we ready to approve number 5?

Stephanie?

STEPHANIE MADSEN: Just for clarification. This is Stephanie Madsen.

Are you talking about number 5 with your other two recommendations, or what happened to the other recommendations that were on this sheet over here? Your onboard storage volumes, those are --

BRIAN ROGERS: The onboard storage volume, as I understood, was another way of wording operating capacity.

STEPHANIE MADSEN: Okay.

BRIAN ROGERS: We do have the stationing of cleanup equipment in the next -- no, I'm wrong on that.

HEATHER McCARTY: I think it's two different things.

BRIAN ROGERS: Two different things. Okay. So that will be number -- so this will be -- basically, this issue of maximum capacity is 26, onboard is 27, and

the voids -- that's basically the same. That's basically the same thing. Okay, so number 27 will be onboard storage.

Okay. We've been at this an hour and a half. We're losing ground in terms of how many recommendations we have to deal with. I'd like to get at least one crossed off.

Are you ready on number 5? Is there any objection to adopting number 5, with the addition of "operating capacity" and the term "maximum operating capacity" yet to be determined?

Heather?

HEATHER McCARTY: I don't have an objection to adopting this in principle; however, I need to bring up this point.

This is Heather McCarty. And I hope that other people can understand this, not just the fishing people.

The last paragraph, acquisition of additional skimming capacity and additional storage, et cetera, et cetera, may, will likely be necessary and so forth. We've heard a number of times that we're not entirely able at this point to determine what that additional equipment will be, therefore -- and we also don't know from the co-op's point of view what their additional membership might be and so forth. It's an open question

as to how much it's going to cost for each individual vessel to meet these standards.

And so, I don't object to the principle of this, or of the others, but I want to reserve for my constituents their right to object to the cost should the cost become disproportionate to the value of this, because clearly that's the main consideration for my people. Sending out this draft material, getting back comments from the people I represent, they're all focused on cost, as is understandable. And so, once again, we've reached this point where we don't know, and we may not know for a while, what the cost is going to be.

And so, I just wanted to put that on the table, on the record, that some of the folks that I sit here for may eventually complain about the cost down the road.

BRIAN ROGERS: Further comments on number 5.

Yes, Sandra.

SANDRA JACKSON: Sandra Jackson, SEAPRO.

Wasn't nameplate capacity for the skimming systems supposed to be in there somewhere, rather than -- I mean, it should be defined here.

BRIAN ROGERS: So that would be the -- is that correct, nameplate skimming capacity?

RICK HARRIS: I think we agreed to that.

SANDRA JACKSON: Yeah, it was agreed, it just --

BRIAN ROGERS: I'm not sure that that is consistent. Is it? It seems to me that we now have -- that that yields a different -- we would have to change the paragraph of definition. Am I wrong? Maybe I don't understand the issue well enough.

If everyone's comfortable with that, I won't say anything.

CAPTAIN ED PAGE: I think the point was earlier it wasn't clear to me if we were talking about D-rated or nameplate, because Larry indicated it was nameplate based on what was done for the previous 267, or whatever it was. So I don't know whether it needs clarification or if this builds on the other legislation. Packaged up with the other legislation, I guess that's already been defined, so just leave it as definition, is the impression I got --

SANDRA JACKSON: Oh, okay.

CAPTAIN ED PAGE: -- and that's why we kind of let it go. But if that's not the case, then it probably should be defined because there are some folks like myself out there that..

BRIAN ROGERS: So, in the example that was

given that came from the group, the nameplate would need to be 300 barrels of spilled fuel per day, not 360 barrels. So it seems to me that we'd have to change the text to explain it, unless I don't understand.

CAPTAIN ED PAGE: I think it's okay, as a practical matter, to go pull up some water with it, is the example here. Right?

BRIAN ROGERS: And the discussion of the group was it had to be 300 actual barrels of oil, not 300 barrels of oil and water mixed.

GENE BURDEN: That's correct. That's -- that prompted this examination of the two different types of skimmers. So it was based on net volume to equate to that 300 barrels, regardless of what the nameplate capacity was.

BRIAN ROGERS: So it's not nameplate?

GENE BURDEN: No; it's actual oil recovery.

BRIAN ROGERS: So it would be the oil recovery skimming capacity.

SANDRA JACKSON: Now I'm confused.

CAPTAIN ED PAGE: Now I am, too.

BRIAN ROGERS: Larry, please.

LARRY DIETRICK: The actual oil in your nameplate, in your example there, is 360. That would be the amount -- that nameplate-rated pump that can pull

360 would be recovering that much oil plus the 20 percent water.

CAPTAIN ED PAGE: The nameplate refers to the amount of oil, not to oil and water.

LARRY DIETRICK: The nameplate refers to the rated pumping capacity of the pump, all liquids.

GENE BURDEN: It's all liquids on the nameplate. And that's really why we worded this this way. And correct me if I'm wrong. I think the cleanup equipment required for nontank vessel to meet its RPS, including skimming capacity capable of cleaning up 15 percent of its maximum operating capacity. Fifteen percent of its oil volume. And that's why it was worded like that, because that's very specific. Regardless of differences on nameplate capacity, this recommendation was you ought to be able to clean up 15 percent.

And, Paul, is that your recollection?

PAUL FUHS: That's correct.

SANDRA JACKSON: Okay.

BRIAN ROGERS: So how do we word this so that everyone will understand that --

GENE BURDEN: Well, I just raise the question, does it need to be worded any differently?

SANDRA JACKSON: I withdraw the --

GENE BURDEN: I think it says 15 percent of the

volume. I mean how -- is there a need to --

SANDRA JACKSON: No.

GENE BURDEN: Okay.

BRIAN ROGERS: There is a table that shows some examples that's in the RPS Work Group summary that we could put in here that might help explain.

Lee Egland.

LEE EGLAND: Maybe just in this same paragraph, it's this issue, are we talking about one day or are we talking about five days. Obviously, we have determined it's going to be one day -- and I was talking with Pat. Maybe to make this a little less confusing, where it talks about 300 barrels of spilled fuel per day, instead of "per day," maybe it's "in a day." It's one day's worth of 300 barrels. It's not -- "per" kind of lends itself to more than one, doesn't it? So, if we --

GENE BURDEN: But that's the -- it is more than one for skimming. It's five days for skimming. Three hundred barrels skimming per day for five days, because the standard is 1500 barrels if you had 10,000 barrels of fuel. The storage capacity is just one day, period. So that's the difference.

BRIAN ROGERS: I think if you take -- following what Lee just said, actually in the recommendation, and storage capacity that equals one day's recovery capacity

of a chosen skimmer, I think that's what it is you're trying to say.

LEE EGLAND: Right.

GENE BURDEN: Yeah, that's fine.

BRIAN ROGERS: Instead of the daily.

LARRY DIETRICK: Use five days to determine the skimmer rate.

LEE EGLAND: Right.

LARRY DIETRICK: One day to nail down the storage.

BRIAN ROGERS: So with number 5 we've got the addition of operating capacity, we've got the change to one day, and at this point no change in the recommendation other than those two. Then in the text we have the discussion of demonstrating a variety of means for storage, that we're not just dealing with one type of storage.

Are you ready to vote? Is there any objection to adoption of number 5 with those changes? Hearing none, number 5 is adopted.

We're ready to move to number 6. Number 6 is the stationing of cleanup equipment, and the issue that's been raised so far is under B. We have the change already made from position the equipment in its subarea of operation to position the equipment at the

site of operation. And that's been accepted as the -- what it was the group actually was deciding -- what actually came out of the group. And we have on number 6, the suggestion, deletion from the explanatory material of the last two sentences, beginning with "the success of this strategy" through "DC-6." So that's where we are at this point.

On discussion, Charlotte?

CHARLOTTE MacCAY: I just wanted to clarify, because I think some people misunderstood what I was doing. Everyone has that option and you just have it somewhere in your subarea. And where I was replacing the wording was in the exception that you weren't staging in your subarea, then you're showing a 24-hour ability to get into the site.

BRIAN ROGERS: To the site, yes.

CHARLOTTE MacCAY: And that was just in the exception part.

BRIAN ROGERS: Heather.

HEATHER McCARTY: Now I don't understand. This is Heather McCarty.

CHARLOTTE MacCAY: Sorry.

HEATHER McCARTY: I'm looking at number 4 and I'm seeing that it says stationing the control and containment equipment, blah, blah, blah. Must be

stationed within the subarea of the vessel's operation.

BRIAN ROGERS: Yes.

HEATHER McCARTY: And I'm seeing that if we change the one, that the statement of that in 6, it will be different. And now I really don't understand what you mean.

BRIAN ROGERS: The discussion has been the control and containment has to be in the subarea; the cleanup either has to be in the subarea or needs to be able to get to the site within 24 hours.

HEATHER McCARTY: I see what you mean. Okay. Okay.

CHARLOTTE MacCAY: It's a little bit more controversial than... (inaudible)

HEATHER McCARTY: Okay.

BRIAN ROGERS: So, basically 4 is boom, 6 is skimmer.

HEATHER McCARTY: I see what you mean. Okay.

BRIAN ROGERS: Stephanie.

STEPHANIE MADSEN: Well, the difficulty in demonstrating where don't know where you're going to have a spill -- I mean, if we're mobile, we're not going to be able to demonstrate necessarily to the site, but we could demonstrate with the original language to the subarea. And we talked -- in the work group we talked

about the need for cascading in equipment to clean up. And so I understand Charlotte's situation, and my recommendation would be that you leave both options in there. That you would change the wording to "reasonably demonstrate to DEC the ability to position equipment at the site or in its subarea of operation."

That way, you could demonstrate how you're going to get it, you know, from Anchorage to your site. I could demonstrate that I can get it from Anchorage to my subarea.

CHARLOTTE MacCAY: Yes.

STEPHANIE MADSEN: And that allows the original intent of the work group, although it, you know -- because the site of operations for us is -- I mean, we're not going to be able to demonstrate that, so you've really taken one option totally away from us.

CHARLOTTE MacCAY: That wasn't my intent.

STEPHANIE MADSEN: And I know that wasn't your intent, so I'm sure you won't object to rewording that so that we'll have that option.

BRIAN ROGERS: Gene Burden.

GENE BURDEN: I agree 100 percent with what Charlotte just said, that our intent in the group was to provide clear options for both these scenarios, so that if you didn't have equipment stationed, you just

demonstrate you can get into the subarea. So, I'm very comfortable with the language just like it is.

CHARLOTTE MacCAY: I am, too. I thought I was just being picky.

CAPTAIN ED PAGE: So we're back to subarea.

GENE BURDEN: So we're back to original...

BRIAN ROGERS: Back to the original subarea, or are we at the site or in a subarea?

GENE BURDEN: I don't see how you can do the site, because you don't know where the accident is going to be, and I think it has to be at the subarea for planning purposes.

CHARLOTTE MacCAY: In my visualization, we're very unique and we have these sites. That's where I was coming from. Never mind.

BRIAN ROGERS: For logging and ore, you probably have at the site. And for fishing, you have in the subarea.

RICK HARRIS: Well, even logging, yes and no. If you don't anchor, yes.

BRIAN ROGERS: Well, wherever --

So we're back to the original language as in the report. Is there objection to the language -- is there objection to removing the last two sentences from the explanatory material?

Rick Harris.

RICK HARRIS: If I can just speak to that.

Periodically I notice in the report we have sort of an anecdotal statement that seems to detract from the report and we start saying you have to use DC-6s or Hercs. Well, in Southeast we don't have either that I'm aware of. Maybe we have a DC-6 around once in a while. But, I mean, I have to be able to show that I can get the equipment to the site in a specified period of time, and when we start saying this, it seems to -- it's anecdotal kind of continuation that isn't helpful, and that's the reason I suggested that we remove it. Because, I mean, we have Zicorskis down there; you don't have Zicorskis. I don't have as far to fly. So there's a variety of different pieces of equipment, so it just seemed to me not to be helpful, and some day we'll argue about, well, you didn't say helicopters so therefore that's not good enough.

I mean, that sounds asinine, but periodically we get into those very discussions. And I could go to -- I won't do it, commissioner, but I have another continuing discussion with her and her people over that very same kind of minutia, so I'm a little sensitive to it at times.

BRIAN ROGERS: With the two amendments --

excuse me -- with the one amendment with the explanatory language on number 6, are you ready to adopt?

CHARLOTTE MacCAY: Yes.

BRIAN ROGERS: Is there any objection? Hearing none, number 6 is adopted as it stands with the change laid out in the text.

That brings us to -- okay. That brings us to IMT, which is number 13. No. I'm sorry. Yeah, it's number 13.

Number 13, we have the original recommendation was that DEC shall specify the requirements for qualification as an IMT. I, then, added in the text, DEC's recommendation, which really becomes a spelling that out.

And I'd like to circulate an e-mail from Doug Lentsch, his comments on recommendation number 13. DEC has recommended that the ICS model from NIIMS be used to standardize the incident command positions, and then recommends an IMT structure in terms of what is required to be specified in the C-plan based on the RPS volume of persistent or nonpersistent, which is either 0 to 5,000 if persistent, or 0 to 10,000 nonpersistent. The individual -- the vessel would need to identify the incident commander, qualified individual. For larger RPS volumes above 5,000 of persistent, or above 10,000

nonpersistent, the incident commander, finance chief, planning chief, operations chief, logistics chief, and QI.

And that's DEC's recommendation, and would -- or could substitute for the number 13 to actually make this the recommendation. Doug Lentsch has said that his concern is that a spill of that size, that that's insufficient number of persons to have dealing with the spill.

And, Larry, maybe I'll go to you first in terms of responding to that issue, and then open this up for discussion.

LARRY DIETRICK: Okay. Yeah, Larry Dietrick.

First of all, let's keep in mind here that this isn't what it takes to handle a larger spill. Neither is the 15 percent RPS enough to do what you've got to do. And neither is just taking it to the subarea. Okay?

What we're trying to do here is define generically for a whole class of vessels what a minimum starting legal requirement is. And this was our minimum. It's not to suggest that this is what you can get by with in a real response.

So once again, it's just like the RPS. It's just like what we've been trying to sort out today.

It's, okay, what's a minimum thing that will be acceptable for nontank vessels and a way of starting out incident management team, and this is what we threw out there as a straw man.

But we otherwise agree with Mr. Lentsch. And indeed these are huge spills, even a 5,000 would be considered -- 5,000 barrels is very large. That's 200,000 gallons, so that's a very large event. So you will need -- I would say it's a 40-person team for a real big one. It's probably even a little bit light. But what do we want to establish for nontank vessels in terms of an IM team? IMT minimum to get a plan approval. And that is what we propose.

BRIAN ROGERS: The other item that came up earlier, there's been discussion of the Alaska marine exchange. This might be an appropriate time to get a little more information on the discussions of forming a marine exchange, because it's one of the functions that has been discussed there. I don't know, Paul, if you'd want to just talk about that now as something that was discussed with the steering committee earlier, trying to make sure we had some information about the marine exchange. I think this is as good a place as any to put it in the agenda.

PAUL FUHS: Okay, thanks, Brian.

This is Paul Fuhs, for those of you on teleconference.

We've talked about a marine exchange for a while. Jeff Thompson and Captain O'Hara and Ed Page and a bunch of us -- Simon Lisiecki. We talked about the educational opportunities and the transponder system. There's marine exchanges in San Francisco and Puget Sound. As we went through this, it seemed that it may be a function for the marine exchange to do coordinated incident command as a co-op, similar to a PRAC.

Now, when the PRACs spoke, they said, well, they could do incident command, but in a way it's kind of a conflict of interest because then they'd be directing themselves to go out and do this work. Insurance companies were nervous about that, they want somebody who will have some fiscal control over the response. And here we had a whole new set of previously unregulated industries that this wasn't really their business. Now, if you're an oil company shipping fuel, it's probable that you're going to have incident command internal to your company; but if you're a fishing company or a spot charter, you probably don't have that.

So, what we talked about as a function here for the marine exchange that would provide incident command. You'd have professional staff, you'd have the

communications equipment necessary, and we figured that it would be up to DEC to lay out those requirements for a co-op like this, just like they do for a PRAC.

So I don't know what regulations would be developed, but it would be along those lines to make sure you had the qualified people, that you'd have the communication systems and everything in place to do that. So that's the concept of the marine exchange in this context.

You talk with the fishing industry, with some of the spot charters, it seems there's quite a bit of interest in it and that it provides an efficient response. It could also really help hold the costs down of a fully-regulated industry in meeting this requirement.

BRIAN ROGERS: Gene?

GENE BURDEN: Okay. I support this concept, but I don't see merits in breaking this out and having different position requirements specified on the basis of a spill.

Number one, you don't know how big the spill is going to be, in terms of planning standard anyway. And what I'd suggest is that you simply say that the parties identify an incident commander that's a qualified individual under the 33 CFR, and the rest of the

supporting cast, if you will, for dealing with the largest probable spill that they may have. So that if John Doe's the incident commander that you identify, you also are able to fill in the other names of the key positions that you'd have on your command team as part of your plan. I mean --

BRIAN ROGERS: Jeff Thompson.

JEFF THOMPSON: Well, germane to that, Gene, is the marine exchange concept, as we've been discussing, is modeled largely on Washington state maritime cooperative, and how the nontank vessel and tank vessel community, users of Puget Sound, came up with a system to basically capture all vessels with a C-plan as it came into Puget Sound. They've been very successful with their program, and their program is administered to a large degree by the marine exchange of Puget Sound. So therein lies our interest.

Insofar as the plan itself, the way it works there, is that the marine -- the WSMC, through the marine exchange, has the first 24 hours of -- administer the response. They are the IC for the first 24 hours there in Puget Sound. And the primary contractor is Foss Environmental. And generally speaking, the RP would come in after the 24-hour management by the -- by WSMC itself, but the Foss Environmental is the

continuum. They're the contractor that would continue on, so there's not a disconnect between the initial 24-hour response and further cleanup requirements.

The -- their plan -- I have a copy of their plan. It's Foss Environmental's proprietary plan that basically is given to WSMC. And if we were to do this as a marine exchange, we would look for a similar situation with our available contractors here and basically it's what we've been discussing in the C-plan group all along, a streamlined plan would consist of the SOPEP and membership in a co-op such as the marine exchange, and then the IMT. And IMT is really addressed by the exchange and the -- excuse me, the generic plan, the master plan, if you will, specify all the requirements and staffing in terms of what's being asked for here with the IMT itself, and using it as a model.

So it's just a long way of saying that bringing in the marine exchange is germane to this. I agree with Gene, that it may not be really necessary to have these ICS positions required until such time as DEC gets a chance to really look at the plan, whether it comes from a co-op like the marine exchange or whether it's an individual plan. I just don't see why you want to limit yourselves to DEC in that regard.

BRIAN ROGERS: Lee, then Charlotte, then John,

then Simon.

LEE EGLAND: Yeah, Lee Egland.

I just throw out a suggestion. I've been involved with spill management for a number of years, worked on various task forces, from revising the existing U.S. Coast Guard fog manual to doing lots of work around this particular subject.

My suggestion of recommendation would be to -- why reinvent the wheel here? This is an issue that, I think even under OPA, was a little -- was left a little short-sighted from the standpoint as to really clearly identify what's required. In OPA, for tank vessel operators, they're required to have nine positions. That's the command staff and the general staff.

But we all know, you have a medium to a large spill, I mean, that's like having a boat without having gas. I mean, nine people aren't going to do it. But I think the assumption is, is that at least if you've gone that far, you've given a significant amount of thought to what people are these -- how much the general staff can bring with them to fill the other necessary functions.

So, I would recommend we just adopt, you know, what's the national standard? You've got to identify nine positions. Regardless of how big your vessel is,

the bottom line is it's dependent upon where you're at. I mean, you know, you could require a whole lot more people than nine for even the smallest of spills because of the environmental conditions that you may be faced with.

So, to keep it simple, I suggest and would recommend we just go with, you know, the nine positions, that is -- on a command staff level is the incident commander, the information officer, the liaison officer, the legal officer -- did I say safety officer yet? Okay. And then you have the operation section chief, the planning section chief, finance section chief, and logistics section chief. There's nine.

GENE BURDEN: You get an A.

CHARLOTTE MacCAY: Make him do it again.

GENE BURDEN: Backwards this time.

LEE EGLAND: So it's nine people, and just be done with it. I mean, because this is such a vague and ambiguous topic that everybody knows, why do we want to do something more than what the federal government's done, and it's -- it's understood it's nine positions, and understanding that, you know, Kuroshima, we talked about it, they had more people, you know, in upwards of 100 people in the spill management team. They had more people in the spill management team than they had

outside physically cleaning up the oil. So, I'm just saying, I think nine people is it, and move on.

BRIAN ROGERS: Senator, do you have a question on that?

SENATOR DRUE PEARCE: I have a question on that.

BRIAN ROGERS: Go ahead.

SENATOR DRUE PEARCE: Does that then assume that those nine people all have to have been to ICS training, or only the commander and the other eight can be designated, because you're running into pretty large costs. Some of the companies may not have nine people in states to send off to training, but that would be expensive.

LEE EGLAND: Well, that kind of gets into the issue of, you know, do we want to defer to DEC to come up with some qualifications for these individuals. And, quite frankly, I don't think we want to do that. I think we have to leave it to the companies to say that they -- they're going to provide a plan that says here's who are going to fill these nine positions, and they need to be qualified or, you know, they need to have a good understanding as to what their roles and responsibilities are going to be that they're going to be filling in the IMT, and just leave it at that.

Because there's been a lot of talk, and I know that the AIMS group has done a lot of work on training and some qualification issues, but I don't think we want to -- you know, I think you can just leave that part of it just somewhat vague, because we know that if it's going to be a marine exchange of Alaska or if it's going to be a co-op that's going to take it on, the co-ops are just going to basically contract with a spill management team company such as Erst-O'Brien or Gallagher or, you know, a firm such as that that are going to come in and fill those positions.

You know, a Crowley, which is the company I work for, we've been practicing NIIMS ICS for nine years now, so we do our own.

SENATOR DRUE PEARCE: Right.

LEE EGLAND: We just say in our plan that, you know, here's the box. And we have a short team and we have a long team. And here's the people that are going to do it and they will be trained and qualified in how to get it done.

And we've trained with DEC through notification exercises, while our plan says -- correct me if I'm wrong, Larry. It's been a while since I've been in our plan because I'm not doing that planning anymore, thank goodness -- but, you know, we have the whole team, but

what you require of us is basically the nine positions. Understanding that you want to see where you're going to get these other guys, but that's what you're really required to have, is nine people, and there isn't a lot of clarity required to -- you know, how qualified are these people, but they just have to move ahead.

BRIAN ROGERS: I've got John, Simon, Bob and Rick, and once we finish this recommendation we've also got a lunch incident.

Charlotte.

CHARLOTTE MacCAY: From the spot charter point of view, the IMT is really important. It actually kind of falls into the functions of this agent and this response planning facility group as we had defined it. And it was very important that it be very well defined in the regulations and even in the statute so that they clearly get the same and even legal immunity as a PRAC. And so whatever evolves out of this needs to give some very definitive role to the IMT people as a PRAC so that they are protected, or else they're not likely to step up to that role.

BRIAN ROGERS: And I believe that issue is addressed in the legal opinion by Breck Tostevin --

CHARLOTTE MacCAY: That needs to (inaudible) with whatever else --

BRIAN ROGERS: John.

JOHN HANSEN: Thank you. John Hansen.

Just a couple comments on this. It seems to me that it would be better to approach this from the standpoint of what are the duties that need to be performed rather than by naming individuals and titles of individuals and so on. So that would be one comment on this.

The other comment would be this threshold of going from 5,000 to 5,001. There ought to be a little more continuity so you don't have to all of a sudden have to trigger in a whole crowd of additional people at that point. You may well need that, the larger number for a smaller spill, say in a sensitive area that you need the larger numbers.

Thirdly, it seems to me that we need to make sure that this is consistent with what the P&I clubs are satisfied with, that it would meet their requirements, in terms of the definitions of roles and responsibilities. And I don't know if we have had a chance to talk to the insurers to make sure that that ground is covered.

In terms of the issue of the marine exchange, I think it's an intriguing idea, but I've sure got a lot of questions about how it would work and how it would

fit with the existing co-ops and so on, whether it would be duplicating efforts or how it would match the responsibilities of the existing co-ops. So I'd sure like to see a little more discussion on that.

BRIAN ROGERS: Simon.

SIMON LISIECKI: I like the idea of this marine exchange with a generic plan, and I think that the developer of that generic plan will obviously have to plan for the largest spill for that area. And I think that will help drive how many people you need for the response. And I like Lee's idea of being consistent with the federal regs.

BRIAN ROGERS: Rick Harris and then Ernie Piper and then Larry Dietrick. Oh, I'm sorry. Rick Harris and then Bob Heavilin and then Ernie Piper and then Larry Dietrick.

RICK HARRIS: I think that this is another useful discussion, and perhaps as striking as the one we had at the last meeting or one of the sub meetings on the cost and the amount of spill equipment, and all of a sudden I start listening to this huge number of people that we need. And, again, I'm on a spot charter thing with a vessel that doesn't get anywhere near 5,000 vessels in its capacity. And I listened to all this and I go, there is a lot of people out there that somebody's

going to have to pay for. And then I begin to wonder, well, what do they charge for a spot charter vessel to go into Puget Sound, you know, to be covered by this marine exchange.

I mean, I listen to it and I listen to this magnitude of people, and I think our shipping in Alaska is nowhere near the magnitude of what Puget Sound gets. I may be wrong. But I listen to this and I don't see that we have the same magnitude of people, and I get very nervous that maybe, when I was worried about equipment, I really should have been worried about people in the IMTs and how big this thing can get. Because, I mean, if we're going to have to have nine people, then everybody in this room is -- or in the spot charters in Southeast, or SEAPRO or CISPRI, or the various -- somewhere I have to start paying for that, I mean directly or indirectly. When I charter the ship, the ship is the C-plan holder, the ship is the -- has the response responsibilities. We work with the co-op. But ultimately, it all comes back to me and I pay for it. I mean, I have to pay for the cost of the ship. I mean, they're already going up, and then we add this and I wonder, how much am I talking about here?

BRIAN ROGERS: Bob Heavilin.

RICK HARRIS: If you could shed some light on

that, it would help.

BOB HEAVILIN: Yeah, Bob Heavilin.

Let's see. I agree with what Lee was saying, and also with what John said. And I think that what we need to remember is that ICS is a modular system and we only fill the positions that you need. And to say we need nine is probably right, but to say that you need nine people to fill those nine positions might not be accurate. You might -- really, ICS is really just a way to arrange your thoughts to carry out an operation. Somebody has to be in command, you have to deal with safety, you have to deal with legal, and all the other things that take place during an incident.

So, you know, as I said before, if you have an incident and if we're coming out with our equipment, you know, we're going to work under the RP. It's not to say that Chadux might not in the future develop a short team of people that are going to be available to be incorporated into that incident management team that a company might have. Or we certainly can go to our yellow pages that we've developed that has a list of vendors that would have folks that would be available to fill those different positions. So, Lee's absolutely right, there's nine positions. But to say that you're going to have to identify -- Crowley, of course, does,

because they're a huge company, and they've done that in their preparedness. But, you know, I think that we can keep this pretty simple.

BRIAN ROGERS: Larry, Ernie, Captain O'Hara and Jeff.

LARRY DIETRICK: Yeah. The paragraph below that table is actually supposed to be a footnote to the table. The nine positions that Lee's talking about, there's actually -- Alaska uses the ICS, so if you have a nontank vessel spill in Alaska, we will be pulling in the ICS. As a matter of fact, the Alaska Incident Management System that's the latest version now of an oilized incident command system, it's totally integrated with the national contingency plan and it is the model that's used in here. And it's basically the nine-person structure that Lee's talking about, five of them are the five box positions, the supervisory positions. And that's the incident commander, and an operations planning logistics and finance.

The other four are command staff positions that support the incident commander. The command staff positions are mentioned in the footnote, but these are otherwise the core positions. And I would say most spills and drills, you always have an incident commander. The next one you usually fill out in a

modular approach is operations, so you kick in planning, logistics and finance, and then you just start ramping up as necessary to deal with the incident.

I just want to flag on here that this is just a starter kit again, so we don't want to get confused about what we're trying to set forth as a requirement to get a plan approved here right now with what it will actually take when you get into a spill, because when you get into an actual spill it will take whatever it takes to do it. And that could be 39 positions or it could be 102, or it could be two, or whatever it takes.

So, this is the starter kit that needs to be ready by the nontank vessel industry in the event that you have a spill. This is the preparedness element here. And the one that we feel pretty strongly on here is the qualified individual. The problem we've had with nontank vessels is who is in charge. And so the qualified individual here -- you see incident commander and qualified individual, those could be the same person. Okay? You could have one person, and if it's the vessel rep, he's the qualified individual, we want to see the qualified individual in the submission that's made for the C-plan. That's the person who has the resources to commit assets. We're using the federal definition for qualified individual, so that's the

person with the checkbook and the authority to commit the company resources to conduct the response. That person may or may not be the incident commander, but we need both of those as the bare-bones minimum.

Beyond that, we need ICS positions that would fall out to the command staff position first and then the supporting positions to fill it out. But these are the ones that are envisioned to be lined up before a spill occurs. That's why we present them as a minimum. It's a core team you need to get started if you have an event. I guarantee if you have a 5,000- to 12,000-gallon spill, you'll have all five people activated. You just won't be able to get around it. That's a real big event. You'll have all nine. By then you'll have kicked in the command staff positions and you'll have quite a few more than that.

So, these are real minimums here again, but, again, it's from the standpoint of what should the starter kit be that should be lined up and in place when a spill happens, and this is what we're saying is the minimum.

BRIAN ROGERS: Before the next person, just a note. Going back to our database, basically this says APL and President is group 2; everybody else is group 1. Because at 30,000 barrels, the RPS is 4500 barrels for

the largest vessel other than those two -- groups of vessels.

Ernie Piper.

LARRY DIETRICK: Brian, I've just got a follow-up to that.

You know, we don't necessarily even have to have these breakouts, as far as I'm concerned. The minimum core team doesn't have to be -- to me it's, you know, if this is a minimum core team, that starting team, is fine for anybody that's regulated under this legislation. This is a starter kit. The breakouts here are just kind of artificial.

BRIAN ROGERS: Captain O'Hara.

MIKE O'HARA: I had my question answered.

BRIAN ROGERS: Okay. Jeff Thompson and then Lee.

JEFF THOMPSON: Just to follow up a little bit on the WSMC might be a useful model for us to use the marine exchange to address some of Rick's concerns as far as cost, is that the exchange as a cooperate would hold the contract with an IMT entity that's acknowledged by DEC. The actual deployment of that -- of that, or anything else for a spill response, of course, comes from the RP, not from exchange itself. All the exchange does is put in place on a cooperative basis, for as

large a pool as necessary, those elements which are going to be required by this legislation, and do so cost-effectively.

The cost in Puget Sound right now, depending on the rig of the vessel, your size of the vessel, is about 100 to $200 per port call for a vessel. That's pretty much the irreducible minimum of what it costs for those vessels to comply with Washington state law when it comes to nontank vessels contingency planning.

So albeit, you know, it's a concentrated area, there's more people, than dealing in Alaska where it's such a huge, a much larger area. But I think there's still, at least from a regional standpoint, the model is apt for us from the standpoint that we can, as a group of vessels and trades, come together as a co-op, either through a marine exchange or a like organization as a nonprofit, that the benefit is to those shippers and those vessel operators to meet the standards of this legislation cost-effectively.

BRIAN ROGERS: The facilitator made a mistake. I skipped over Ernie. I guess I must be trying to move a little bit too fast here. So, Ernie, I'm sorry.

ERNIE PIPER: As all us know who have used ICS and have watched over the last ten or 12 years, there's an incident command system which is enormously useful,

and then there are people that are ICS junkies. And I think that it's critical that the kind of command staff that Lee described and that Larry described, I think is about as far as you want to go, because the intent of doing that is to make sure that the RP can successfully provide a common -- to participate in a common framework for efficiently managing a spill without getting too far into haggling over what aspect of ICS is being implemented in what way and how many angels are dancing on the head of the incident commander.

So, I would say that when this task force looks at this, that we not go too much further than what Lee and Larry have described, as the core people who are able to interface properly with the regulatory agencies.

BRIAN ROGERS: Lee, and then Stephanie, then Charlotte.

LEE EGLAND: Just a quick comment. It's very important for us to identify the positions, whether it's two, or nine, so as that the people that are going to provide this service, either directly or indirectly, can put a box around how much it's going to cost.

For example, if we go to Erst-O'Brien and say, okay, we would like to execute an agreement with you to provide nine bodies for us, they're going to give us a cost based on how many vessels they're going to be

covering. Okay? So whatever it is, whatever the group decides, I'd vote for nine, consistent with the national contingency plan, consistent with the subarea plan, consistent with everything else we've got. Just go with the nine and be done with it, and move on.

BRIAN ROGERS: Stephanie, Charlotte, and then Heather.

STEPHANIE MADSEN: Stephanie Madsen.

I guess I'm to blame to have this on here, because it was important for me to provide flexibility. If you wanted to come up with your alternative compliance, you needed to know, in regulation, what was going to be required if you were going to provide that service for yourself. And I couldn't find anywhere where it was defined.

So I'm of the mind that minimal is better. I'm supportive of the starter kit. And I think that I'm looking at it not from a person's perspective that's going to hire someone to do it, because I think that's easier, and if you have the money, you can do it. I'm looking more of a person that has vessels that wants to do a fleet plan, that believes it has the resources in-house to do this. And so, I would maybe go to the five that are listed -- without the delineations of fuel capacity, but the five that are -- the core that are

listed in the second box, understanding that you're going to kind of cascade in your ICS team like you are your cleanup equipment, because it's all going to be based on what size spill that is and what you're going to have to do to get it cleaned up.

So, I'm of the mind to go more to the minimum than nine, to go with the starter kit, but that it's very important for those that want to do alternative compliance, that they understand if they have to be separate bodies and what training may go besides just naming them -- and I guess I'm not familiar enough with 33 CFR to know if the training is defined there, or are you just identifying people who are going to fill these positions with no specificity on qualifications or required training. So I need a little help there. And again, mine is more likely to go with the second box than the nine.

BRIAN ROGERS: Charlotte.

CHARLOTTE MacCAY: Excuse me. This is Charlotte MacCay.

I pretty much agree with Stephanie. And there was some comment about the incident commander and qualified individual may be one person, in which case we need the word "and/or" instead of a comma, just for clarification.

In regards to the marine exchange, which may be a very good idea, I think it's a side note at this point in time. I think if one is formed, it needs to be optional. In the sense we're dealing with an optional, we need to keep it open. And if one is formed, it would need to be more of a public process that we don't have time for now.

And so, it may be a great thing that comes along in time, as long as we're considering the option of independence. I don't know that it's pertinent to deciding this issue.

BRIAN ROGERS: Heather.

HEATHER McCARTY: This is Heather McCarty.

Yes, I agree, Charlotte, that we have to keep it at a level that may be obtained by people who may not be capable of having a large group of people hired.

I think the marine exchange sounds like a great idea, and I know that some of the people I represent think so as well. And so, I think it's a wonderful thing to move towards. But what if it doesn't happen right away and you're faced with doing this without such a service for whatever reason -- time, element, and so forth. So, I guess I would go with the lower recommendations as well.

I guess I also would like to ask the question

that Stephanie asked, about the 33 CFR. If somebody could answer that question in terms of the training requirements. I don't know who is best qualified. I'm not familiar with this area at all.

CAPTAIN ED PAGE: And I don't know it specifically.

Bill, do you know how that is worded, the verbiage we use in 33 CFR and the qualifications?

CAPTAIN WILLIAM HUTMACHER: No. No, I wouldn't want to quote it.

BRIAN ROGERS: Actually, I think it's Craig Lewis, as I recall.

CAPTAIN WILLIAM HUTMACHER: Can I ask -- Larry, I understood you to say that that qualified individual, 33 CFR 155 and 102 applies to the QI. (Inaudible)

LARRY DIETRICK: That's QI. It's not a qualification itself. 33 CFR, the definition for that, which is a federal definition, simply states along the lines that you have to be the designated person by your CEO that has the authority and resources to commit resources during a spill, period. So it has nothing to do with the qualifications.

HEATHER McCARTY: Okay.

LARRY DIETRICK: I would say on the qualifications issues, we're all going to use ICS. If

you have an event in Alaska, it's guaranteed we'll be using the five-box structure, which is probably what you're familiar with, which is these things. That's going to happen, I guarantee it.

Now, where is the roles of these positions laid out? Well, there was an industry/state/federal group that has prepared the Alaskan submanagement system, which has the closest thing to the qualifications. So, if you want to know what these people -- what their role is in the ICS, or what their duties and responsibilities are, or what their qualifications are, that document has come closer than anything to date in terms of laying out what the qualifications ought to be for people working in ICS and the oil spill response.

And even though the qualifications are in there, they can be used as a gauge to know what kind of training they ought to have, and experience. But they are not rigid. There's been a lot of debate about whether or not the training and qualifications for people in these positions should be made rigid or not. So at best all we have right now that exists is recommended training levels in there in that document, and they will answer that question.

I would also throw out -- again, on these barrel breakouts and type of product, I think it is

artificial. Since the ICS is a modular and it is based on a ramp-up, you always start with an incident commander, you always start with a qualified individual that can commit resources, then it goes to an incident commander and then they activate an operations chief, if it's big enough, and then a planning or whatever, so it flows. So, it's kind of irrelevant if you make a break point. If you need a starting management team and it fills the five boxes or gets thrown in the four command staff position, and again nine, that's your core team that you're going to need to start management of any event.

So that to me is why it's a minimum capability to get things going, assuming then that all the other positions you might need to fill out an ICS as it ramps up are made available in a cascading or unfolding scenario.

BRIAN ROGERS: We're in a situation where we have three proposals on the table. That you identify nine, of which two may be the same; six, of which two may be the same; or two that may be the same individual.

It's 20 after 12:00. I'm going to call for a break for lunch now and then we'll continue the discussion after lunch.

(Lunch break taken from 12:20 p.m. to 1:00 p.m.)

BRIAN ROGERS: What I'd like to do -- I had earlier said I was going to schedule the Alaska Railroad for a fixed time, thinking that Ernie was bringing in a consultant. Since he isn't, I want to finish number 13 and then we'll move over to the Alaska Railroad presentation, assuming that Susan Harvey is back. She wanted to be here for that part of the presentation.

Where we are is dealing with recommendation number 13 -- and find it again here. And the current recommendation reads that the DEC will specify the requirements. We have proposals -- three proposals -- for what the minimum requirement would be for designating a qualified individual and a team. One proposal is a QI and the eight-member team. The QI -- and it may be the incident commander in each of these. The second is the QI plus the five-member team. And the third is just the QI and the incident commander. Again, in each of those three, it can be the same individual.

I've got to say it's the first time I've ever seen the regulated community say they want more than DEC asked for. This has to go down as a red letter day for DEC.

STEPHANIE MADSEN: Thanks for pointing that out.

BRIAN ROGERS: But it has been suggested. So,

who wants to make a proposal on this one?

Stephanie, and then Bob.

STEPHANIE MADSEN: Oh, I'll let Bob go.

BOB HEAVILIN: Well, I just had a question. Is it separate than the -- where it says the DEC shall specify the requirements for qualifications, I mean, is that Part 2 of this or -- how does that play into...

BRIAN ROGERS: If I can respond. DEC says we don't want to do that; we want to use the QI requirement in 33 CFR, 155.1026, and then identify who your incident commander is, without specifying -- without DEC setting requirements for what that -- for the training of that IC.

BOB HEAVILIN: I see. Great.

BRIAN ROGERS: Charlotte.

CHARLOTTE MacCAY: This is Charlotte MacCay.

Not to take away from your red letter day, but I think there are a lot of us who would like to stick with what's here, with the and/or qualifier between incident commander, you know, and at most maybe a list of contractors that they could contact if they need to establish this. Much like we do other resources. Keeping in mind, just because it is supposed to be formfitted to each situation and (inaudible), describing it ahead of time seems kind of countercurrent to the

whole theory.

BRIAN ROGERS: Senator?

SENATOR DRUE PEARCE: As a practicality, what limited experience I have watching spills and cleanups and drills, if any company that has ships doing business in our waters waits until after the fact to figure out who their team is going to be, they will have lost the opportunity to get to a cleanup quickly enough for their cleanup to be successful. But they also will probably end up with a federal takeover or a state takeover, which I think usually, likely costs more.

So, I would hope that in going with the lesser number that we actually put into a statute or a reg, that's fine, but that shouldn't then leave any company, I would hope, to not having their own internal crisis plan. Because these things do happen, and you don't want to wait for it to happen and think about what you do.

BRIAN ROGERS: Charlotte.

CHARLOTTE MacCAY: Charlotte.

I agree with Senator Pearce. And I think, you know, you're very prudent to have that, but at the same time you won't want to prescribe it ahead of time so that if you decide to change this module and combine it with that module for this circumstance or that one, then

you're not bound by something that was prescribed before you knew what your situation was.

BRIAN ROGERS: A response?

SENATOR DRUE PEARCE: I'm getting a little out of my area of expertise, but as in -- and I don't know, Charlotte, have you been through any ICS training?

CHARLOTTE MacCAY: Uh-huh.

SENATOR DRUE PEARCE: Okay. Because, you know, you don't really -- he's right, you set up your incident commander and then they call in the people that you need for that particular event.

CHARLOTTE MacCAY: And that's where I want to state --

SENATOR DRUE PEARCE: And I don't know that either one of these changes that.

BRIAN ROGERS: Lurilla.

LURILLA LEE: I've got a question for DEC.

Now, my understand is, is that if we have our own incident management team, we'll have to have that approved by DEC as a RAC, isn't that correct?

LARRY DIETRICK: Yeah, Larry Dietrick with DEC.

It's my understanding in a lot of the dialogue the last couple weeks is that the industry, if they're going to have their own IMT, that that's their preference, is that they want the option of registering

it as a RAC so they have the immunity. And our information we've got back from Breck so far is that that's all doable.

LURILLA Lee: But my question is if as a company we have our own inside incident management team, and we put that down in the plan, or that's what we choose to use instead of contracting someone out, someone else outside, that we have to go through the approval process at that point.

BRIAN ROGERS: Under option -- as stated in the recommendations under option 2, that would be the demonstration of equivalent resources to the contract, PRAC.

LARRY DIETRICK: I think I hear what you're saying, Lurilla. There are two ways it could get approved. One, if they registered as a PRAC. When we register as a PRAC, it will be approved, and that would take care of it right there.

The second one, then, if you're going to do an individual plan, you would just represent who it's going to be. And they weren't going to register as a PRAC?

LURILLA LEE: Hm-m.

LARRY DIETRICK: Then they would get approved through your individual plan, approval process.

LURILLA LEE: Okay. Because it's just that

it's very confusing to hear -- to listen to, say, well, you just have to get your qualified individual, then you give a list of what else you're going to fill, without bringing that other aspect in that if you do choose to go it on your own, that you're going to have to go through an approval process with DEC. Because that is another something else to be thinking about.

And I believe that's where this number 13 originally stemmed from, was knowing what you would have to do to become an incident management team per se and be approved. That's what I thought stemmed this whole -- this whole recommendation, number 13.

BRIAN ROGERS: So your question, if I can try to rephrase it, is if you are trying to demonstrate equivalent resources for your IMT by designating your own people, by what standard does DEC determine in its review process that you have -- that you've complied with the alternative resources?

LARRY DIETRICK: Larry Dietrick.

And the standards we would use would be the qualifications as they've evolved in the AIMS manual.

LURILLA Lee: Okay, that's fine.

LARRY DIETRICK: I'm making arrangements to have one brought over and then we'll get them for all the Task Force members.

BRIAN ROGERS: Simon and then Ernie.

SIMON LISIECKI: If an entity was going to contract with a SEAPRO or a spill response organization, they would be, by having that organization respond with them, they're probably for all practical purposes going to get nearly all of these individuals, except for the QI, obviously. And I think that if someone wanted to go and come up with these other new plans, I don't see how they could really sort of identify less than the number of people that are mentioned, the eight plus one. So I think that -- sort of intuitively, I think, from a practical purpose you're going to have to have all those people if you want to go with your own plan. Because -- correct me if I'm wrong -- I think that you get those people anyway if you sign up with a co-op.

BRIAN ROGERS: Ernie.

ERNIE PIPER: I think that -- let's take it backwards. Rather than having DEC require that these specific positions be filled within your plan, and you demonstrate that you're filling them, I think it's reasonable and it meets Senator Pearce's point, which is a good one, that the RP just has to be prepared to operate within the command structure that is the standard in the state and with the Coast Guard. And that's ICS. So whether I call my planning section chief

"planning section chief," as long as I demonstrate that those functions that are involved in the plan can be covered, then whatever plan I present meets the standard.

But I don't want to get into a situation where because I don't have a planning, logistics and ops chief and a finance chief in the way that it's designated in that plan, that I'm somehow determined not to be able to do it.

Do you see what I'm saying, Larry? I think a reg can say you shall be prepared to demonstrate to us how you will function in this management system that we use at the state and federal level. And unless you can demonstrate that you can do that -- and I don't know how you could demonstrate it anything short of showing that you have those one plus eight functions covered -- but it's a little different than saying you shall have those things and that's their name.

LARRY DIETRICK: Yeah. I mean, ICS is -- I mean, it is modular and is a functional approach. But you cannot -- if you're an existing regulated facility in the state of Alaska, you can't get your plan approved without using the ICS. So, I mean, I think what you're saying in principle is right, but I think the fact of the matter is it's because you're required by statute to

use the ICS. I don't think we have any structures out there from any companies right now that look different than the five box, basic five-box configuration of an ICS. I mean, I guess it's theoretically possible, but they all fall out into an incident commander or command staff, operations, planning, logistics and finance. I mean, that's...

ERNIE PIPER: Ernie Piper again.

BRIAN ROGERS: Go ahead, on the response.

ERNIE PIPER: Does the reg say capital I, incident, capital C, command, and capital S, or does it have small, an incident management system? And then it's the unified plan that makes reference to the incident command system. Am I --

LARRY DIETRICK: The statute says ICS, and the unified plan has adopted -- that's what I'm about to say here, is this is the latest working model right here and that's what we'll send out to it. So this is the working model for Alaska. This is in the public domain now. It was done by state and federal industry work groups for Alaska. And the theory here is -- that underlying structure that you're talking about is all in here, but because we put it in the public domain, each company can now go put their own chartreuse cover on it with their logo, and the guts will be the same but they

can put their own individual line up here and that, in essence, will meet the incident management and command team planning requirements under an ICS. And we'll all be using standardized terminology, standardized resources, nomenclature, the whole nine yards.

I don't know if that answers your question, but -- I mean, if you go to a spill in Alaska, it will fall out with an incident commander and staff, and you will -- operations, there will be an operations chief. And you may have -- your representative may not be called the operations chief, but he will probably undoubtedly be working one of those four ICS boxes.

BRIAN ROGERS: Bob Heavilin, then Sandra and then Rick.

BOB HEAVILIN: Yeah, Bob Heavilin.

I guess I agree with -- I mean, if a company puts together their incident management team and identifies those people from within their company who are going to fill those positions, that's satisfactory, right? I mean, if a company identifies various people -- individuals within their company that are going to fill the various positions within an IMT, that's good, right?

LARRY DIETRICK: Uh-huh. Yeah, I mean, if Ernie's got his second lieutenant, he's capable of

filling the logistics or the planning chief role, that's fine.

BOB HEAVILIN: Exactly.

And now we have this document here, the blue document. It doesn't mean that if somebody else is using this, say, strictly NIIMS, or that their company has put together a plan using ICS, but that it's not identical to that, that that's going to be a problem. You're just saying that this one's available, but if you want to change the cover and put your company's logo on the front, that's all good and well, too?

LARRY DIETRICK: Uh-huh.

BOB HEAVILIN: Correct?

LARRY DIETRICK: Yeah, because by doing that, you're -- this is an IC -- this is the latest version of the oilized ICS, and it's still the basic five-box structure. It's just everything's explained in detail, so...

BRIAN ROGERS: Sandra.

SANDRA JACKSON: That's what I was wondering.

BRIAN ROGERS: Okay. Rick.

RICK HARRIS: I guess I'm just seeking clarification.

We're using people and functions kind of interchangeably. Now, this five-box structure, can one

individual perform more than one duty within this? I mean, if that's the case, then Lee said -- he defined nine, and I said -- you know, I mean, that all makes sense. I mean, if you have a spill, you want to have a safety officer. I think even SEAPRO and others require that. If we just say you need to have these functions assigned to someone, but -- and if it's just that, I don't have a problem with it. But if I've got to have nine people, you know, particularly in the first day or on the first shot out, I'm a little concerned. So I guess I'm -- as I say, we keep going back between people and functions, and if you can have functions and an individual can do more than one of those functions, then I'm satisfied, then I can figure out how I'm going to do it. But if I'm being told that I have to have five or nine positions, then I get a little bit more nervous -- five or nine specific people.

BRIAN ROGERS: Charlotte, and then Stephanie and then Larry.

RICK HARRIS: Can I get an answer to that? I hate to --

BRIAN ROGERS: Okay. Larry.

LARRY DIETRICK: Well, number one, ICS is -- it is modular. So the theory on this is you start out with that one person. And that person would be the incident

commander, okay? That's the way this works. And that person performs every function that's required of an incident at that point in time. It's his job, though, as the incident escalates, to identify when he needs another resource and for what. And so, as the incident escalates, your structure ramps up, and so it isn't too long before he would probably -- it would probably be two hours into an event, you start out with one person, where you'd be designating an operations chief that you would need full time.

So it's built that the first person does everything, but then as you exceed the capacity of one person, you turn on the other parts of the organization that you need to deal with it and it just keeps unfolding in that manner.

RICK HARRIS: And so then my response to you is I have a plan, and I say, I will have these -- this -- these functions all covered. I mean, I've listed them and I say I will have them covered. I don't have to have names or -- other than the initial incident commander listed, and then would everything else be okay without specific names? I mean, I know the functions that I have to have covered, and I may assign one individual two or three functions.

LARRY DIETRICK: Well, I think the intent of

defining the minimum here, to define the minimum core team that you're going need for an event. I mean, it may be that, you know, for purposes of SB273, what's a minimum core team that you should identify that you have available to respond to a spill?

Now, it's granted you might have a real small spill and you will only need one person, and you have a real large one and you'll need ten times what you've identified. So it's the core team, the starter team here that I think we're trying to settle on, is what would be required for identification up front by nontank vessels.

RICK HARRIS: Could I have one more?

What you're asking, then, is that we have to have people in those functions. I mean, I feel like we're kind of dancing around a little bit.

LARRY DIETRICK: You have to have the people or access to that capability.

RICK HARRIS: So, in my plan, you're going to want to see something that says I have physical bodies that will be able to fill at least those five boxes within a certain period of time. You're going to want to make sure that I can attest to you that I will have a finance guy and a few other people.

LARRY DIETRICK: In the actual plan, it's my

understanding what you'll be attesting to is that you have access to people that can perform those functions if you have a spill. And so, if it's a PRAC, and you contracted with an IMT, then the validation becomes whether or not the validation -- or whether the PRAC is registered and has a planning officer that meets the criteria, operations and logistics, et cetera. Or, if you so choose, to satisfy that capability with internal resources, you can do that.

BRIAN ROGERS: Charlotte.

CHARLOTTE MacCAY: Mark was articulating what I had to say earlier better than I did, but I still also don't understand -- do you want names for those positions?

LARRY DIETRICK: Yeah, we want the resources identified. It could be a contractor with --

CHARLOTTE MacCAY: For each position?

LARRY DIETRICK: I mean, when you go through a PRAC, for example, you're going to be contracting with a PRAC and you'll have some sort of contractual document with your contractor that says he has four people on board, and he'll have the names of the four people, any one of which can play operations chief. And that would be fine. If it's an internal and you were going to identify internally who it was, then whoever that person

was is who it will be.

CHARLOTTE MacCAY: But you're not saying, Joe is operation chief, Al is safety officer, so-and-so is finance officer?

LARRY DIETRICK: Well, you would be making the decision as to who would be -- has the capability of performing those functions, and represent them in the submission.

CHARLOTTE MacCAY: But are you requiring me to give you one name for each function?

LARRY DIETRICK: Uh-huh.

CHARLOTTE MacCAY: And you cannot combine those functions if you choose? We're trying to figure out how much flexibility we have, and we're not understanding you very well as far as how prescribed this team is, as we're trying to maintain the flexibility to join modules or overlay or switch to whatever we feel necessary. And I know the answer is doing it on-site, we've done it somewhat as is with our own people, and I know it can be done. But I'm trying to figure out if you're saying, Joe will have this position, Al will have this position, and you're not combining Joe and Al's position.

LARRY DIETRICK: What we're saying is --

CHARLOTTE MacCAY: How prescribed is it?

LARRY DIETRICK: -- you go for two -- what do

we have on the board there, two -- that's the size of the starter team that we're -- that Brian is trying to get us to vote on.

CHARLOTTE MacCAY: And that's two specific names?

LARRY DIETRICK: And Lee mentioned -- Lee makes good arguments for having you pre-identify a full core team of nine people, which is -- which would be a minimum core team under ICS.

CHARLOTTE MacCAY: And are we held to keep those people in those positions, or can we move them around as we see fit?

LARRY DIETRICK: If they're qualified to move around, you can move them around. But you would need nine people to be able to field the team, a nine core -- nine-person core team.

BRIAN ROGERS: Stephanie.

STEPHANIE MADSEN: This is Stephanie Madsen, and I am really confused.

I guess we're going back and forth here. And this is exactly the reason why I think we need it explained. I don't know what document you've got in front of you.

LARRY DIETRICK: Right.

STEPHANIE MADSEN: So -- but it sounds like to

me it was a plan that industry and DEC came up with that is a document that suffices. If you want to do your own plan, you put your own cover on it, you identify your people, you're covered for your incident command system. I guess this is just something that we have access to now that the industry group has already done it. Is that what's in front of you?

LARRY DIETRICK: No. Take this off the table. Okay? What you brought up -- this just has all the qualifications, roles and responsibilities, the ICS positions per se. Okay? So it answers all those questions you asked this morning.

STEPHANIE MADSEN: But that is just an approved, DEC-approved plan. I mean, it's not regulations, it's not this is what is definitely required. You said this came out of a working group.

LARRY DIETRICK: Right.

STEPHANIE MADSEN: So this is the recommended, this is what has already made -- gone past DEC scrutiny as qualifying?

LARRY DIETRICK: This is a definition of what an oil -- of what an incident command system for oil spill response looks like in Alaska. Okay?

STEPHANIE MADSEN: Okay.

LARRY DIETRICK: So when we're talking ICS,

you're talking about one box on the top and four boxes underneath. Planning, operations, logistics and finance. That's all this is.

So when you're talking about what size team -- you could have a thousand people working under an ICS team. But what's a minimum core team that you need to have to be able to react to a spill? Can you have one? And under ICS principles -- not just this blue book but ICS principles -- the first person there does everything. As the first person there that's the incident commander, one of the things you have to do is immediately make decisions on where they need additional resources to perform additional functions that are now beyond our capability. And that's how the thing unfolds. So if the first thing he identifies is my safety officer -- I need a safety officer. Okay. He activates a safety officer and brings him into the command. The safety officer starts performing safety officer functions. If the next thing he overdoses on, because he's only one person, then is operations, he orders up his operations chief and brings him on.

STEPHANIE MADSEN: Okay. Let's go back, though. Let's say --

LARRY DIETRICK: Planning, et cetera, et cetera.

STEPHANIE MADSEN: Let's say that Stephanie Madsen is the qualified person, and I'm also the incident commander. Okay? I know what my qualifications are because, as an incident commander, we're saying that it's defined in 33 CFR. So I know --

LARRY DIETRICK: The qualified individual is, not the incident commander.

STEPHANIE MADSEN: Okay. So the qualified individual is defined in 33 CFR. I can be the incident commander, as a qualified individual. I can be one person and fill two slots.

What we're trying to decide today is, from DEC's perspective, what is the core team; and we've got three options up there. I guess -- so, from my perspective, I need to know, one, what is going to be the core team, which we're deciding. And then, two, once we define the core team, how do I know if the person that I put in these core positions is going to be considered qualified by DEC. Do I have to then go to that book and determine that Stephanie Madsen is no longer qualified because I don't know anything about safety? So I have to get somebody that has different qualifications to be the safety officer. And what's unclear to me -- as I understand it, what we're doing is we're trying to define the core start-up team that would

meet DEC's approval in the contingency plan process.

LARRY DIETRICK: Right.

STEPHANIE MADSEN: Okay. What I'm struggling with is, how do I know what the qualifications are for that core team, because I understand that the only one that's defined is the qualified individual, and the rest of them are in that blue book. So, does DEC use that blue book to look at my person to determine whether my person is qualified or not?

LARRY DIETRICK: Yeah, this would be the closest thing that's available on the market right now to judge that qualification.

STEPHANIE MADSEN: And what makes that the final rule? The final say?

LARRY DIETRICK: Well, it's not regulatory, and so it's a guideline.

STEPHANIE MADSEN: Okay. Well, then I propose that we look at the core five, not core nine.

BRIAN ROGERS: Charlotte, and then Gene and then Heather.

CHARLOTTE MacCAY: I think, as is often the case, we're looking at our liabilities and vulnerabilities here from a violation standpoint, and it's not clear to us how prescribed what you're asking us to be is, and how much to the letter we have to

adhere to it when the situation arises.

If we have listed certain people for these positions, but for whatever reason they're not available, they're stuck out on a ship, whatever, what allows us to bring other people into those functions or not, and do they have to be on this list that has been prescribed in this process. And that's why we're raising concerns about not being too prescribed.

Yes, we need to be prepared for ICS. I don't think anyone's fighting that. And we need to have given it some thought and see that we have some people available. And if they're not, we are held to them, and if it's a violation if we do not use those people we have listed, or are not using them in a certain way that you interpret, how is -- that's, I think, what we're all -- where we're coming from.

BRIAN ROGERS: Gene.

GENE BURDEN: Just to follow up on that. Maybe you need to refresh my memory, too, Larry, on this. But I don't think the department goes in and renders any kind of judgment on the qualifications of who the supply person is, or who the public information officer is in the contingency plan holder's plan. You are really looking -- who the parties have assigned to that position, isn't that correct? You don't really -- so

there's no evaluation process that's applied in the oil sector, and I wouldn't see -- I don't think DEC would be interested in trying to pass judgment on the qualifications of -- and maybe some misunderstanding in terms of the terminology. Qualified individual is actually sort of separate and apart. Think of separate and apart --

LARRY DIETRICK: Yes.

GENE BURDEN: -- from the ICS system. And so, that's got some specific characteristics that you can determine whether or not somebody's a qualified individual.

The ICS system is really pretty much up to the C-plan applicant to dedicate who they want. And I've found, from Tesoro's standpoint, I think that we've seen flexibility on the part of the department for, you know, having backups or substitutes, or if somebody's on vacation and we have an incident, part of our planning process is to identify who those -- who those backup individuals are. And I've not seen the department be real prescriptive in that area at all.

SIMON LISIECKI: There's no names at all.

SANDRA JACKSON: It's just function.

GENE BURDEN: Just the functions.

BRIAN ROGERS: Heather, then Ernie and then

Jeff and then Captain Page.

HEATHER McCARTY: This is Heather McCarty. My question goes along with what we've just been talking about to some extent.

If this became part of statute, what we're talking about now, we decide on what format we want it to be in. It doesn't mean that the parts of that plan that you're holding there, that you're referring to, becomes part of statute as well. The only thing that becomes part of statute is that we, as operators, are required to follow an ICS system and to put together an IMT to meet those requirements. Is that right?

LARRY DIETRICK: Uh-huh.

HEATHER McCARTY: That's all it's going to say. So if we want to know what the details are, we go to these recommendations, but that's not going to be part of statute.

LARRY DIETRICK: It's just a resource document.

GENE BURDEN: So really the question before the group is whether the parties would have to commit to have X number of positions in their ICS -- I'm sorry for coming in late, but that's what it sounds like. Is that what we were debating?

BRIAN ROGERS: We're going back and forth between positions and names. Ernie? Yeah, and

functions, yes.

ERNIE PIPER: Again, there's ICS, and then there's dogmatic ICS. And I don't think that we want to get into a situation where it's left open that incident command system procedures and protocol become a pathway for enforcement or determining the adequacy of cleanup. If the IAP isn't filled out in the exact way that that regulatory agency wants it filled out, what happens then? If somebody isn't designated in the right spot, what happens then?

I think that the core functions that are identified are it, and ICS is the only way to go if you want to effectively manage your spill. By the same token, having the department rigidly prescribe what it is you have to do to meet their picture of spill response, down to the title and -- is probably farther than I think that we want to go.

BRIAN ROGERS: Jeff?

JEFF THOMPSON: I was just going to make the general observation from what little I know about ICS, it's prescriptive by nature. You're being asked to prescribe what's going to happen with your ICS. And I guess if the conundrum is just putting a name to that function, then that's what we need to determine. But I don't see us getting away from ICS in terms of we're

going to have to use ICS as far as being C-plan submitters, because that's the system that's been identified that's effective for dealing with oil spill incidents.

Now, I was just going to ask Larry, the book you have there, that's base on the NIIMS?

LARRY DIETRICK: Uh-huh.

JEFF THOMPSON: And that's pretty much the standard, isn't it? I mean, this is all pretty much standardized, as far as the national -- as I understand it -- the national response plan, relates to the Alaska response plan, to the subarea of -- the ten subarea plans, it's all based on this. This is all hierarchy

And as far as the functions, they are very prescriptive in terms of how this is going to be done, for a couple of reasons. Number one being uniform. In other words, that someone from another part of the country is going to understand what your ICS is because it follows this fundamental model. For example, in other words, if I have to pull in -- if I have a huge spill and need to pull in assets from Louisiana, those folks are going to understand our ICS because their ICS knowledge is fundamentally the same as mine.

LARRY DIETRICK: That's correct.

JEFF THOMPSON: And as such, it is

prescriptive. So, I think we need to keep that in mind as we try to make this determination for this particular recommendation.

BRIAN ROGERS: Captain Page?

CAPTAIN ED PAGE: I think I agree with everybody. It's not -- prescriptive by nature. I guess I would use it like it's a standard of care. There's an expectation that this is not a regulation, as Stephanie was concerned about. It was developed over the years with the oil industry, for tanker type, large oil spills, with the Coast Guard, with the industry. It's a national program. And we applied this model -- and actually, the genesis of it was during the Exxon Valdez spill, we started doing the ICS, and we tried several different organizations and then this is the one we ended up with. And it's since been modified beyond that.

But from a federal on-sea coordinator perspective, when I was in that capacity, my benchmark as to whether the response was adequate or not was if the responsible party showed up and was able to run the organization, plug in people. We didn't care ahead of times as far as who the names were, or whatever. But when they showed up, I expected them to be conversant on ICS and expect to have people to fill those positions

and represent their interests. If not, then we -- the term, federalize a spill, that's when you start federalizing a spill, if you feel they can't adequately manage a spill.

The real objective is to get the oil out of the water as fast as possible and minimize the consequences. History is showing you need some type of organization to be somewhat effective in that. There's some people now that concentrate more on organization than picking up the oil. But the reality is you want organization that helps ensure that you get effective spill response.

So, one way of getting the confidence of the State and the Coast Guard on-sea coordinator, is you come in, you know what ICS is, and you have people that run the organization. Otherwise, what's the benefit of being incompetent? Otherwise, the State and the Coast Guard will run your oil spill response and it will be very, very expensive.

And so, it's not an absolute thing, but to have some guides saying we expect you to have an ICS knowledge and ability to run the organization I think is a prudent thing, but not to get too terribly specific on it. That is a guideline, and that might be -- that will only be used in its entirety for a major oil spill, which none of you folks will ever get. A fish boat will

never be in that category. But maybe Simon might be worried about the whole book. No offense, Simon. But, you know, you'll never have to use the whole book, quite honestly. But there are some slices, aspects that you probably will. I hope that clarifies to some extent the ICS thing.

BRIAN ROGERS: Is the question that if you're contracting for your incident management, you just have to do the incident commander -- a qualified individual and incident commander; but if you're doing equivalent resources, you have to lay out in more depth what your incident management team will be in the five- or nine-box model. Is that the issue? Or, it seems to me that the group, in going back and forth, we're partly dealing with some entities that are going to be contracting for basically all of incident management, and others who are trying to provide it in-house.

BRIAN ROGERS: I have Stephanie, Heather, Ernie and Gene.

STEPHANIE MADSEN: This is Stephanie Madsen.

I guess my concern is, how do we demonstrate that we are familiar with the ICS? I mean, if we hire somebody that's already approved by DEC and is on their list, that's one way to comply. But if we're wanting to do alternative compliance and hold that in-house, it is

still unclear to me, other than giving you my five names, or however many core people, how I demonstrate, to DEC's acceptance, how I'm going to comply.

And I guess that's kind of where I started with this whole thing, is that I'm looking at maintaining all my options. And if one of my options is alternative compliance, how do I get past DEC's scrutiny that my management team is appropriate and not subject to their having a bad day and no, they don't like my team? That's kind of where I am. I understand, and you've summarized it very well, that we have to demonstrate a knowledge of ICS system. But I'm not clear, if I want to do that on my own, in-house, other than providing the core names, how I'm able to demonstrate that.

BRIAN ROGERS: Heather.

HEATHER McCARTY: No one's going to tell Stephanie?

BRIAN ROGERS: You want to let Larry answer that first?

HEATHER McCARTY: Yeah, I'd like to know.

LARRY DIETRICK: Maybe I can give a counter model. We inherited the NIIMS ICS system because it was created for the wildfires, okay? ICS is an emergency response management system, that's all it is, okay? And the wildfire guys developed it first. It's National

Interagency Incident Management System, or something. Anyhow, it's the acronym for the wildfire model, and they've developed all the standards and whatnot. And so, the oil world went to that as the solution for fixing the problem in '89. And there's a little bit of truth in that and there's a little bit of overkill, too.

But let me point out the wildfires example of how they would deal with qualifications and training. This is how fine-tuned their system is in the wildfire world. Each position has minimum class requirements, okay? ICS level courses, 101, 201, 203, 204. It's got experience requirements. Each person that works in the ICS has got a personalized booklet, okay, where you have to log your experience in participating in the role of situation unit leader or operations chief or planning chief. So you have a history of all of your experience in there. Plus, you have all of the curriculum, all of the formal training that you're required to take.

And for you to elevate, say, up the chain of command in the ICS and wildfire world, you start out at the bottom of the structure, you accumulate experience, you accumulate time on the job, you accumulate course work, and you work your way up to, say, a section chief, like the planning chief. You can't then go to an incident commander until you've had time in each of the

section chief jobs. You would have had to have logged time, I think it's like a year or two, as a planning chief, as an operations chief, as a logistic chief, as a finance chief, before you could become then incident commander. So, it's an incredibly formalized, very detailed, they've not got qualifications and training that they abide by rigidly, and you don't go from one position to another unless you pass those -- have those credentials and pass muster.

Now, what do we have in the oil world so far? Well, the oil world is way, way, way away from that. And we've argued this with the west coast states and everything. The oil world can't even agree on what the qualifications should be, okay, for people working in the ICS for an oil spill response versus wildfire. And this is the first place where we've summarized what we think the qualifications might be. But there's nowhere in the country yet where they've agreed as to what the qualifications and training hierarchy should be for oil spill response in an ICS, to the point where either the Coast Guard or anybody else has put it into a regulatory format, or really even into a single document. And we haven't adopted the wildfire model at all. So the rigor in the oil world ain't there.

You go to a spill or drill in Alaska and if you

can identify the five boxes, roughly, you're kind of doing good. That's about the level at which we can execute it. And it's because we don't have the qualifications and training, and the time and the formal training that one is required to have in each of the ICS positions underneath, and then have accumulated in all the positions above it, that it doesn't work too well yet in the oil world. So, what've you got here, in terms of checkoffs here, is very crude, okay? And these qualifications, they're as close as anything that exists as far to what it might take to be qualified.

So, it's pretty rudimentary, and it's not regulatory at all. And if you say that Sandra is your ops chief, and Sandra said she was to three oil spill drills, she's probably as experienced as anybody in that arena. I mean, that's the likelihood of it.

BRIAN ROGERS: So, clearly we need more spills so people can get more experience.

LURILLA LEE: That's what I was going say.

LARRY DIETRICK: I don't know if that will help your question here, but we're way aways from --

STEPHANIE MADSEN: Well, I guess, you know, what I heard you say is that, you know, right now, after we decide what our core is, I just have to give you my qualified individual's name and tell you that I have it

under control for the rest of them and that I will have those functions covered, and you'll approve my plan.

LARRY DIETRICK: Yeah, I think that's what we're trying to do, is settle on what a minimum core team ought to be that you all people ought to know about, have access to, and know who you're going to call to get that team so you can get started on a response. That's critical to begin with.

STEPHANIE MADSEN: Yeah, right there.

BRIAN ROGERS: Can somebody capture that one?

RICK HARRIS: I wrote something down to try it. Let me read it and see if this is right. It basically says, the C-plan should identify by position -- and I said and/or name -- the qualified IC and QI. I mean, those are the two names I think you're after.

LARRY DIETRICK: Yeah. Definitely need to have a QI.

RICK HARRIS: And in addition, the following function should be assigned to individuals -- to individual or individuals within the IMT. And then you can list -- in that case you can list all nine. I don't have a problem. I think you ought to throw a safety officer in and the others. So, you could have somebody that's incident com -- or you could have somebody performing both the safety officer function and another

function in the field. Depending upon the magnitude of the spill. I mean, so I added all nine, but I mean it's actually not nine, it's seven, because we pulled the two off.

HEATHER McCARTY: Second.

BRIAN ROGERS: That motion has been moved and seconded, but we do have Ernie, Gene and Simon taking the floor. Okay, that second didn't count? Then go ahead, Heather is first.

HEATHER McCARTY: I get the feeling this is an educational process as well as a decision-making process. So, I apologize beforehand for asking dumb questions, but I think we're all sort of behind the curve -- I mean, some of us are behind the curve on this.

What are the legal requirements -- this is my question to DEC or whoever. What are the legal requirements currently for tank vessels in this arena? Is there a similar requirement for tank vessels? And if so, what is it?

LARRY DIETRICK: Yeah. This is Larry Dietrick.

Yes, there is, but again, we're not -- we're trying to, I think, design here a generic starter team for everybody, period. If you go into a plan here that Simon's got, okay, you're talking about an individual

plan that's gone through an individual plan review now that has scenarios in it to which they design then the response management team and response capability.

HEATHER McCARTY: I see.

LARRY DIETRICK: We're not developing scenarios here for a worst case spill at all here. But he would have a management team that would be quite extensive. It would be in the ICS format and it would all be submitted for review.

HEATHER McCARTY: Just to help me understand a little bit. So, the individual plans are approved -- in the tanker world, in the tank vessel world.

LARRY DIETRICK: Yes.

HEATHER McCARTY: Okay. So there's no generic requirement as we are looking at here. But they know, when they submit their plan, that it needs to adhere to the ICS format?

LARRY DIETRICK: Yes.

HEATHER McCARTY: Okay.

LARRY DIETRICK: And in some cases now, I should mention that the crude oil industry does have links with SERVS in Prince William Sound, and with CISPRI. And so then there's an integration then between, in some cases, what the co-op teams provide versus their own internal management teams. And in the

case of 72 hours, you have a SERVS starting out team, and then it's replaced by an owner vessel company team at the 72-hour margin and whatnot.

HEATHER McCARTY: Thank you.

BRIAN ROGERS: Ernie?

ERNIE PIPER: Well, I would go to the first part of that declarative sentence and then go from there. You have to have in your C-plan, you ID by position and name the qualified individual and the incident commander. And then, the plan holder has to demonstrate that the members of the management team -- and you can identify who those are -- through experience or documented training, are conversant and can actively participate in the incident command system used by the state and federal governments in a major incident. Or in an incident.

And I think that that gets to the point that Senator Pearce made, which is you really ought to do that way, to the point that Larry and Captain Page made, which is we're going to decide whether you guys know what you're doing based on whether you can participate. But it eliminates going to the extent of saying that unless you have these boxes filled and follow the ICS form 204 and 201 the way that that implies, that you're not in compliance.

Larry, is that -- does that satisfy you, or no?

LARRY DIETRICK: Well, yeah, I mean, we don't have a prescriptive 204, 205 formula right now. I mean, there's versions of that, but saying to demonstrate with appropriate training, experience and spills or drills is okay.

ERNIE PIPER: Right, because that shows that in my plan -- well, Stephanie, here's what I'm getting at. So, in the plan you say, here's my qualified individual, here's my incident commander. These individuals, one, two, three, four, five, are members of our management team. They hold this, this, and this. And the kinds of training that are available in ICS, from small to large, allow you to pick from that menu and demonstrate that you have documented training in it, or -- and/or experience. So that DEC and the Coast Guard know that when everybody shows up, they're going to be able to all -- we're all going to be able to function together.

BRIAN ROGERS: Gene, then Simon, then Charlotte, then Lee. And Captain O'Hara.

GENE BURDEN: Okay. DEC shall specify the requirements for qualification as an incident management team. I think that's poorly stated and not what we want to recommend. I think that's sort of on your wavelength, Ernie. I jotted down that the Task Force,

just as a straw man, recommends that the NIIMS ICS model be used to standardize incident command positions by the C-plan applicant, and that the C-plan applicant has responsibility to demonstrate that they have incident command and support positions identified and staffed in the event of an accident, period.

BRIAN ROGERS: Simon.

SIMON LISIECKI: Ernie and Gene have stated it quite adequately. I have nothing to add to that.

BRIAN ROGERS: Charlotte.

CHARLOTTE MacCAY: Go ahead. I forgot what I had to say.

BRIAN ROGERS: Lee.

LEE EGLAND: Lee Egland. I was going to somewhat mirror Gene's. I don't think because we're not there yet, as Larry mentioned, as far as setting qualifications, that we want to go down that path. It's strictly a matter of -- and I'll defer to Gene's language and that I think that does it, other than do you need to identify how many positions need to be in there?

BRIAN ROGERS: Captain O'Hara.

MIKE O'HARA: Ditto.

BRIAN ROGERS: Eric.

ERIC BRITTEN: Just in my propensity to state

the obvious, let me see if I understand what we're saying here. We're basically saying, you file your plan with DEC, they're not going to review the qualifications of the people who you say are there; they're going to rely upon you, as the plan holder, to have people who are qualified. And where the rubber really meets the road is what Captain Page said. If your people get there and they are identified as totally inept at doing what they're doing, not trained, don't have the qualifications, your bill just -- your ticket just starts to run. And that's the enforcement part, right? It's the what happens if you don't.

GENE BURDEN: Or if there's a drill and that's discovered, then you might end up with some sort of consent order where you have a certain time frame to get people trained.

ERIC BRITTEN: But the way I read it, we're not looking for those qualifications. You're just saying, these people are qualified, we have confidence in their ability to do it, and when either the tests or the reality occurs, you'll see if these people are qualified.

BRIAN ROGERS: So, can we say that the NIIMS ICS model should be used to specify the positions by the C-plan applicant. At a minimum, the applicant must

identify the QI and IC by name; may be the same person.

SANDRA JACKSON: I'll second.

BRIAN ROGERS: Is that what you're looking for? Does anyone object to that? Larry?

LARRY DIETRICK: How does the NIIMS model specify positions? I understand the second sentence. The first sentence. I mean, NIIMS --

GENE BURDEN: Yeah, it would be the standardized, the ICS approach or methodology, the NIIMS model. That's all it does, doesn't it?

LARRY DIETRICK: Well, NIIMS just says, you know, if you have a release and you respond, you know, follow this structure in these positions. But what it doesn't say is what a minimum sized team should be to pre-identify for a response. I mean, it's a given you start out with one and you ramp up as necessary to deal with the event.

BRIAN ROGERS: So, what's a better way of saying that?

LARRY DIETRICK: What you're saying here, then, is our core team is two people. We're not specifying a generic minimum sized core team then. That's the way I read that.

GENE BURDEN: I think -- I'd suggest that we just -- I'm plagiarizing some language out of 13. If we

just say the NIIMS model be used to standardize incident command positions by C-plan applicants.

RICK HARRIS: Can we say functions as opposed to -- I mean, when you say positions, that implies to me a person. I mean, are we talking about a person, or are we talking about a function?

GENE BURDEN: I think we're talking about positions. That's the way it's referenced in NIIMS.

CHARLOTTE MacCAY: Some of the functions are sometimes joined together by one person, and that's why he's worried about --

RICK HARRIS: I'd like to have the finance chief and the -- you know, for him to be able to do two functions.

GENE BURDEN: I don't have any problem --

RICK HARRIS: And so, I guess what I'm saying is when I see positions, then I start -- I see that as a person. So if I'm wrong in that way, that's fine.

GENE BURDEN: We could say position and/or functions, because some people will have for it for each position and might break it out as functions.

BRIAN ROGERS: Okay. So, where we are now is the NIIMS ICS model should be used to specify -- to standardize incident command positions and/or functions by C-plan applicant. At a minimum, the applicant has to

identify the QI and IC by name. The QI and IC may be the same person.

Does that satisfy everyone in the room? Everyone on the Task Force at least?

LARRY DIETRICK: Read your first sentence again.

BRIAN ROGERS: The NIIMS ICS model shall be used to standardize incident command positions and/or functions by a C-plan applicant. At a minimum, et cetera.

LARRY DIETRICK: I'd just point out, you should change it to AIMS, though, because that is -- NIIMS is wildfires.

BRIAN ROGERS: A-I-M-S?

LARRY DIETRICK: A-I-M-S.

ERNIE PIPER: Well, now that's going to be another discussion.

BRIAN ROGERS: Is that correct? Is that a new -- is that opening a new issue?

GENE BURDEN: Why not use NIIMS?

LARRY DIETRICK: AIMS is NIIMS.

BOB HEAVILIN: One thing to remember --

GENE BURDEN: Why not say command system and --

BOB HEAVILIN: I think you just want to stick with NIIMS, and I think you can probably get rid of the

word "model," because ICS is the incident command system. NIIMS is the overarching five components, one of which is ICS. And also remember that the governor did an administrative order a couple years ago that said NIIMS ICS would be the system used for all response by all agencies in Alaska, in their response and in their planning.

HEATHER McCARTY: Then we don't need this.

CAPTAIN ED PAGE: What happened, though, is that AIMS is, as Larry pointed out, is the oilized or the modified NIIMS. If you go NIIMS, you're talking about fires, wildfires.

BOB HEAVILIN: But you've also said that if you use -- if a company wants to use NIIMS, that's fine. Right?

CAPTAIN ED PAGE: Well, sure. I guess the point, again, is that NIIMS was designed and is -- if you took strict NIIMS, is really is geared for wildfires. What we've done, through the Coast Guard and through ADEC, is come up with a system that puts it on the water. But either one is fine. NIIMS is used interchangeably, I don't think it's a problem.

I guess I'd be a little more concerned, you talk about the two positions, yet we've talked at length about five and nine. It would seem that at a minimum

you maybe want to mention the RP should be prepared to staff an ICS organization, and just leave it at that. You're not being prescriptive as far as identifying the bodies and whatever. But you're leaving that like you only need one. But as a practical matter, they need to know there's more commitment than that. And that's a good kind of between. You don't throw out the nine and three. And then on five, you don't to go a one. You kind of say, by the way, that's not the end of it, there's more to it than that, be prepared to do an ICS.

BRIAN ROGERS: Gene.

GENE BURDEN: Hopefully not extending discussion on this too much, but one of the things I raised earlier in this process is that a lot of the folks here have never had to prepare contingency plans, they're not familiar with ICS --

HEATHER McCARTY: Right.

GENE BURDEN: -- and I still advocate some commitment, maybe it's joint commitment from DEC and maybe the Coast Guard, to conduct one or more -- one-day'ers that can be free to the new people covered, to go through ICS 101, whether it's NIIMS or whatever you call it.

CAPTAIN ED PAGE: Excellent idea.

GENE BURDEN: And I'd like to throw that out as

sort of a collateral recommendation maybe at this point.

CAPTAIN ED PAGE: I'll commit to that. I mean, you know, as far as -- it's a gap we haven't identified. We haven't worked with that. And in the likelihood of this happening, and the complexity is much less, generally speaking, for this group, and so don't have to go through days and days of training. One day --

GENE BURDEN: It can save these folks a lot of money and time, because if they could sit down with you and the department and sort of get a 101 on this, then they'd know, you know, how far this goes and how far it doesn't go, and know what their flexibilities are.

BRIAN ROGERS: So, I'll put that down as 28. We'll hold off on discussion on that.

CAPTAIN ED PAGE: I don't know how you incorporate it into the law.

BRIAN ROGERS: We're on number 13 still, and here's the proposed -- here's the proposed language for number 13. Is there further discussion on that one?

Stephanie.

STEPHANIE MADSEN: Well, I guess this is my ignorance in understanding C-plans, but what I'm worried about is getting my C-plan approved. And when I see a statement about the responsible party has to be prepared to staff ICS organization, I mean, how am I going show

that? How do you want me to show that? And here I get back to my broken record on demonstrating. And I need very clear guidelines on how I need to demonstrate to DEC that my C-plan is accepted. Aside from the fact that if I have a spill, I better be organized and ready to go. But, you know, I have a document that I have to get approved by DEC. And everything was clear to me up until we are preparing -- you know, that I know at a minimum I have to have that. But then you add I have to also be prepared to staff, well, that's the ICS 101.

CAPTAIN ED PAGE: I see your point.

STEPHANIE MADSEN: So I get concerned about very clear things that I have to incorporate in my C-plan so I can get it approved. And then overarching, I need to be able to understand, you know, ICS and respond accordingly. But that's really two different things. As a responsible party, I have these obligations; and then I have to demonstrate to DEC that I have these things prepared and ready to go.

CAPTAIN ED PAGE: Take out "prepared," and just say it's anticipated to have -- should anticipate having additional people, or something like that.

GENE BURDEN: And maybe I'm reading too much into it, but I sort of had the assumption that if our direction to the department is to use the ICS system,

that would be implicit. Yeah, it would be implicit that the applicant would demonstrate that they have the resources available to implement that system.

BRIAN ROGERS: Charlotte.

CHARLOTTE MacCAY: I think that last sentence kind of bothered what we were calling anecdotal comments in there.

CAPTAIN ED PAGE: And it is?

CHARLOTTE MacCAY: And I think it's true and we needed to hear it, and I think it needs to be stricken out of the recommendations per se. But I think we all need to keep it in the back of our mind.

BRIAN ROGERS: In keeping it in the back of your mind, do you want it in the explanatory text that that's likely to be out there? There's not consensus on that issue.

Larry?

LARRY DIETRICK: Well, I think, again, what we're trying to carve out here is what it takes to implement SB273, response planning standard. So what we're defining here is -- you're right, I think Stephanie is right. What we're trying to define is what you got to give to the department to get your review and approval done. Okay. Now, is what we're defining here everything you're going to need in the event of a spill?

STEPHANIE MADSEN: No.

LARRY DIETRICK: Well, no. I mean, our starter kit here with 15 percent is so low, okay? And even Doug Lentsch's 40-person team for a 200,000-gallon spill is so low, but that's -- you know, and so everybody needs to recognize that. But what we are trying to do is define what the requirements are for you to get your approval. We need to be explicit about that.

Right now, when I read that, that means your plan, when you send it in, I'm going to look for two names. I'm going to look for a QI, and I'm going to look for an incident commander. And it could be the same.

CAPTAIN ED PAGE: That's what SOPEP has already.

LARRY DIETRICK: No. SOPEP is a little light on that. It could be that if they so indicated, but they're not required to.

So, you can have that last statement in there, and that's kind of a statement of intent. But if you ask me, okay, what does that mean, as Stephanie's question is, what do I have to send to Larry to get his approval? Well, be prepared to staff ICS organization. Well, I don't know. I mean, if we want you to do something, to demonstrate that to us, then we need to

say what that is, otherwise my expectation here is we get two names.

BRIAN ROGERS: Rick?

RICK HARRIS: And that's where I come back to where -- and if I know I'm talking about functions and not people, I'm happy to throw on -- because I'd like to be able to pick this document up and know that I have seven functions that are laid out. And just to say what those functions are. I mean, I need to have these functions covered. I need to have a safety officer, I need to have a -- or not a safety officer, but someone carrying -- performing the safety duties, the logistics duties, the da-doo, da-doo, da-doo. I don't have a problem listing those five, seven, whatever, if those are the things that you're going to look for. I think it clarifies for me what I need to look for, without having to wade through the blue book and trying to make sense of it. This helps set the stage for me. So, I actually feel comfortable listing what is there, as long as it's clear that they're not necessarily people. They're functions. Somebody could be doing two or maybe even three of them, depending upon the size of the spill.

STEPHANIE MADSEN: You can do that, Rick. You can put more people in your plan.

RICK HARRIS: I don't want people.

STEPHANIE MADSEN: Functions.

RICK HARRIS: I just want to know what's supposed to be done.

BRIAN ROGERS: Lee.

LEE EGLAND: Lee Egland. Interesting conversation. To me, it's real simple. It's either, we either have to -- if you're going to identify, you may not have to pay for it. But if it has to be under contract, when you go to someone to provide this contingency plan for you, whether you identify somebody is one thing. I mean, you can just put Erst-O'Brien in there, no big deal. You've identified a spill management team.

But -- and this is the way I'm reading Gene's version -- which is okay -- is that there's two people that have to be identified. That's who you're going to have to contract for. All right? And if you don't have them, you may have to pay for those people. Maybe not the QI, necessarily. That's going to be the company rep. But in this scenario, it could be the incident commander.

The bottom portion of it says you have to be prepared to identify other functions. Which is okay, but to me that means they don't have to be under

contract. So, for example, if a nontank vessel owner comes to Chadux and says, we want you to provide a spill management team for us, to meet this regulation -- and that's what Larry was saying, is he needs to know, how does he determine whether you've got enough meat in your plan that says you meet the requirement? Well, they've got two people. They've got their QI, which is a company representative; and an incident commander. And if you identify, that means you don't -- you're not having to -- to me, identify means you don't have to have them under contract, right? Because that's where the money decision's going to come in. If you, as a company, or Chadux or SEAPRO as a spill organization, has to have a contract for a spill management team to commit to -- that is going to be committal to provide people, then he needs to know that, then that's a cost to him. But if you're just going to identify, like you got up there, which is fine, then, you know, just like you identify salvage, fire fighting and lightering, you don't have to have a contract for them but you can identify them, which is okay. It's your version of the yellow pages.

These folks, whether it's a co-op or a company, they can deal with that. But just like you said, if they know they've got to have nine people, whether it's,

you know, the positions, if they need X amount of people, then they're going to have to get them. So, I'm just saying the way I interpret that is, identify, that means there's two people you're going to have a name, and then you're going to maybe identify someone else who can fulfill other functions, that they're not going to have to be under contract.

Do you understand what I'm saying, Larry?

LARRY DIETRICK: Uh-huh. It would be a plan or procedure.

LEE EGLAND: Right.

LARRY DIETRICK: Not verified.

LEE EGLAND: Correct. Because at the end of the day we need to find out how much is this going to cost to do this, whether you're going to do it internally or hire it out. Well, this method right here that's written on the board, to me, is probably, there's going to be no cost to it because the particular companies are going to do it themselves, and they may come to Chadux or even put in their plan, open up the yellow pages and just list three or four different spill management teams. But they're not going to have to have a contract with them in order to provide those people. They've identified them.

BRIAN ROGERS: Lee said one thing that's

important. He said, "at the end of the day." We're actually hoping that will come. I would point out to people, we started this morning with five open items and we've done two and a half, and have five and a half to go. And that is for agenda item five of ten.

So, without trying to limit debate at all, I would encourage you to economize on comments so that we can make our way through the agenda. Certainly, it may be that we're going to have to refer some of these issues to additional work group meetings that were unanticipated or something like that, because at the rate you're going, we're not going to make it through. Just as a warning to everyone. We've been an hour and a half on incident command so far. And where we are right now is on this issue of what beyond the two is going to be required and what that means.

LEE EGLAND: I make a motion -- Lee Egland -- that you accept that language.

BRIAN ROGERS: With this in?

LEE EGLAND: Understanding what "identify" means.

BRIAN ROGERS: Okay. That at a minimum identify the QI and IC by name. They may be the same person. Now, and you're saying with this language in?

LEE EGLAND: Sure.

HEATHER McCARTY: The last sentence.

BRIAN ROGERS: Is in. According to that proposal.

RICK HARRIS: If we clarify what "identify" means.

BRIAN ROGERS: Identify the QI and IC?

RICK HARRIS: Right.

BRIAN ROGERS: By name?

RICK HARRIS: But he took it further than that, to identify the individuals who would perform the RP functions or the ICS --

ERNIE PIPER: No.

BRIAN ROGERS: No; he's saying what's up there. The RP must be prepared to staff the ICS --

RICK HARRIS: I see.

BRIAN ROGERS: Is everyone okay with that one? Let's take a five-minute break and then proceed to Alaska Railroad.

HEATHER McCARTY: Did we approve it?

BRIAN ROGERS: I asked if everybody was comfortable, and I didn't hear any objection.

(Short recess taken.)

BRIAN ROGERS: We have a request here for another agenda change. Breck Tostevin's wife is at home ill, and so what I want to do is deal briefly with the

legal report now. Actually, what I really want to do is, in order to speed the agenda, the impression that I've gotten is that memorandum addressed the questions that were raised. We haven't had any follow-up questions coming out of the memorandum that was e-mailed to everybody last week. And so, if there's any follow-up, let's deal with that now, otherwise let's let Breck get out of here.

So, Breck, do you want to come up to the table and see if there are any questions. Are there questions? Charlotte.

CHARLOTTE MacCAY: Well, the spot charter group has been in communication with Breck, I think, since giving him questions, so I'm not sure what you mean that there haven't been any.

BRIAN ROGERS: None have been addressed to me, I guess, would be -- or I wasn't aware of any.

CHARLOTTE MacCAY: Once he gets through what he gets through, maybe they'll be taken care of, and I can leave them until then.

BRIAN ROGERS: Here he is. I think he basically wanted to address any follow-up questions that people had.

BRECK TOSTEVIN: Hello, this is Breck Tostevin from the AG's office. If anyone had any clarification

on what I said here -- I'm not looking for any further questions. I thought maybe someone could ask me like what is the meaning of life and I could try to opine on that, too. But I wanted to have an opportunity for people to ask me on points on what I said in the memo, if they didn't understand what I was saying, then I'd be happy to clarify. Other than that --

CHARLOTTE MacCAY: Part of the reason, I don't have your memo, so -- I'll let people do that if they have them. Otherwise, I need to see what your comments are on some of the things that the spot charters raised since then.

BRIAN ROGERS: Stephanie.

STEPHANIE MADSEN: This is Stephanie Madsen.

Could you go over, on the last question, basically the question about DEC inspecting vessels for compliance. And the two options, that we could either request that the State adopt the federal regulations, or just ensure that the C-plan holder or responsible party signs that they're in compliance with federal law.

I guess where I'm going, Breck, it seems like there was a recommendation for the two options. We could either adopt federal law, and the State could prosecute violations of federal law. Or, we could just have the applicant certify that it complies with federal

law, and just go with the Memorandum of Agreement between Coast Guard and DEC about how they report and prosecute those violations under state and federal law.

I guess what I'm looking for is not to duplicate or have the State prosecute a violation of federal law by adopting -- maybe I'll just be quiet there and let you -- I guess where I'm wanting to make sure is that by adopting federal law, my understanding is that gives DEC authority to prosecute violations of a federal law. Or, if we have the applicant sign that it is in compliance with federal law, DEC boards the vessel and finds that you are out of compliance with federal law, the protocol is that DEC notifies Coast Guard.

That's the system that I would like to see in place. That we have the Memorandum of Agreement between DEC and the feds, and that they notify each other when they're inspecting the vessel, that they notify the party that those laws are applicable under, and that we don't have DEC prosecuting a vessel for being out of compliance for a federal law.

BRECK TOSTEVIN: Okay. That doesn't seem like a legal question to me. I mean, you're putting forward your position on how to adopt the prevention measure. I guess I would say, is if you had a certification requirement that said that an operator had to certify

they were in compliance with federal law, and if DEC inspected the vessel or the Coast Guard inspected the vessel and found that it wasn't in compliance with federal law, then the remedy for that would be in violation of your C-plan. And things can happen, your C-plan could be suspended or it could be revoked.

BRIAN ROGERS: Larry?

LARRY DIETRICK: Let me take a stab and see if I understand. First of all, I think this is with regard to the prevention measures if we adopt the federal or IMO as a mandatory measure, and then we go on board and inspect and notice something out of compliance with either the federal or international requirement, what would we do?

STEPHANIE MADSEN: That's one aspect of it.

LARRY DIETRICK: I mean, because one of it is inspection, and then the other is an enforcement. From an inspection standpoint, that is covered under our current MOA, which you all should have here.

So, if we notice some of those, we report them to the Coast Guard. That's how we handle those right now. We wouldn't -- if we don't have a prevention program here, mandatory, if we don't adopt one for mandatory prevention measures, we wouldn't even be looking at them. If we inadvertently noticed one, we

would refer to the Coast Guard. So that's what we do onboard.

Now, there's the second question, I think, that you're asking, is would the State enforce then? Let's say we noticed it, we referred it, and the Coast Guard validated it, okay, it was out of compliance with international law, could the State then also take an enforcement action.

STEPHANIE MADSEN: Uh-huh.

LARRY DIETRICK: That's a different question. So, the inspection part is real clear as to what we would do. Whether or not we would enforce, I think, depends, one, whether or not we adopt the prevention scheme at all. Because if we don't, then we wouldn't.

If we did, then Breck has dealt with that as a question. I forget which one. You asked -- one of the questions that was posed was, from an enforcement perspective, was what would the State do if there was a noncompliance with a federal or international requirement? Would it also then become a violation of some kind of state law, would it be a double jeopardy situation? Breck has responded to that one in the legal memo. And the answer was?

BRECK TOSTEVIN: Yes. Generally, yes.

STEPHANIE MADSEN: And I guess --

BRIAN ROGERS: Go ahead.

STEPHANIE MADSEN: If the Task Force recommended that that not be, is there a way that either you do one or the other and it's not subject to penalties by both state and federal? Or is it because -- if you sign that you're in compliance with federal law, in your C-plan, and then you're not in compliance with your C-plan, you're going to get penalties from the federal government for not being in compliance with federal law, and you're going to get penalties from the State for not being in compliance with your C-plan?

BRECK TOSTEVIN: Potentially.

STEPHANIE MADSEN: So you're going to get penalties -- for the same violation, you're going to get two penalties?

BRECK TOSTEVIN: Yes. If you certify that you're in compliance with federal law, and you're not, then you've violated your C-plan.

GENE BURDEN: That's not a particularly unique situation, though, is it?

BRECK TOSTEVIN: No, not that I know of.

CAPTAIN ED PAGE: If you're in violation of federal law anyway, you'd be subject to penalty action. The deal here, I guess, would be that you would be

subject to additional penalty action by the State above and beyond what's imposed by the federal government, is kind of what I see the intent is, anyway.

LARRY DIETRICK: If the prevention program is adopted and included this as part of that.

CAPTAIN ED PAGE: But, I mean, are we adding anything on prevention there? Actually, the same prevention measures that already exist by Coast Guard and IMO still exist. We haven't added anything in this case. You're just making a linkage to the C-plan regulations, I think is what I see. I guess I don't see any added value to that, in my mind. But certainly that's your -- other than the fact that it gets additional penalty action. If that's what the intent is, then I can't argue with that.

BRECK TOSTEVIN: This is Breck Tostevin again. As I understood the idea behind the certification would be to say to get a state contingency plan approval, you need to certify that you met these requirements. And one of the consequences of not meeting the requirements would be that you couldn't get a state contingency plan. That there was a state step to allowing a vessel to operate in the state's waters.

BRIAN ROGERS: Commissioner.

COMMISSIONER MICHELE BROWN: This is a question

for Breck and for Larry. I can't recall the case where we have ever sought penalties for that. What we are more likely to do is revoke a C-plan, so you would lose your authority to operate. I mean, if it was based on a certification that you were in compliance with these federal standards, we found that you weren't -- the federal prevention, we found that you weren't -- isn't it more likely that what we would do is revoke than file a penalty action? I mean, I just can't think of a case from the past where we have sought penalties for a C-plan violation, short of a spill. I mean, there hasn't been a spill. It's more of you're not in compliance with your C-plan, therefore we're going to have to revoke it or modify it or do some action to bring you into compliance.

BRECK TOSTEVIN: Bring into compliance.

COMMISSIONER MICHELE BROWN: Or revoke your C-plan. So, I mean, there's a penalty of you not being able to operate, certainly is a penalty. But not a fine in the sense of I think Stephanie was talking about dual fines. Although, theoretically, I think that is possible. I just can't think of a time when we have ever done it.

BRIAN ROGERS: Stephanie.

STEPHANIE MADSEN: Well, this is where I was

going with this, is that under the Contingency Plan Work Group minutes, on the last page, it said that the Task Force will be asked at its November 6th meeting to determine whether federal and international vessel requirements should be adopted by state law. According to Assistant Attorney General Breck Tostevin, if the State adopts the federal and international requirements, they can be enforced under state law as well as federal law. Alternatively, the State can require the vessel owners simply certify that they meet the federal requirements. Under this State proposal, if the State finds a vessel owner in violation of federal requirements, a violation would be forwarded to U.S. Coast Guard.

And that's what I'm asking. And you're right, I guess maybe this isn't a legal question. But my preference is that the State requires vessel owners simply certify that they meet the federal requirement; and that if the DEC went on board, then they would notify Coast Guard for prosecution. And I guess --

BRIAN ROGERS: I guess I'd like to ask that, for this portion we're just trying to make sure we've got all the legal issues covered, and not the policy -- the policy questions we'll come back to. We've still got five to go, plus however many more there may be.

Charlotte?

CHARLOTTE MacCAY: There are a couple of things that the spot charter group had proposed to Breck, I'm not sure if it was before or after this -- I'm assuming after -- in amending statutory definitions. Where we wish to amend the definition for response action. Are you familiar with what I'm asking for there?

BRECK TOSTEVIN: Yeah, I guess I'm not -- I'm not in a position at this point to talk about amending the statute or anything like that. I think we're in agreement, basically, on the general concept that incident command system is a response action contractor, if that's what you're getting at.

CHARLOTTE MacCAY: Well, there's a series of things that in spot charter trying to find a way to make a very complicated group of vessels fit into this plan in an easily feasible manner that needed to be done in statutory change in order for there to be the comfort level for people to take on that task. And one of those was to define response action to mean -- so it's in both sections the same -- to mean an action taken, respond to a release or threatened release of oil, including mitigation, cleanup, marine salvage, incident management team services, or removal of a released or threatened release of oil.

And basically what it comes down is the lawyers will, in counseling the vessel agents in particular, are not going to counsel them to do this unless some of these things are in place.

BRIAN ROGERS: So, we'll take up as number 29 the definition of response action.

CHARLOTTE MacCAY: The other one is one we had asked for earlier to amend the words "may not cause or permit the operation of," which is not consistent with how it's read other ways -- otherwheres -- to, "a person may not operate a nontank vessel within the waters of the state, or cause or permit the transfer of oil to or from a nontank vessel." Which is more acceptable than "may not cause or permit the operation of." They may seem minor, but they're important to these people.

And then there's basically three places in the regulations and also in statute where they want to very clearly include a definition of IMT as a PRAC, so that it is very clearly covered in that liability protection. And, discussion has gone on through this whole process of whether or not they can live without that, and it's highly recommended by their counsel that they need to have these changes made.

BRIAN ROGERS: So, we have --

CHARLOTTE MacCAY: I don't know where these

fit, but when I tried to bring them up earlier, then I was put to legal, and the legal discussion is being confined to this memorandum. So if I'm out of place, I apologize. I'm not quite sure where to put these things.

BRIAN ROGERS: Your question, in terms of a legal question, you're saying --

CHARLOTTE MacCAY: There is probably more of a --

BRIAN ROGERS: And this is really more of a policy issue, you want to define each of these issues, each of these terms, or actually redefine the -- or change the language on "cause or permit" as recommendations of the Task Force.

CHARLOTTE MacCAY: Yes. And why that would not be okay. I recognize there's always a fear of a change to the statute turning into a Christmas tree and things being tacked onto it, but there are things you can do to minimize that risk by having a very tight title to that legislative action, so that it's hard for anyone else to get in there and add anything else different to the statute.

BRIAN ROGERS: So, is the legal question whether that statutory definition change is required in order to achieve what you're trying to achieve?

CHARLOTTE MacCAY: We believe it's required. It's a request to include it. But when I tried to bring it up before, I was told to do it in a legal session.

BRIAN ROGERS: That's why I'm asking. Can you address that issue, Breck?

BRECK TOSTEVIN: In my opinion, an incident management team is a response action contractor. An incident management team responds, under contract, to the responsible party to provide oil spill response services.

What Charlotte is saying is that different attorneys have a different view, that they would have more comfort if the words IMT were inserted in the statute. But in my opinion, that the statute is very broad and you don't actually have to have that listed as an example.

CHARLOTTE MacCAY: And basically, I mean, it's a difference of legal opinion, and if you're on the side that's not at risk, it seems broad enough; and if you're on the side that's at risk, it doesn't seem broad enough. It may be difficult to bring all these spot charters under an umbrella of an agent if these changes aren't in place. We're seeing an unwillingness for them to do that, which for us, of course, is problematic because we don't know how we would do it without an

umbrella type shell.

BRIAN ROGERS: Larry.

LARRY DIETRICK: I'm just wondering here. It sounds to me, we don't have a disagreement in concept on the part of Task Force. If we don't have a disagreement in concept -- I mean, statutory language drafting is something that I think is a step that has to be done yet. And if it's attorneys talking about how to frame that, it seems to me the direction from the Task Force here is clear. We agree they would be included. Breck is saying they would be. And they're saying, well, they might not be. But the Task Force is agreeing that they qualify as a PRAC, and that to me should be instruction to the drafters, when we get to the point where the bill is drafted, to figure out legally whether or not -- I mean, I'm just wondering if that's beyond this task force now as to actually get into drafting challenges here that are normally done by the attorneys at a later date.

BRIAN ROGERS: Charlotte.

CHARLOTTE MacCAY: I think what we're doing is looking for a recommendation that the statute be amended, as appropriate. And not just on the IMT, but also on the wording that is different here than it was with the tankers about "may not cause or permit the

operation of," and on the response action language.

LARRY DIETRICK: But is there a difference in -- but it sounds like --

CHARLOTTE MacCAY: I don't think we expect it to be written today.

LARRY DIETRICK: At least with the IMT, there's no disagreement here on what we've agreed to as a task force.

CHARLOTTE MacCAY: Yeah.

LARRY DIETRICK: There's a battle of whether or not it's got to be in or out of the definition. So, what's the disagreement on the second one? I mean, it seems to me that we agree that the IMT is a PRAC. So the other -- what's the problem with the definition for response action contractor? I wasn't quite clear. I mean, other than knowing that -- whether to put it in or take it out. Is there a disagreement in concept here on something?

BRIAN ROGERS: That's this one here, the response action?

LARRY DIETRICK: Yeah.

CHARLOTTE MacCAY: Response action itself?

LARRY DIETRICK: Yeah.

CHARLOTTE MacCAY: We may agree it fits in there, but we feel it needs to come out of this task

force if there is a recommendation for statutory change to support what happens.

On the response action, they want a definition of it that says an action taken to respond to a release or threatened release of oil, including mitigation, cleanup, marine salvage, incident management team services, or removal of a released or threatened release of oil.

Breck, maybe you're familiar with what's particularly different in this request.

BRECK TOSTEVIN: It's the same issue as 29 and 31, they're just two different definitions.

CHARLOTTE MacCAY: So, basically you're adding an incident management team services?

BRIAN ROGERS: So, 29 and 31 are related issues and really come down to whether the statute is adequate today and covers it or whether it doesn't.

LARRY DIETRICK: But there is no disagreement, though, that the IMT is or should be a PRAC.

CHARLOTTE MacCAY: Right. There's just a disagreement that we need this other support in order to give the comfort level to the agents for them to take this on, because otherwise they're wavering. And without them, the spot charter component is going to fall apart.

LARRY DIETRICK: Wasn't this a legal issue, though? I mean, if we agree that the IMT is a PRAC, and if it's not necessary to do a statute, but it's still there, why is that a problem?

CHARLOTTE MacCAY: We do think it needs a statute.

LARRY DIETRICK: So it's just two different attorney opinions?

CHARLOTTE MacCAY: Yeah.

GENE BURDEN: You got a case where you got a recommendation that the group recognizes IMT is the same as -- is covered by a response action contractor in state law, and if in fact there's a requirement to clarify that by statute, the group supports it. End of story.

BRIAN ROGERS: Commissioner?

COMMISSIONER MICHELE BROWN: My only concern -- again, we don't have a concept problem, but all the recommendations are just -- this is the concept that this group endorses and how you would meet the response planning standard. Nowhere does it say, and this one has to be in statute and this one has to be in reg and this one has to do this and that. And I think those are legal drafting questions that come out of the concepts that the Task Force lays forward. And I think, you

know, if we're going to start doing it for one or two recommendations, do we have to now go back and vote, do we want this in the statute, how do you want it worded, do you want this or -- ultimately, it's going to -- leg drafting or the AG's office are going to have to sort this out.

CHARLOTTE MacCAY: I guess it's just a feeling amongst -- and I'm not a lawyer, so, you know, these aren't my passions particularly. But, is that without a recommendation from the Task Force, that it will be difficult to get the statute open. And that if we don't do that, will we have failed in providing some sort of a mechanism to pull spot charters into the C-plan network? Because otherwise it's really going to fall apart if you're leaving it up to the individual vessels. They're obviously not going to understand or be capable of pulling together a C-plan, when they come here for three days once in their existence.

So, I mean, my theory is if this recommendation doesn't go through and we can't access the statute, then we kind of fall out of this process. Even though we all have a nice feeling of where it should go, it's not something strong enough that anybody picks up. So I think it's just looking for a recommendation that the statutory language be addressed, because this is

somewhat of a unique situation in handling the spot charters.

BRIAN ROGERS: In terms of the legal question, I think we've framed what we can frame, which is either you do or you don't define it, depending on which lawyer -- in statute -- which lawyer you listen to.

In terms of what we need Breck here for, that's a policy issue we'll get to after we deal with 18, 19, 26, 27 and 28, we'll get to 29, 30 and 31. Are there any other legal issues that we need to raise? Any questions that fall out? If not -- yes, Bob.

BOB HEAVILIN: Yeah, Bob Heavilin. I think that there was a discussion, and I know that our general counsel for Chadux had, I think, oh, maybe tried to insert some language when this legislation was being crafted, and that was regarding the liability issue regarding a co-op being the plan holder. I don't think that's really ever been resolved, has it?

BRECK TOSTEVIN: To actually be a C-plan holder, a co-op?

BOB HEAVILIN: Yes.

BRECK TOSTEVIN: Yeah, I answered that. That was number 6.

BOB HEAVILIN: So, you're saying that we can't, a co-op could not be the -- we are the C-plan holder,

that we're not afforded any immunity there?

BRECK TOSTEVIN: If you were the C-plan holder, you would have the liabilities of a C-plan holder. And I detail kind of what those liabilities are, what liabilities a C-plan holder has, as opposed to what a response action contractor has.

BRIAN ROGERS: Jeff.

JEFF THOMPSON: As distinct from an RPF, a facilitator who then has the RP sign off a C-plan, thereby absolving that person of any liability.

BRIAN ROGERS: And that's why we specifically took the word "hold" out of that discussion of a response plan facilitator, because a response planning facilitator is a response action contractor, not a plan holder.

Any other legal follow-up? If not, we'll proceed. Rick.

RICK HARRIS: I just have a couple. One is just generally a comment, is that you've, at the beginning, Breck, fairly well qualified your statements to say that these are not attorney general opinions. These are informal or otherwise. Which, I mean, they're guidance for the group. But at some point in time I think some of these questions become critical and certainly require them to become more formal. Because,

again, it sets a lot of the administrative record for the process.

The second part -- I'm looking at Page 8, and it's item number, I guess it's 9, dealing with response action contractor. And it's about three paragraphs down. I see that we're talking about preplanning and drafting of C-plans would not be considered response action services because a contractor would not be responding to the release or threatened release of oil. And then you talk about, you say the term threatened release, while not specifically defined, has been generally interpreted to involve a substantial threat.

And I see those, "generally interpreted," those are the kinds of words I write when I don't want to fess up to my boss what I've done or going to do and, you know, I get a little bit nervous when I see those kind of phrases. They're really qualifications, they're not emphatic and they're not succinct, in saying that it has been interpreted to not result in this, but -- because it's important, because we're talking about the threat posed by the normal operations of a vessel in the area.

When you put that qualifier in there that the normal operations has generally not been interpreted to be a threat, I then get a little bit nervous. "Generally" means that there is an opening, and I need

to understand under what circumstance that opening exists. If you take out the phrase "generally interpreted," but says has been interpreted to not do this, then I have much more comfort. So I don't know if I'm raising a legal question, or is it just simply a drafting issue in that particular statement?

BRECK TOSTEVIN: The reason I used the words -- Breck Tostevin. The reason I used the words "generally interpreted" is because there isn't a specific statutory definition in that section of the statute.

RICK HARRIS: Is not?

BRECK TOSTEVIN: There is not a definition. And what I did is I pointed you to another section of the statute that did have that definition and I think is analogous. We're talking about responding to a threatened release, which is -- there is some kind of imminent harm that the release is going to occur. The vessel has lost an engine and it's being driven toward shore, a release hasn't happened yet but it's a threatened release. In that case it's like a spill response or you're responding to a threatened release where there's, you know, a substantial threat that it's going to occur.

CAPTAIN ED PAGE: I know in federal law it's kind of a determination by the federal on-sea

coordinator. If he or she determines it's a substantial threat, it's a substantial threat.

RICK HARRIS: And I guess I only ask the question because when I see that, I wondered why it was qualified. What you really are saying is that you had to go to another part of the statutes to pull a definition forward, so that may or may not -- if there are some statutory amendments being made, that may be worthwhile to consider making that a little bit more solid so that you don't have to use the terms "generally interpreted."

Because when I see that, if I got an official attorney general's position, or statement, from you, you would still be making that kind of a statement, which is a qualification. And in those cases I would think that we would want to try to make it clear what we're doing.

And the only reason I'm pointing on that is because then we drop down to the next sentence and then you start talking another issue about involvement, and again, contractors are not generally exposed to liability. That's the next paragraph down, about one, two, three -- four lines on the right side. You see "are not generally exposed to liability."

And each time I see that, I have to stop for just a minute and say what does that mean? I mean, if

it says they are not exposed to liability, I understand that. When it says they are not generally exposed to liability, there is then a series of circumstances where --

BRECK TOSTEVIN: I guess I don't know where you're talking as far as --

BRIAN ROGERS: Page 8, the third paragraph, beginning, "However, as noted above..."

RICK HARRIS: And then, what causes me to get even more nervous is then we drop down to the last sentence there where we start shifting it to, well, even if there is a liability, no matter how weak, it really can be taken care of as a contract between myself and the IMT. And every time I've had the State tell me, well, you take care of it in a contract between you and this other entity, then all of a sudden I see that myself and that other entity in the State's eyes are really just one. I mean, the State's going to go after that group. You know, I can't go to you and say, well, I have a contract with this guy, so you go sue him, not me. Don't come after me for your enforcement; you go after him. And as a practical matter, I don't think the State will do that. I think they're going to look at both of us setting out there and say, collectively, we're going after you, too.

So, I only raise those questions because when I see qualifications, and particularly in dealing with these liabilities, and then assignment of the responsibility to a contractual relationship between myself and a third party, I all of a sudden start saying, you know, either we're trying to make the statute do something that we shouldn't and we need to fix it, or I only raise it as question, you may say, let me go back and look at this and I think I can write the words more emphatically to cover your concerns.

BRECK TOSTEVIN: The problem is -- this is Breck Tostevin. The reason I can't write the words more emphatically is because, like I said at the very beginning of the memorandum, is that the courts haven't addressed a lot of these provisions. So I'm giving you my best interpretation.

And my second point I would make is that the reason there are qualifications in there is I'm generally talking on, speaking to certain hypotheticals; and you change the facts, then your liabilities change. If you make special promises to people in your contracts or if you engage in services outside of the norm that might get you into another area of liability, that's the reason there are those kinds of qualifiers in there.

So, one, the courts haven't interpreted these

provisions, and I'm giving you my best interpretation. And, two, I'm responding to a certain sets of facts; and if you change the facts, then you get a different answer.

RICK HARRIS: If I may.

BRIAN ROGERS: Rick.

RICK HARRIS: I guess the commissioner told me just a little while ago, and I agree with her, is that -- it's on a totally separate issue, but she said let's not -- you don't want to go to the courts because no matter how much passion you have, you never know what the courts are going to do.

And what we're trying to say is let's look at the statute and if you needed to have a more definitive statement -- and maybe it's the regulations, I don't know -- but if we need to address these issues so we take away the vagaries and the ambiguity, or at least try to narrow it or limit it, is the only thing I'm asking.

And, as I say, when I see these things, it's telling me that you're in actually kind of an awkward position. We don't want to depend upon the courts. If we can do a very good job as a group, and also within the legislative and the regulatory drafting, if we can do a good job, then we have a pretty solid situation and

don't have to deal with the courts as much as we might have to otherwise. So all I'm asking is, is there some different ways we ought to approach these to make these responses more bulletproof?

BRECK TOSTEVIN: I don't think I have an answer.

RICK HARRIS: I think that all I'm asking is, is that we recognize that this group, there are some vagaries and some ambiguities within what we're doing at this point in time. There are some uncertainties and it's not a perfect world and we'll never expect to take care of all of them, but there are certain areas that are critically important to us that are being regulated, and it's critically important for us to be able to bring, for example, the ship's agents in, who we think are excellent parties to control a lot of what's happening here. But if we can't bring them in, if we can't build their comfort, then we lose, as Charlotte said, the opportunity to go forward.

So, all I think I'm asking in this thing is to say, is to recognize that there are potentially some ambiguities or some weaknesses that exist, and that we need to have those addressed at a point in time before we try to finalize this. I mean, I think in the report all we have to do is to say, here are some of the

potential legal issues that may exist. There's very few lawyers in this room, but if we can address -- recognize them here, then we don't just walk away and forget it. So that when we're standing in front of a committee, we're able to say we've raised these issues, these are what we need to address, here's one solution. And then hopefully we can find a path that everybody's agreeable to the language, we keep it very narrow, very tight, and we're successful in implementing.

It's just my own experience, we did that in forest practices, where we passed two bills through the legislature virtually unamended. Spent a lot of time working with the legislature, and we spent a lot of time working in this very kind of group. And somebody tried to change, in the legislature, a comma, and everybody stepped up and said, no, we've agreed to this, no changes. So, I think that we have plenty of room and plenty of time to work through that process so that if there is indeed statutory change needed, we can have it done in a professional manner so that it doesn't open up the Pandora's box.

BRIAN ROGERS: The issue that you raised, we can deal with as part of this 29 and 31, defining response action, and if C-plan drafting is not part of response action or --

RICK HARRIS: As well as some of the other functions we defined for the ship's agent, which was delivering the C-plan to the ship, receiving notice back from the ship that they had indeed received --

BRIAN ROGERS: The response planning facilitator function.

RICK HARRIS: Right.

BRIAN ROGERS: Gene?

GENE BURDEN: Just one comment. I think it's important to recognize that any statutory changes made in any of these areas invokes a geometric expansion of the interested parties in this arena. And the complications we've had in coming to grips with some of these issues is really expanded dramatically once you go in and start tweaking this with some of the definitions. That makes Drue's job -- Senator Pearce's job even more interesting.

BRIAN ROGERS: Anything else on the legal issues? Yes, Sandra.

SANDRA JACKSON: I have a question. Is SEAPRO considered a C-plan holder?

BRECK TOSTEVIN: No. Unless you hold -- have you been issued a certificate of approval by DEC with your name on it saying you hold --

SANDRA JACKSON: No, but we have a contingency

plan.

BRECK TOSTEVIN: You have a response plan.

SANDRA JACKSON: A response plan.

BRECK TOSTEVIN: They're different things.

SANDRA JACKSON: Okay, so we're not?

BRECK TOSTEVIN: No, you're not. Not to my knowledge, at least to my knowledge.

LARRY DIETRICK: Do you have a crude oil tanker?

SANDRA JACKSON: Not that I'm aware of.

BRIAN ROGERS: Okay. If we've finished with the legal issues, let's proceed to the Alaska Railroad, and I'll hand out --

LARRY DIETRICK: Thanks, Breck.

ERNIE PIPER: Having cleverly extended the discussion about ICS, and then strategically inserting an attorney in front of me, we can probably dispense with my work fairly quickly, because we're in the midafternoon sugar dip and I know that we will be losing people quickly.

If you can look at your presentation here, I'm going to sort of skip through the first part of it, and the meat begins on Page 3, and talk about the things that specifically affect this committee.

Just by way of background, before this bill the

Alaska Railroad was not a regulated entity for purposes of oil spill response, or oil spill transport under state law. However, this is the Alaska Railroad Corporation Emergency Response Plan that includes oil spill response, that was written in 1991. It was an outgrowth of the Dunbar spill settlement. And it was updated in 1993, and when I started using it in 1999, we began to find that there were a lot of areas that had not been substantially updated since the mid 1990s. And we're in the process of doing that now. Some are ministerial, some are more substantive. Some involve updating training for individuals, some involve putting new training for individuals who replace those who have passed on.

Back on our meeting on the 6th, we had a lot of questions about what a new plan was going to look like for a regulated Alaska Railroad, and based on the comments that have come out of the Task Force, you know, it appears that substantially if you have a contract with a response action contractor, you have an emergency management team that meets the criteria that DEC establishes, you're pretty much on the way to getting where you need to go. Would that be fair, Larry?

LARRY DIETRICK: Got her started.

ERNIE PIPER: Right. And for the purposes of

what this means, strictly from the standpoint of the legislation, the Alaska Railroad wasn't subject to the regulations that you can sum up in the periodic training, the exercises and their verification. And what this legislation will do is change it so that we are part of that, and that will arrange a little bit more about how the plan is put together and how it's tested.

I will skip on to Page 3. And if you look at the slide about 1999-2000 incidents, we're talking a lot in here about response planning and contingency planning. But what is underscored in the incidents at the Alaska Railroad over the last year, is that really what you're looking at are systems failures, more -- not just active errors that produce spills or derailments and spills, but also what behavioral scientists and system scientists call latent error. You know, those things that are imbedded in an organization through long-time management principles, culture, decisions, resource allocations, that can accentuate what an active error does. And in the transportation industry this isn't uncommon, and you can see it right there in spades. That led us to, in December, go for a system safety assessment, part of which has to do with this -- an outcome related to this legislation. But part of it

more to the long-term management practices at the Alaska Railroad.

If you look nationally at train accidents, 30 to 35 percent of all train accidents every year are a result of human factors, and that's a designated defect code under the Federal Railroad Administration. Another 30 to 35 percent involve track defects, track geometry, you know, how -- the gage, tie condition, misalignment, cross level, all those kinds of things that affect how the train rides on it. And then another, less than a third tend to be mechanical.

What's interesting is that you find that over half of the train accidents that happen every year happen right in yards during switching operations, and more than half of those occur at one to nine miles an hour. So, while you see in the news, both here and Outside, sort of the graphic pictures of derailments that occur on main lines, primarily where you run into trouble on railroads is in the yard. And the simple reason for that is that's where you do most things. You know, there are more events happening, there are more decisions that human beings have to make, there are more rules, both formal rules and implied rules, that have to be followed. And I know Captain Mike would be well aware of that sort of thing in bridge management.

We got Rail Sciences, which has been our chief contractor on a number of operating changes, to first of all come in and say we were going to systematically look at our track repair and maintenance, our quality control in the car and locomotive shops for mechanical. And then rules, compliance and best practices, and switching and train operation. Those three major areas that I noted, you can run into trouble with trains.

The fourth piece of it is to assess the environmental and community risk associated with HAZMAT transport. And that all comes together. The branch of it that really goes into this legislation on the contingency plan is to determine the conditions and locations that are most susceptible to what's called L/V derailment, and that's a ratio of between the lateral forces exerted on the rail and the vertical forces. And the very short version of that is that 1.0 is a certain derailment, and then down from there you get less risk. But you can measure that, it's an industry standard, and it's a 100-year-old calculation. And our objective is to use the work being done in the risk assessment now to identify those locations, see if they match up with our existing planning. If so, augment or verify it. If not, improve it in those areas.

The first part of it was the track portion that

we got done before it started snowing on the system. And we did a walking inspection of all main line track, with the emphasis on curvature. Eighty percent of all derailments involve curve, whether it's a turnout or a curve. That's where bad things can happen. And we literally -- there were eight of us and we literally walked every curve on the Alaska Railroad.

We also did a walking inspection of all the switches and turnouts. And in that you look at rail condition, tie condition, the spiking patterns, the anchoring, those things that keep the track where it's supposed to go. And we went through our standard operating procedures and tried to match them up in the field to what we saw. I mean, are we doing what we say we do with track maintenance and standard repair procedures?

We then went into the shops to do our mechanical audit, which we completed last week. So we now have two-thirds of the operating portion of this done. The track work, the data from the track assessment, is in data reduction and drafting right now. The mechanical inspection was just completed last week.

We looked at all of our fleet. Not every single car, but a very significant sample. I would say far beyond a statistical sample. Anywhere from 10

percent to 40 percent of our fleet. And looked for defects that existed on those cars, according to the Association of American Railroad Standards and the Federal Railway Administration. And then also what we call noncovered defects. Those things about rail cars that you really would like to be able to correct before they become a problem. And they are in such arcane areas as wedge rise, side bearing clearance, and other aspects of the rigging of that car. I call it sort of the waist down. You look at the tank car from the bottom of the belly down to where it hits the track, and that's where you're looking for most of your problems.

We emphasized the tank cars, for obvious reasons. Most of our fleet is post-1990. So they're relatively new cars. They're mostly leased. Nationally, 99.6 percent of all tank cars run on railroads are part of a leased fleet. Railroads do not operate tank cars. We own more than most railroads do, although we don't run the ones that we own very much.

We also audited our inspection techniques for what in the railroad industry is known as bad order. What defects did our inspectors see, did they do a good job at locating them, and then did our repair facilities properly follow up on those inspections with repairs?

Interestingly, on the track portion, what you

find is that we -- the main thing that the Alaska Railroad needs to work on is improvement in its standard operating procedures. And again, this is a little arcane and I won't go into it. But most Maintenance of Way manuals on railroads say that under certain conditions these are how you spike, these are how you anchor. And the Alaska Railroad has tended to do that a little bit more based on individual roadmaster experience. And while we've got very experienced people, you want to make sure that you have a more standardized approach to it.

The tie condition on the Alaska Railroad is vastly improved than it was five years ago, and it is substantially better than most regional railroads. Mostly thanks to the federal money that we've received for tie replacement and anchoring.

On the mechanical side, we have found that generally, the tank cars, the hoppers, the most used cars in the fleet are all well above AARS and FRA standards. There are a few exceptions that we need to pay more attention to. And this is getting back to the fact that we run trains, not tank cars. And interestingly, the tank cars look great, in terms of their mechanical condition, but there's a class of car, if you'll notice down in the yard there's a train that

goes out every night that has the trailers on the top of it, those articulated cars. That runs with tank cars coming south. And we discovered that those articulated cars actually need, beginning today, a fair amount of work in a couple of key areas. So that's just to show you how the risk assessment comes into play in terms of derailment prevention, which in turn prevents fuel spills.

Operationally, we will be monitoring our best practices, our rules compliance, and what's known in the industry as operational monitoring, beginning on the 11th. We'll do that for ten days, with about seven people going out through switching operations, road operations, and other specialty operations on the railroad, checking FRA compliance and compliance with our own standards. We expect that with the number of people involved, we'd hoped to have all this done by the 1st of November. It's really looking more like we won't be done until the end of November. And a draft set of findings will be available before the end of the year, December 31st.

As far as this, the railroad and the Task Force are concerned, we fully expect we're going to wind up under Title 46, and administrative code section on contingency planning. We don't know exactly how that is

going to take shape in the current legislative session, but we're ready to do what we have to do.

In the meantime, we are proceeding on the assumption that if our contractual discussions follow through to fruition the way we expect them to with response action contractor, and our training plans follow through with what we have planned for now, between now and the end of January, that we would be substantially in compliance before approval by the 1st of February. And then, the risk assessment will tell us some of the other things that we may want to do about our prevention plan.

Again, the final place for an approved plan is largely going to depend -- in part will depend on what the outcome of the current legislative session is and what that schedule is that gets set up. But I think we're well ahead of the curve right now.

BRIAN ROGERS: Any questions for Ernie from members of the Task Force? Must have done a good job.

ERNIE PIPER: Well, like I said, I think the good job was done when I delayed those other things ahead of me.

SIMON LISIECKI: Timing is everything, absolutely.

ERNIE PIPER: Pre-lunch there might have been

more questions.

BRIAN ROGERS: So, are there any other recommendations for the railroad that should go on our list? We're up to 31. Any others, or are people comfortable that our existing recommendations cover the issues that you want for Alaska Railroad? Lacking any suggestion to the contrary, then you're off the hook. As long as you complete, carry out.

ERNIE PIPER: We're moving.

BRIAN ROGERS: Okay. It was pointed out to me off line here, there is a difference between what the Task Force is doing under SCR1 and SB273, having to do with the legislation. Our legal task under the bill was to deliver a report on recommendations to implement the response planning standard. The senate concurrent resolution does ask for recommendations concerning statutes and regulations. The former would require only regulations, the latter would require statutory, any statutes that are necessary as well. And I'm getting a sense that there are differing expectations as to the extent to which legislation may or may not be required to carry out.

The law sets response planning standards, Senate Bill 273. We're determining how to implement that under the law, which would be the regulatory

approach. We are coming back around on several of these issues and saying, oh, but we need statutes in order to implement the statutes. And I think there's some confusion in the group on that. I want to raise that issue now. We're going to have to discuss that at some point today as to how we sort of resolve the differences between the two versions of what we are, and that may affect some of these decisions.

Have I further confused everyone? Well, we actually do have the issue of legislation as part of the agenda. It was originally under the attorney general's office report on legal issues, and I think that's the point at which we will discuss anything having to do with Task Force legislation.

It's 3:15. We have one, two, three, four, five, six -- those are the same -- seven recommendations to go. And then we have the prevention -- we have the unresolved issues from RPS and prevention. Hopefully, some of these will move faster. I've been off on my estimates of time all day today, though. Maybe we can turn these around. Maybe we'll get a little further in the rest of the day than we have so far.

Next issue on the agenda is inspection. Number 18. Stated that DEC shall have statutory authority to inspect nontank vessels for C-plan compliance. And that

was pulled off the consent agenda before the meeting started. And I think, Jeff, that was your request.

JEFF THOMPSON: Yeah, if I may, Brian, thank you. Jeff Thompson.

I need to ask my co-chairs to assist me here because, as I recall, we dealt with inspections late in our C-plan meeting, and I just -- I knew we had discussed it and we had made several observations, but I don't remember going to where we were recommending statutory authority for inspection. Obviously, DEC, if we submit a C-plan, they have to have the ability to check the facts of that C-plan, that's understood. But I don't recall going there, and you can correct me because I just may not remember.

But I also -- in view of that, I would like also to kind of go back and revisit the memorandum of understanding between DEC and the Coast Guard just to see, ultimately, is it necessary to give DEC statutory authority to inspect nontank vessels for C-plan compliance.

I'm looking to Charlotte and I'm looking to Stephanie to set me straight.

CHARLOTTE MacCAY: I was going to try to stay out of it.

BRIAN ROGERS: Senator Pearce.

SENATOR DRUE PEARCE: Charlotte and Stephanie, if you want to make a comment first.

CHARLOTTE MacCAY: I don't remember anyone having a lot of objection.

STEPHANIE MADSEN: I don't remember talking about how it was necessary to allow authority, but I don't know enough to know whether we talked about statutory authority or not. But I do recollect that there were three things that we talked about in the C-plan group to inspect. And that was that you had your financial, your COFR on board. In relationship with the COFR, you may confirm the fuel capacity of the vessel, in relationship to the COFR. To make sure that you had your SOPEP on board. And your contract with your response action -- there were three things that we decided that were appropriate for DEC to inspect when it came to C-plans. But that's as far as I recollect.

CHARLOTTE MacCAY: And I don't think I had a particular -- I didn't think we dispelled they had the authority to inspect, and I guess we didn't talk about how they got that authority. Personally, my tendency is to say we'll recommend yours if you recommend mine. But I don't particularly see a problem with it, other than the issue of opening up statutes.

BRIAN ROGERS: Senator Pearce.

SENATOR DRUE PEARCE: Thank you. Before they described the different memorandums between the Coast Guard and the state. As a veteran of writing statutes, and then the departments do the regs, we have to in the statute give the department the authority to do just what Jeff said, which is -- well, it's obvious -- that the department has to be able to check and make sure that you are meeting what you say you're meeting in your contingency plan. Without statutory authorization, they don't have that authority. So it has to be in statute.

JEFF THOMPSON: Jeff Thompson. If I may, Brian.

BRIAN ROGERS: Go ahead.

JEFF THOMPSON: I think what -- Stephanie is right. We talked about the fact that these three things would have to be checked. We just never got to the word "statutory" that day. And I think that's probably what my hang-up is, which really is not a hang-up at this point, other than to say that I would like just a little bit more discussion, since we have this opportunity. I know it's late in the day. But maybe Larry could, if I could ask Larry, just as your normal scenario as to how, through the MOA with the Coast Guard, that because ports take control -- and Captain Page and Captain Hutmacher are well familiar with that program -- how that liaison

with the Coast Guard -- the Coast Guard is going to be able to perform a lot of that inspection for you. And is that the intent of DEC in relying upon the Coast Guard? Because SOPEP is a CFR requirement, it's a federal requirement that the Coast Guard checks on.

As far as the membership in a RAC, or a PRAC, which is one of the aspects we discussed, I don't think there's federal -- corresponding federal statute for that. But again, you know, as you envision it, Larry, do you think the Coast Guard's going to really help you out with this, in terms of -- again, I mean, unless you're looking to really expand DEC's staff to be able to add a bunch of inspectors for these vessels, because there's quite a few vessels that will be coming into this pool. So I was just wondering what your feeling on that is.

LARRY DIETRICK: Yeah, Larry Dietrick with DEC.

Well, I haven't actually talked to Ed yet about how we do it, but we do do that with the Coast Guard on all the other inspection programs, so our inspection programs are fully coordinated with them ahead of time. I think Ed or one of his other people at an earlier meeting discussed the criteria they used to select vessels to target for inspection, based on certain criteria. So that vetting process already is in process

and they follow those guidelines, and our folks get with theirs, they go through the criteria, and some fall out and we do some and they do some. Clearly, Coast Guard is probably doing the bulk of them. We do a few now, but not very many.

With regard to the nontank vessels, I don't see it working too much differently in terms of how we interact with the Coast Guard. It would still be a process where we get together. I think an example that we've talked about at one of the earlier meetings, I don't know if it was on the side or not, but in the case of Dutch Harbor. If we were sending a vessel inspector out to Dutch Harbor, we would do it in coordination with the Coast Guard out there and go through their screening criteria. And for the most part, the need for an inspection capability to maintain the integrity of this program isn't so much to check 100 percent every vessel that is under a requirement here, as it is to screen for the ones that are not.

So if you're in Dutch Harbor and you've got the list of who is coming and going and you're working with the Coast Guard, and a lot of the vetting process you can screen out by records check, okay, who is coming in, who has got their SOPEP, a state Certificate of Financial Responsibility, state C-plan, et cetera, and

you can make a decision then as to whether or not you need to board them. And in most cases those will probably be random and they'll be few and far between, just because the items that we have on the list here are not, you know, they're not too extensive.

On the other hand, there will be a name of a vessel coming in and they won't pass a records check. That one will get targeted for boarding. And that was -- that will be when we need to go on board, verify whether or not they have the SOPEP, a Certificate of Financial Responsibility, co-op membership card, issue with the volume capacity or whatever.

And so that's the capability you need, then, to maintain, I think, some integrity in the system.

CAPTAIN ED PAGE: If I can.

LARRY DIETRICK: Go ahead.

BRIAN ROGERS: Captain Page, and then Rick.

CAPTAIN ED PAGE: There are a couple items here in the letter of agreement that we've been pursuing before on a continual. One comment is find ways to conduct vessel inspections in such a way that disruption to industry is minimized. And efficiency and safety maximized. So, if you minimize duplication effort, as offered before in previous discussions that, at the subcommittee, I can't remember where. But in the course

of doing our inspections, the State would like us to check, have some documentation. We would do that and report back to State. We wouldn't enforce state law. We would report back to State.

And some other provisions of that where -- in this MOA it talks about a single inspection may fulfill both state and federal requirements as to minimize duplication effort, minimize disruption to the industry, also be more efficient overall. So again, we're willing to do that, and we've done that in the past in other areas. So I think it's already kind of scripted in the way we conduct business.

And I guess, on the other hand, if we suddenly don't do our job right because Congress decides not to give that money to the Coast Guard, the State is saying, well, then we don't have to sit and wait for the Coast Guard to do this; we can go ahead and get it done ourselves. But I think in the present regime, the way we're staffed and whatever, I think we can minimize these disruptions, duplicative disruptions.

BRIAN ROGERS: Rick Harris?

RICK HARRIS: My only comment is, on 18, as I read the explanatory paragraph, I see a variety of things which I don't know why it requires that you have to go on board the vessel. I mean, to see that you have

a contract with the response contractor. I mean, those are all types of things that the ship's agent would normally have or we would have available. And I guess as I looked at this, I couldn't see anything maybe other than confirming the quantity of fuel on a vessel that really required a ship inspection.

So, I mean the rest of it is paper, it's moving paper around. It's, have you got your COFR, do you have your C-plan, do you have your certificate of insurance. I mean, those are -- that's paper stuff that, logically, the ship's agent, as we've already identified them in many cases -- at least from the spot charter basis out of Southeast, we've identified them as a potential entity that really becomes a collector of all of that. So, if someone wants to know, you know, the relief days in port at Hoonah, which it is, I think, and somebody wants to know what's there, the ship's agent is the excellent candidate to get ahold of that information. So, I'm going, why do you need to go on board a ship to get it, because it's already been sent to someone else, because we've chosen to make them the conduit to receive all that, as well as to communicate that all back to the ship.

BRIAN ROGERS: Does DEC want to respond before I go to Captain O'Hara?

LARRY DIETRICK: Yeah. Larry Dietrick.

Yeah, there's some items here. And I think the paragraph here captures some of them, but there's some undecided items here yet that's not clear. As to whether or not we'll end up with some things on board that we would check.

For example, the storage capacity may or may not be an issue here, I think, when we get to, what's the number, 27, 28 -- yeah, I mean, if we've got to get in. That why I raised the issue before, if we're going 50 percent fuel loads or something, and then those have to be verified periodically, then that becomes an item that we would do on board.

Similarly, the prevention thing. It depends, there may be prevention items to check that may be so, maybe not, depending on the prevention program, I think, that's ultimately adopted here.

And as well, there may or may not be response equipment items under the C-plan that some vessels, I'm not totally sure may not still choose to put on board. So, in addition to the paper requirements, there are those items that I would point out that might become candidates, but we're just not quite to the end yet.

RICK HARRIS: And I don't have a problem. The only thing I want to make sure is, is the ship thinks

that he has sent the paperwork to the responsible agent, then all of a sudden DEC climbs on board and says, where is this, this, and this. And they say, our agent has those. I mean, we shipped those to that entity with the intention that that would be the conduit by which that information was collected.

So, all I'm saying is, as we go through and if we identify things, you know, you don't come to me and ask me for something that I don't have -- I mean, I may have control of, but I've shipped it over to someone else to say, here is my contact on this. And so, as we go through this, I'd like to make sure we narrow it down to in fact physical things that are on a ship. If indeed we're moving the paperwork to a ship's agent for the insurance and these other kinds of things.

LARRY DIETRICK: I'd just like to point out again, it's the vessel that's without that will be the vessel that, through a vetting process, would become the target. And if the expectation is that we're going to be boarding 100 percent or anything close to that, in terms of nontank vessels, to check paperwork, the answer is no, we are not. I mean, we're talking probably about less than 5 percent here of the vessels. And that would only be after a vetting process that we go through with the Coast Guard ahead of time before we board vessels.

And I would like to dispel the notion that we've kind of heard some rumors about the DEC black helicopters that come swooping down. We don't have them. And we don't board any vessels without trained people that have beaucoup experience and that hasn't been coordinated with the Coast Guard ahead of time, and haven't gone through some kind of screening process before we even make the decision that it's worthwhile. And even when we do do that, that's done in port at a designated location where the Coast Guard is usually already carrying out that kind of activity. So, we're reasonable guys.

BRIAN ROGERS: Captain O'Hara. And then Senator Pearce, Jeff, Stephanie, Scott, Eric, and Charlotte.

MIKE O'HARA: I just want to ask Senator Pearce if this had been considered in the original legislation.

BRIAN ROGERS: Senator Pearce.

SENATOR DRUE PEARCE: It was in the legislation until it got to the House something or other committee, and Representative Phillips pulled it out. I don't think the explanation at the table, frankly, was very good about inspections. So, it dropped out on like the last committee -- second to last committee on the House side.

BRIAN ROGERS: Do you have another?

SENATOR DRUE PEARCE: Yeah. Number 18, the way I read what is here, and you have to look at the fact that last sentence for C-plan options 2 and 3, the department would have the ability to inspect. So, them having the authority to inspect is for all the different opportunities to have C-plans, and option 2 and option 3 are if the vessel -- a group of vessels in the fleet wants to have their own, like Stephanie and Heather have been talking about. So, you need that authority because then DEC doesn't have a PRAC to go to or somebody else. They have to go to the fleet or the individual ship.

But I would think, in the explanation that you were given, Rick, you would never hand over to an agent or anybody else your original documents. They stay on the ship and you give them copies. You know, I'm not saying that DEC needs to comes aboard just to look for those if you've given them to the agent. But your Certificate of Financial Responsibility, probably the original stays in the vault somewhere. And even the ship has a copy, but the ship does never sail without a copy, I would think. Am I wrong?

MIKE O'HARA: No; you're right.

SENATOR DRUE PEARCE: Certificate of airworthiness, that never comes out of my airplane,

ever.

BRIAN ROGERS: Jeff?

JEFF THOMPSON: I was just going to -- I had a couple of points, and Senator Pearce I think answered my first question. That is, I'm a little confused, we're talking about how the charter deals with statutory, and that maybe the charter of the group were exceeding that on some -- I didn't quite understand what you were saying about that. But basically we're being asked to recommend this because it was taken out of the legislation, so it needs to be put back in?

SENATOR DRUE PEARCE: Well, could I?

BRIAN ROGERS: Yeah.

SENATOR DRUE PEARCE: Unless DEC has the authority to make sure that you have met the requirements, there is no way for them to verify that you've met the requirements. And so, there does need to be a verification process. Now, maybe verification is a word people are much more comfortable with than inspection, because for the -- well, I heard lots of comments, for the ten years that we've had 567 in place, I have yet to hear a horror story of DEC going off and boarding a ship and doing awful things and having people that were unqualified and so on and so forth. I've never heard one. I think I would have heard one, you

know.

And so, there seems to be all of this intense worry that some employee of DEC is going to take it upon themselves to go out and inspect a ship and look for things in the holds that aren't any of DEC's business. That's not something that they have ever done, and I would think it's not something they're going to start. So, maybe rather than talk about inspection, we should talk about the ability to verify, if that word has some connotation that people get nervous about.

BRIAN ROGERS: Jeff, if you want to respond.

JEFF THOMPSON: Yeah, if I may. Following up on the senator's comments, Brian, I would like to make a motion to replace the word "inspect" with "verify," for recommendation 18. And I just have one more follow-up question, if I may, for Larry.

Larry, it says here in the explanatory language, to verify quantity of fuel. Is that the actual fuel on board that would be germane to our further discussions on 27 and whatever, or is that fuel capacity?

LARRY DIETRICK: Well, it could be either one, depending on where we go here.

BRIAN ROGERS: Stephanie, and then Scott and then Eric and then Charlotte.

STEPHANIE MADSEN: This is Stephanie Madsen. I guess, from a fishing vessel or a fish processor perspective, you know, right now when we get boarded by Coast Guard, it's most always at sea. Because our schedules, we don't report to anybody that we're coming to town. I mean, we're not required to report, necessarily, unless you're a catcher vessel reporting to your processor that you're going to come in. And even that can change based on, you know, your catch or weather or breakdowns or anything like that.

So there's no reporting system to where Coast Guard is going to know when we're coming and going from port. So it's going to be, I think, from a fishing perspective, you're going to rely on Coast Guard a lot more than you might anticipate, because most of these boardings are going to be at sea.

Two, though, on the other hand, I would hope that since DEC also has the authority to inspect processors, floating processors, that there isn't a duplicative system here for those processors that are fixed, that stay in one place and process. That we don't get a DEC health inspector come, you know, one week and we get inspected, and then we get an inspector from the spill division to come in and inspect. And I would hope that there would be some kind of an approach

to where if we're going to a verification system, that a person from DEC that's going aboard a vessel has a comprehensive list of things that DEC would like verification on.

We're not looking forward to having to pay any more increased fees to get our permits, or the cost of doing business goes up because now we have to fly DEC out. And, primarily, you're not going to get -- we're not on the road system, so you're not going to easily get to a place where you're going to do a verification of paperwork.

So, I do believe that many of my members want the alternative compliance; and then, because of the alternative compliance component, DEC is going to have to have the authority to verify and inspect. But I do hope that there's some very well coordinated effort amongst DEC personnel and with Coast Guard because, as you've heard all along, we're an animal of a different color and it's going to be, you know, it's just not going to be able to be handled the same way that you've been able to handle other vessels.

BRIAN ROGERS: Before I go to Scott, Eric and Charlotte, let me ask if anyone objects to 18 with a substitution of the word "verify" for "inspect." Are there any objections from members of the Task Force?

Stephanie?

STEPHANIE MADSEN: I'm not objecting, but I would like to know where it would be appropriate my request that the State require a vessel owner simply certify the federal requirements, and not adopt the federal requirements. And I go back to our minutes, Contingency Plan Work Group, there was two ways that we could do it and that that decision was going to be made on November 6.

JUDY ERICKSON: Stephanie, that's on the agenda.

STEPHANIE MADSEN: Oh, that is later?

JUDY ERICKSON: Under prevention.

STEPHANIE MADSEN: Okay, thank you.

BRIAN ROGERS: That's right. That's under the prevention portion.

STEPHANIE MADSEN: Okay.

BRIAN ROGERS: Is there objection to adoption of 18 with the substitution of "verify"?

HEATHER McCARTY: I don't object. I just want to ask a question.

BRIAN ROGERS: Okay, go ahead.

HEATHER McCARTY: Larry mentioned that he might include the inspection for voluntary prevention measures in this place as well. Should we put that in, or should

we wait until we've talked about the prevention stuff?

BRIAN ROGERS: That would come under the prevention, because we don't know if they're going to be prevention measures, voluntary prevention measures, or not, so that's all under the prevention discussion. And should that happen, we might amend this or we have a separate thing on inspection for prevention purposes.

JUDY ERICKSON: Brian, would you just read the way the recommendation is.

BRIAN ROGERS: It would read: DEC authority to verify. The Task Force recommends legislation to give DEC statutory authority to verify nontank vessel C-plan compliance.

Commissioner.

COMMISSIONER MICHELE BROWN: I don't have any objection to that, but I do think when it comes back to turning the whole document over to drafters, what they're going say is the easiest thing is to go into 26.04.060, which is what it says, in all oil programs DEC has the authority to inspect for any provisions of law. And what's missing in there is the word "nontank." Every other kind of facility is covered. So the drafters are most likely to say the easiest way to provide that verification is to insert it in that section. So it may, the word "inspection" may come up

again.

BRIAN ROGERS: Further discussion? Is 18 approved as changed? Eighteen's adopted.

Which brings us to 19. Drills. The drills, I think the issue -- I had questions from primary response action cooperatives, contractors, about the drill schedule. Also had a suggestion for a slightly different schedule on this. I'm not sure where the group wants to go with number 19 as it stands now.

Heather.

HEATHER McCARTY: Maybe we could hear from the people who made those suggestions.

BRIAN ROGERS: Does anyone want to suggest an alternative on 19? It may that be the question -- that from the time this was stricken from the consent agenda till 3:30 this afternoon, that the questions were answered and there's no longer an objection.

STEPHANIE MADSEN: Mr. Chairman.

BRIAN ROGERS: Stephanie.

STEPHANIE MADSEN: My understanding is that number 19 reflects the work that the Contingency Plan Work Group did, and we worked out -- this reflects what the C-plan Work Group did.

BRIAN ROGERS: Correct.

STEPHANIE MADSEN: And I guess I was absent

this morning to know who requested this to come off the consent agenda, but --

BRIAN ROGERS: Well, questions were raised by Bob Heavilin in a phone conversation, and then DEC had some questions, but I think those both of those questions may have been resolved.

Bob?

BOB HEAVILIN: I'll have to think about what my question was when I talked to you on the phone.

BRIAN ROGERS: Your question was --

BOB HEAVILIN: Exclusively?

BRIAN ROGERS: -- this idea of a spill response cooperative that provides services exclusively to nontank vessels.

BOB HEAVILIN: Right.

BRIAN ROGERS: A hypothetical new co-op, because the existing co-ops are drilled as part of the RP drill. In this case, you don't have RP drills and so there would be no way to drill a PRAC that was -- a cooperative that was only providing to nontank. This was to try to make sure there wasn't a loophole that allowed somebody to come in and not ever get drilled.

BOB HEAVILIN: I suppose I agree with that. I just don't know if by opening that up to where DEC then would have that authority to start drilling those folks,

is where I would want to see it go.

I guess the other thing, too, is on the first sentence there, on the explanation, spill drills are currently conducted in the tank vessel regulated community for responsible parties. And that probably should read for plan holders.

BRIAN ROGERS: Yes.

BOB HEAVILIN: You're not an RP until you have a spill.

BRIAN ROGERS: Right. In the description, plan holders would be more accurate than responsible parties.

Is there any objection to adoption of recommendation 19?

RICK HARRIS: What was the change?

BRIAN ROGERS: In the first sentence after the bullet. It's for plan holders.

Is there an objection to 19?

LEE EGLAND: Just a question. I'm sorry. The sentence here where we talk -- and I'm not sure -- if the idea is we're trying get to the PRAC that is doing some exclusive response contracts for the nontank vessel, I mean, why limit this to a co-op? Why don't you just put recommends that a PRAC provide services, so it covers anybody and everybody, right? Otherwise, you've just got this, two different organizations, so

it's a PRAC that provides exclusive services; now you've caught them all.

BRIAN ROGERS: Is that a better wording? Does anybody object to that? I think that was the intent of the group.

Yes, Heather.

HEATHER McCARTY: I just have a question. Does that last sentence refer to tabletop drills or a full actual deployment.

BRIAN ROGERS: Full deployment.

If there's no objection to 19, with the substitution of "PRAC" for "spill response cooperatives," we've set a record for getting one of these done today, and maybe that's good for the rest of the day. Is there an objection? Hearing none, we're okay on 19.

That brings us to the six issues that have been identified as issues. And I guess the question I would have for the group is, do you want those dealt with now, under the items removed from the consent agenda, or on the discussion and action on unresolved issues? We can do it in either place.

CHARLOTTE MacCAY: Now.

BRIAN ROGERS: Now? Okay. Any objection to now?

Okay, the issue of defining capacity. This is the one that came up earlier today, and what do you do if the capacity is something other than the fuel capacity of the vessel. Does anyone have a recommendation that they'd like to try to float on the issue of defining capacity? Yes?

JOHN HANSEN: I do. Since I was the one who raised the issue this morning and opened that Pandora's box, let me throw out some words that we can then discuss. And I'll just read what I've written here: The maximum operating capacity is defined as the total fuel tankage of the vessel or the actual fuel volume that the vessel will not exceed while in Alaska waters. And then we could add, certified by the vessel owner and approved by DEC.

So, what I'm basically saying is that we have two options. One, go for the full tankage option according to the ship specs, or go for the option where you will not exceed a certain amount. And that amount would be the defined maximum operating capacity. And the owner would commit that that would not be exceeded over some time frame, and it would be subject to some kind of approval process, verification by DEC.

BRIAN ROGERS: Comments on that proposal? Captain Page.

CAPTAIN ED PAGE: I guess the only comment, Captain O'Hara brought up before, and said that -- I guess I'm assuming that approval process entails not just validation that that's really all they're going to carry, but also takes into consideration some of the safety issues that we had mentioned earlier, so you're not suddenly bringing it so low that now they don't have the reserve fuel capacity that would cause some other problems. I'm just assuming that. Without having the safety word in there, I guess without some extra verbiage that goes into the safety considerations. I think we understand that and that's kind of what that approval means. So if someone says, well, we're just going to run on vapors and keep the fuel down and coast into Juneau and out of Alaska waters. I would expect that 99.99 percent of the time that operator is going to take that into consideration and do the right thing, but if they're trying to save a couple bucks, they might push the envelope a little.

Mike, is that kind of how you see it?

MIKE O'HARA: Yeah, that's pretty much, safety aspect.

This is O'Hara. This is again for the spot folks, because the line hauls know the weather and they know how much fuel they're going to use. I mean, they

know all this stuff. But a foreign ship, foreign master, is not aware of what goes on in Alaska. And running into the ice in the winter. So -- I think -- and also, it seems so me that if you use the actual fuel volume, your ship will be delayed up by Adak. So I think, I would guess that you'd have to go by maximum operating capability, or capacity, unless you've got a lot of time to wait.

CAPTAIN ED PAGE: But then again, if they run out of fuel, at least they're not a pollution threat anymore.

RICK HARRIS: I'm glad you said that.

CAPTAIN ED PAGE: There are some other issues, too.

BRIAN ROGERS: Scott Carter.

SCOTT CARTER: This is Scott Carter. Like I stated earlier on this topic, I don't see that this is going to be a big problem with the spot charter industry. Three quarters of the time the ship is not in port anyway and don't have any chance to change any fuel status on board. So they're going to come in with what they have and that's it, so I don't think that's a concern.

CAPTAIN ED PAGE: I think it's only the liners, who are really the biggest, that push the threshold up,

and they can easily -- they'll make a smart decision on that.

BRIAN ROGERS: Jeff.

JEFF THOMPSON: Yeah, just as Captain Page was saying. In the instance of Dutch Harbor, we have just a few ships that really push the standard far beyond what the average is. And in the case of the language that John's proposing, it would be appropriate to take that upper standard and look at what it is really in order to get a very accurate assessment. Because working with whatever co-ops and whoever else is going to be involved in spill response out there, we need to have an accurate number that reflects more the reality of the situation.

BRIAN ROGERS: Larry.

LARRY DIETRICK: Yeah, I'd be interested in the verification system. I mean, this is one where the State's had experience, it's not worked well, and as a result has gone to this concept since '90. And the threshold to -- the verification threshold that's been accepted to date has been to mechanically isolate the capacity of the tank. That's the way it runs right now. And that's accepted.

Now, if we're not doing that, then I would just ask the group, then, how do you expect the department to verify that, if you want to maintain a level playing

field for all operators and not have a huge -- I mean, because the population of boats here is much higher to the verification issue here if people are going to report fuel, is not something that's -- number one, how do we do it; and number two, what would you expect as a frequency?

BRIAN ROGERS: Senator Pearce.

SENATOR DRUE PEARCE: Larry, if you think of the two, the C-10s going in and out of Dutch Harbor, let's say you mutually agree with them that in the long length of time between now and when this is going to go into effect that you take actuals of every time they come in, which is on a regular basis, how much fuel have they actually got in the tanks -- and we know that gets reported to somebody already. And then you take whatever that number is over the -- over an analyzed period, so you've got all seasons somehow, and you, I don't know, add 5 percent, you know, put a little bit. And then they certify to you that they're going to come in with not more than that amount of fuel. If they do come in with more than that amount of fuel, later on down the road, and they have an event and they spill more and they weren't prepared, guess what? It's going to cost them a whole bunch. So, one would think that there would be kind of a self-enforcing. I can't see

either of the companies we're talking about wanting to take on the additional liability of throwing on more fuel than they said they would, than they're ready to deal with.

So, couldn't we -- wouldn't you think that you'd be able to work out, since we do have a long lead time, some sort of a way to come up with a mutually acceptable volume it uses to drive the planning standard -- and I'm only talking about Dutch Harbor -- to drive it for that region? Those are the two aberrations.

BRIAN ROGERS: Larry.

LARRY DIETRICK: I mean, the idea of reducing the volume of fuel on board is good, because that's the way you mitigate the damage to the environment. You change the risk of a spill occurring and you reduce the volume that can be spilled. And that's definitely --

SENATOR DRUE PEARCE: Well, I'm not trying to get them to reduce. I'm trying to get them to be able to tell you what their true amount is.

LARRY DIETRICK: Well, right, but by reducing that volume, I mean, going with actuals as opposed to the maximum capacity, they're more reducing the volume that could be spilled potentially.

SENATOR DRUE PEARCE: Yeah.

LARRY DIETRICK: And the system that can be -- the system that we would use to verify that, I guess, yeah, I think that's something that can be worked out. It's not something we're using anywhere else in the state right now, so I just want to make sure everybody understands that. And if you want a level playing field, then what -- you know, and we want a verification system, what is it going to look like, what is it going to be like, or do we want to not have one? I mean, not having one is also an option, I suppose.

I mean, working with them and establishing those numbers on actuals, getting it certified by the ship agent, having that forwarded to us, are all possibilities. In the end, usually you need to have some capability to spot check to maintain the integrity --

SENATOR DRUE PEARCE: Sure.

LARRY DIETRICK: -- of a system on that scale. But open to ideas.

SENATOR DRUE PEARCE: Two big issues that seem to drive this discussion. One is Dutch Harbor and those two lines of huge vessels that drive something beyond anybody else's capacity. And then the second one is the spot charter question, and what I'm talking about doesn't fit their question.

LARRY DIETRICK: Uh-huh.

SENATOR DRUE PEARCE: But I was trying to deal with one thing at a time.

LARRY DIETRICK: Yeah.

BRIAN ROGERS: Okay. I have Jeff, Eric, Charlotte, Rick, Captain O'Hara on this issue. But I have a question, and that is my assumption is that we're dealing with anything in this certified by owner and approved by DEC. We're not talking about the five-day turnaround on something like that. Which means that this doesn't work, that this would not be in effect for a spot charter, because there's no way -- I mean, DEC has said we can do 15 days, we can't do five days, except on something that is very routine. Something like this is nonroutine. That's all the discussion, and everyone accepted those time lines. So, I guess the one issue I'd raise here is, this really doesn't apply to spot charters. You're only dealing with the regular carriers on this.

SENATOR DRUE PEARCE: The cruise ships --

BRIAN ROGERS: The cruise ships, yes.

SENATOR DRUE PEARCE: Except they may already have an agreement beyond this, because they've already got all those tanks down there. APL and (inaudible).

BRIAN ROGERS: Because the discussion of

regulatory time lines, basically, DEC has committed to a five-day turn turnaround on routine matters, and anything that is alternative compliance or an alternative to the basic formula, they said 15, or 45 to 90, depending on the issue. And so, a spot charter, at least under the discussion that was in that group, was something that we needed five-day turnaround on, and therefore it would have to be the routine matter and not something that is an alternative compliance. At least that was something accepted by that work group, and we've already adopted those time lines. And so, when we put something in here, you know, unless you are reopening those time lines --

CAPTAIN ED PAGE: If I could just add, that works fine because the spot charters don't really have the huge fuel amounts. It's the cruise ships and the liner containment ships that carry the most oil. I think that works fine.

BRIAN ROGERS: I may have opened up another can of worms here and extended the discussion myself, so I'm sorry. I've got Jeff, Eric, Charlotte, Rick and Captain O'Hara. Have I missed anybody that is seeking the floor? If not, Jeff.

JEFF THOMPSON: I was just going to allude to my earlier comment in regards to the vital statistic of

fuel on board a vessel at any given time is a very important primary statistic. And although I appreciate the fact that verification independently is really necessary, it's the purview of the chief engineer aboard most vessels that the amount of fuel on board is very accurately known at all times, for some obvious reasons. Operating class being a primary one.

So, I like Senator Pearce's suggestion that with the cooperation of APL and NOL, their parent company, and we can -- in Dutch Harbor within the next year, have the chief engineers, as they call, report through their office what their quantity is on board, what they've burned to get to Dutch Harbor, what they have on board. We can get a really good idea as to what that is. Because it's going to be consistent, because again, as Captain Page pointed out, it's a liner trade, and much like the cruise ships in Southeast, it's a known route on a known schedule, and therefore the amount of fuel required is known. And these vessels generally will plan to bunker in the most cost-effective place. I'm not sure where that is. But at some point in their cycle, they're in Dutch Harbor with a certain amount of oil. And it could be less than half of what their capacity is, very easily. So this is what we need to establish because it really would make a big

difference in that region. And I think we have time to do that.

BRIAN ROGERS: Eric.

ERIC BRITTEN: Well, just following up on what Senator Pearce was talking about. Not only do we have a chance to measure what's in the vessels when they are in Dutch Harbor but, as Jeff said, it's all a matter of record. You can go back as far as you want to go. And what then the actual measurements would do is simply confirm that those are close to right on. And the only thing that would ever change that is change of class of vessel that calls in Dutch Harbor. And certainly that's something that everybody's concerned about. So, yeah.

BRIAN ROGERS: Charlotte.

CHARLOTTE MacCAY: On the issue of this verification, I think if the owner is certifying it, that's a whole different level of violation if you get into it. I mean, that would be fraud, knowingly misrepresenting documents. The temptation to do that is not very high. I mean, the tradeoff of what you get to knowingly violate records I don't see being there, so I don't think you have a big risk there.

But I do think that the concept can go, and I think you could still recommend, so we get through the day, a work group that figures out how to get DEC

comfortable with verification and how it goes through the approval process. Because I don't know, but perhaps in a spot charter, if you go through the records you'll see that you've never, ever exceeded 75 percent fuel capacity, or whatever. And maybe there is a simple way that, in your approval process for your shell plan, which isn't going to go after your 15-day process, probably -- maybe, maybe not -- that you could still have the vessels coming in if they certify. And I hate to close the door on that, but I hate to waste today beating it around the table.

So, knowing there's a risk that we may or may not fall out of it, I still think it's worth passing the concept and then letting a work group work out the details of verification and approval and who is likely to fall in or fall out.

BRIAN ROGERS: We don't have any work group meetings scheduled, so that would involve, what you're saying is set up a new work group to deal with that?

CHARLOTTE MacCAY: A small work group, whether it's with or without this process. Whether it falls after this process or during this process.

BRIAN ROGERS: Rick.

RICK HARRIS: I think I don't need to say much. I concur with what Charlotte said, and I still think

that this is a statement that can apply both to tank and nontank vessels and still meet the schedule. I think it is possible to go back and look at what is the record or the history of fuel that's on board spot charter vessels coming into the area, and we can begin to develop a plan that sets a threshold that then really sets what equipment you need to have. I mean, that's what this is about, is trying to determine what equipment. And if you see these vessels always coming in and they're always at 60 percent or 70 percent of capacity but never go above that, then we should be able to say that's the threshold and that's the equipment requirement that they have to have.

I gave Senator Pearce just a -- I went and I said, Paul, how much fuel do we have on a vessel, so, you know, he was able to call very quickly. I know what their capacity is, and how much is persistent and how much is nonpersistent, and, you know, how much they've got on vessel -- or on board. So, all we have to do is go back to those records and we can figure that out, and I think we can develop a strategy that would work.

So, I don't know that we need to create another work group, but what I would suggest, as I had said at the beginning, is that in your C-plan if you want to plan for something less than maximum capacity of the

total vessel, you can do that at that point in time, and then you go to DEC and work it out. You know, so if I have -- if I can go into the vessels that I charter and I can show that every year, you know, we're never more than 60 percent of vessel capacity, this amount of gallons, then I can put that right into my C-plan, it becomes part of the generic C-plan, and I have to tell them if I have a vessel coming in that's more capacity than that. It's a simple question. You're coming in, do you have more fuel on board than this? And if you do, then I have to let Larry know and we've got to take care of that problem by making sure that I've got enough equipment to meet that response requirement. So what I would do is immediately run over to SEAPRO or someone and say, I need to make sure I've got more equipment available, they can say you've got the equipment available, and we go ahead.

BRIAN ROGERS: I guess that brings us back to the issue of time lines. And the time lines that were there earlier, that would be not -- that would be an amendment to a C-plan, which under the time lines we adopted earlier today would be a 45-day turnaround.

RICK HARRIS: I'm not sure that I would call that a material or significant amendment to a C-plan. I mean, I have a C-plan that says here's a capacity. If I

have a vessel that comes in and it's, you know, 500 barrels or 200 barrels over that capacity, and I can come to them and say I'm over the capacity by that amount and, by the way, I have that amount of additional equipment available to me, and I can attest to both of those things in one statement, I don't think that's a material modification of a C-plan. If I was going to bring in a new IMT or a new co-op or something like that, I would say that's modification. But I view this as a fairly minor adjustment, as long as I have a solution.

BRIAN ROGERS: Captain O'Hara and then Lee Egland.

MIKE O'HARA: Yeah, addressing Larry's comment about blocking off a tank. As a sailor, I would strongly not support that. The ship's crew uses the fuel as ballast, shift from tank to tank for stresses and for draft, air draft, et cetera, et cetera. So, it's something that would just destroy some of the capability of the ship. Over.

BRIAN ROGERS: Lee Egland and then Jeff.

JEFF THOMPSON: Class wouldn't allow it anyway, Mike.

LEE EGLAND: Yeah, Lee Egland here. I'm not sure, I think we're getting hung up on this DEC

approval. You know, from a tank barge industry standpoint, we turn in the contingency plan that's got all this information in it, for which there's a statement in there that said here's the maximum operating capacity. DEC, before they approve a plan, don't come out to our barge and verify that that is the capacity. That's why I don't understand -- maybe I'm misunderstanding this issue relative to time lines and approval.

I like the wording that John's come up with. I mean, basically you're going to turn in your plan, it's going to have a quantity in it, and DEC is just going to take that at face value with a certifying statement that everything in that plan is correct. Right? The verification comes when they go out to -- you don't like to use the "inspect" -- to verify the contents of the plan. All right? So, again, I think it's -- when you turn in your plan, you confirm just like a tank barge does now, just like a tanker does today, that they have X amount of capacity that they're operating, and then their RPS is based on that number.

BRIAN ROGERS: We've been operating for a period of time, and I made an error in forgetting that in order that this be part of the record, we're transcribing everything, and our transcriber needs a

break. She's been full at it for as long as we've been talking. So we're going to take a ten-minute break.
(Short recess taken.)

BRIAN ROGERS: If people will take their seats, let's go here.

We're on agenda item five of ten. Item 26 of 31. I had a number of requests that we not work all night, including from the Legislative Information Office. And so, what -- and we do want to try to finish today. If we don't, we will have to take some time and figure out when to have a follow-up meeting to this. And since everyone was noticed that we could go into the evening, what I'd like to do is set an absolute go home time of 7:00; and at 6:45, if we're not through the agenda, we'll switch to a discussion of logistics from that point on, and not take a -- not have -- we will have a couple, at least two breaks between now and then, so as to not -- so as to be able to have a continued transcript of the meeting. I appreciate what Kim is doing here, and I know that when we get to the point of the legislative and administrative regulatory process, having a record of this meeting is going to be useful to us.

We have a proposed definition of the maximum operating capacity. Just a note. That would apply

to -- that would drive the numbers on the cleanup. It would not drive the numbers on containment, drive anything on containment and controls, since that is already laid out in the statute. The statute says the RPS is 15 percent of the maximum capacity for containment and control. So this is only affecting the storage -- the skimming and storage requirement, in terms of being a cost driver. But it is a fairly significant issue, as several have noted, on the containment and control. Excuse me. On the cleanup.

Does anyone have an objection at this point to adopting the maximum operating capacity language for the purpose of determining the cleanup requirement? Gene?

GENE BURDEN: If this has been discussed a lot, I'll refrain from any question. I don't know, has this already been hashed?

MIKE O'HARA: Oh, yeah.

RICK HARRIS: Where do you want to start?

GENE BURDEN: Just, not the merits of this but I'm just questioning of how does DEC approve this? Has this already been discussed? I'll withdraw the question. It's already been.

BRIAN ROGERS: Commissioner.

COMMISSIONER MICHELE BROWN: Just to sum it up for Gene, and just to make sure it's clear. You know,

this is conceivable and doable, but it will have implications on issues, the turnaround time, and certainly going to have implications in the cost of running a whole program. And at some point when we ask ourselves how we pay for the program, is it worth a whole lot more cost to save what may be not a whole lot of money in the long run?

So, just so that's on record, that we may -- we don't know that there's going to be a real financial gain from this versus the cost it's going to take to go down -- go down the steps it takes to figure out how DEC will verify this.

BRIAN ROGERS: Are you ready to adopt this as the recommendation number 26?

Okay. Number 27 is the issue of use of onboard storage. Charlotte.

CHARLOTTE MacCAY: Having been, I think, the one who raised it, I don't have a need to push it any further. I can drop it. If anybody else wants to keep it, that's another issue, but I think it's droppable, myself.

BRIAN ROGERS: Anyone want to keep going on onboard storage?

CAPTAIN ED PAGE: Charlotte for president.

BRIAN ROGERS: ICS training. This one was

suggested that we have a recommendation concerning provision of ICS training to plan holders. Do we need a -- does anyone want to craft a recommendation to that effect? Does anyone want to propose that we -- Gene?

GENE BURDEN: I sort of made a recommendation that the Department of Environmental Conservation and the U.S. Coast Guard collaborate -- I don't know if the Coast Guard should be involved in this since it's a state program, but --

CAPTAIN ED PAGE: Use us.

GENE BURDEN: That DEC develop and offer at least a couple of training programs on contingency plan preparation and ICS. And the relationship of ICS to the contingency plan.

BRIAN ROGERS: Okay. So, the recommendation, DEC develop and offer training programs on contingency planning and an incident command system? Discussion?

LARRY DIETRICK: Point of information. There's a number of these that are already available and they're already freebies that are ongoing. There's another sister agency that gets grant money from the federal government to do broad-based training in ICS, for communities, municipalities, anything. So there's already a calendar for these right now that we could tap into.

BRIAN ROGERS: Charlotte?

CHARLOTTE MacCAY: Maybe you could list those on the web page?

LARRY DIETRICK: On the Task Force web page?

CHARLOTTE MacCAY: Uh-huh.

LARRY DIETRICK: We'll research that and see -- I'll get their calendar and put it up, we can do that.

GENE BURDEN: So, Larry, you charge a thousand dollars a head to help cover program expenses?

LARRY DIETRICK: It's for the verification program.

BRIAN ROGERS: Is there objection to -- is 28 -- are we saying DEC should develop and offer, or are we saying that DEC should develop and offer or indicate where training programs are available?

GENE BURDEN: Just from my perspective -- and I don't know how the rest of the group feels -- I think DEC should actively participate in helping train folks who have never participated in this activity, and what ICS is, and what some of the basics are to contingency planning. I think that would be a great service to help get this off on the right foot.

LARRY DIETRICK: No problem.

BRIAN ROGERS: Eric?

ERIC BRITTEN: If we just changed a word or

two, we could just have DEC ensure that there are training programs available. That way if they're available through other alternate -- you know, through other sources, we get Larry off the hook again.

BRIAN ROGERS: Is that acceptable to the --

GENE BURDEN: I don't know whether we want to get Larry off the hook.

LARRY DIETRICK: Twenty-two of them will be in Seattle.

BRIAN ROGERS: DEC's ensuring availability in Alaska of training programs on C-planning and ICS for nontank vessels. Is there objection? Is there an objection? Hearing none, that's adopted. It won't be number 28 later on, because we skipped the 27.

We're now to 29 and 31. And 29 and 31 are the issue of, first, I think Larry stated that there is consensus that an IMT is a -- is a PRAC. And then the issue here is, is this -- does this require statutory change, or not? And is that something that the Task Force wishes to address, or that the Task Force is willing to leave to the drafters of legislation?

And, Charlotte, this is your issue, I believe.

CHARLOTTE MacCAY: Uh-huh. Sorry, I can't pull this one.

CAPTAIN ED PAGE: You're off the ballot.

CHARLOTTE MacCAY: Yeah. That's all right.

I guess we would like to recommend that the statutory support, which would be actually both 29 and 31 --

BRIAN ROGERS: Thirty-one, yeah.

CHARLOTTE MacCAY: -- combined, I think are both basically addressing the same issue through different statutes, be provided. And I don't think -- I mean, I think we already established that we are addressing statute a bit because we had to address it for DEC, so I don't see why we can't address it here.

BRIAN ROGERS: Larry, and then Gene.

LARRY DIETRICK: Somebody said earlier, I thought it had some good language for this, is to make it, IMT as a PRAC, that's the consensus of the Task Force, and that the statutory language be looked at and changed, if necessary, down the road, after examination.

I mean, I think we got a dueling attorney situation here, and it may be necessary to change it, it may not. I mean, if we're agreeing to the concept, that's what I think we should do. But in the end, to, just to lock in that this attorney has the right opinion or not, I'm just not sure is something we can lock into or not. I mean, maybe they all need to get in a room and argue it out, and whatever comes out, that we'll fix

the problem, I think should be acceptable.

BRIAN ROGERS: Charlotte?

CHARLOTTE MacCAY: I think I can agree with most of that language if down the line can be a little better defined. But I think it's not too discredited by dueling attorneys. You've got several attorneys that agree on the vulnerable side, and you have attorneys that agree on the administrative side. And it's, I think, a matter of your risk where your perception comes out.

If it was just two of our attorneys on the outside, then I'd agree that you could almost just say dueling attorneys. But it's the attorneys, several attorneys, that represent the people who would be taking on the onus of this job, and we aren't going to get the people to take on the job if their attorneys aren't pulled through. And if we have to pacify them with a statute change, be it necessary or not, I think that's an important thing to do in order to get that structure in place, or else you're going to have pandemonium when it comes to spot charters.

BRIAN ROGERS: Gene, and then Rick.

GENE BURDEN: Under existing state law, 46.04.035, a person may apply to the department for registration as oil spill primary response action

contractor, and the department's obligated to come up with the regulations for certifying it. And for the life of me, it looks like primary response action contractor is awfully broad in the statute. It means a person who enters into response action contract with respect to release or threatened release of oil and who is carrying out the contract, including for cooperative organization, or maintains supply response equipment materials, that enters into a response action contract relating to a threatened release -- related to release or threatened release of oil.

That was very broad, and the intent was broad when that was put into the statute. So, I just -- you know, I personally don't think that statute needs to be tweaked to make it even broader. But the department certainly has discretion to reach a determination under state law as to whether or not an entity qualifies.

Maybe an alternative is that this group direct the department or make recommendations to the department and to the legislature that these organizations be considered response action contractors. And that, as Larry suggested, that in the event that there needs to be some additional legislative tweaks, that that be examined. But...

BRIAN ROGERS: Charlotte.

CHARLOTTE MacCAY: And I in no way can go back and forth on the legal merits, and don't think we need to go there. I'm just saying if you have a group that's about to take on the onus of a job that, if they don't take it on, we have pandemonium, then why don't we give them whatever we need to give them, even if it's redundant? I mean, does redundancy hurt us if it brings them around to taking on that responsibility? And the only way it can hurt us is if it does bring other people in to trying to (inaudible) statute. And, again, you can be very careful in how you craft the title to try to control that.

GENE BURDEN: But that's basically my concern. I mean -- and Michele wasn't -- you were with the Department of Law at the time, I think, when this was -- 567, I think. This was -- you would not believe the number of hours and the number of people involved in this. And you open this up, and it's -- not only all the oil shippers, all the environmental groups in the state, it's -- I don't know how you open this and start tweaking it without having a major, major issue. So, I can say I don't think -- it might not be an issue we can reach consensus on, as far as making a recommendation that there be a change in the statute.

BRIAN ROGERS: Charlotte, and then Rick, and

then Captain O'Hara.

CHARLOTTE MacCAY: And there are kind of two parts to both of these. And one is a recommendation to the statutory language. And the other is, is the regulation itself, and defining it more clearly and more explicitly and redundantly, if necessary, in the regulation would help. They also want this statutory language. But at a minimum I think if we can get redundancy, if necessary, in the regulation, that's an important aspect.

BRIAN ROGERS: Rick.

RICK HARRIS: We're right back to where we started several meetings ago. We came in and said, look, we want our ship's agent to have the capability to perform a variety of functions relating to these response actions. They told us that their lawyers looked at it and said, we're concerned, we have a set of liabilities that are a problem. So we said we're not going to mess with this part of the statute. We're going to create a totally new and separate function over here, and we called it the -- what was it, something facilitator.

CHARLOTTE MacCAY: Response planning facilitator.

RICK HARRIS: Response planning facilitator.

So we weren't going to mess with any part of the statute. Larry assured us that these guys are already covered under this other thing, and so we dropped that concept. But still, their lawyers -- and I sat and listened to a teleconference and they had some very compelling arguments, I'm not going to try to repeat them -- said you're still potentially at risk. And I'm not going to go into all the reasons why. But they said you're still at risk.

So, we are now saying we need a statutory -- potentially, a statutory change. I accept Larry's recommendation, is that we'll leave it open and let us work through it, but maybe we should back back up and create, again, the response planning facilitator and give them the indemnity that we originally asked for.

So, our original proposal, I mean after I listened to Gene, what he's telling me is our original proposal was the right one and we should go back to it. Which is to create a whole new category and give them the indemnity that we want them to have. We all agree that they're a very vital function. I don't -- nobody disagrees with that. It's how do we get them inside the tent, and that's all we're looking for. If it is indeed that big of a problem to open up that section, then let's go ahead and let's go back to where we originally

were, to create that facilitator position and give them the indemnity.

So, I don't care how we go, but I'm getting a little frustrated in that we're trying to tell you there is a problem. We're listening to their lawyers and they're saying it's a problem. We're prepared to accept Larry's recommendation, which is, in this group, to say we understand that there's a complexity there and we need to make sure that we work that indemnity out. It requires some more legal work. I'm not going to allow it to go to the attorney general's office to draft it, and then -- or the legislative drafting people, to draft it, because I'm afraid of what the response or the, you know, the outcome would be. I think that there's still some working together that has to come.

Now, the only reason I'm saying that I'm afraid of putting it in there, because they haven't been part of this discussion. They're going to draft something and all of a sudden, as Charlotte said, we're going to leave, think we've got the ship's agents involved in this and they're in the tent, and all of a sudden we're going to find out they're not. And that's going to be way too late then. We're going to be back chewing this again.

So, I'm kind of passionate about this piece,

because we've tried to work around it, we didn't want to mess with the existing stuff, we created a new set, everybody said, you don't need to do that, you're all covered under this. But we can't convince their lawyers that they indeed are adequately covered. So either we need to change this one, we need to go back to the old proposal, or give ourselves some more time for the legal people to work together and see if they can't come up with a solution that satisfies everybody.

BRIAN ROGERS: I just note that this morning you did adopt recommendation 12, which is the response plan facilitator.

RICK HARRIS: Right, which is part of it. But we didn't adopt the indemnity language or the immunity language that we needed. That was still left open.

BRIAN ROGERS: Okay. Just a second. I've got Captain O'Hara and then Gene and then Charlotte.

MIKE O'HARA: I'll defer to Gene.

GENE BURDEN: I just suggest that the group could perhaps reach consensus on a recommendation, or a conclusion of the group that IMTs are response action contractors under 46.04.035, and recommend that the department clarify that, specifically in regulations. I mean -- and I don't know what the department's reaction is to that, but that -- if that was done and you had it

clarified in regulations, I don't know why you'd have a problem with it.

CHARLOTTE MacCAY: Well, would be part of it --

BRIAN ROGERS: Charlotte.

CHARLOTTE MacCAY: -- but they explicitly feel they have a problem if it's not further backed up by statute.

And kind of to maybe paraphrase kind of where Rick is coming from. The group looks at it as this whole task force, when dealing with ships with a certain commonalty, except as spot charters who have this complex, problematic, kind of pesky issues going on -- and what we really tried to do hard is we have spent a lot of organization, pulling the lawyers in from the beginning so that we don't have someone, you know, coming back later saying, nice idea but we're never going to go along with it. And trying to bring you a solution to get through this problematic subgroup that you have to deal with. And we feel we've brought a solution forth of what we need to ask in order it get buy-in on the other side, is not only the regulatory clarity but also the statutory clarity. To give them the ease to do that.

And like I said, you know, we can go back and forth all day. Is it absolutely necessary to spell it

out with that much specificity in statute? The parties that are or are not going to step up to the plate feel it is. And you can all dismiss that, but all that means is they don't step up to the plate.

BRIAN ROGERS: If I can state where I think the group is right now, is that there is -- that is a consensus that an IMT is a PRAC. That everyone is willing to accept at least putting that in regulation, and two or three members want it placed in statute, and two or three members are saying if it goes into statute, that creates so many problems, we're against it. So we have two or three members not accepting whether it's in statute or out of statute. So, that's going to force a vote, and one item that won't be a consensus item on this. Whichever way you go on that, we will not achieve consensus on that issue.

One of the things that we've looked at in terms of preparing the report, to allow for the possibility that this might happen, is that a discussion that Larry and I had off line between the last meeting and this meeting, and I'll mention it now, although I was actually going to cover it on the report, would be to allow members of the Task Force to submit up to two pages of concurring or dissenting opinion to the Task Force report, if there are issues that people feel need

further elaboration, in order that the report have a record of what those issues may be. I just note that now, because clearly on this issue, because a "yes" loses some and a "no" loses some, we're not going to have consensus on this.

CAPTAIN ED PAGE: Can I just clarify one thing?

BRIAN ROGERS: Yes. Captain Page.

CAPTAIN ED PAGE: My read on this -- this is more complex than my mind can digest -- but is that the definition of PRACs that applies to the oil tankers and the IMTs is a little different for -- this would maybe justify further definements, because an oil tanker situation, the IMT is provided by the responsible party. Essentially what the case is. But now we're talking about nontank vessels and we're seeing an IMT might be provided by someone else other than the responsible party. So maybe it does warrant some definition, because it's not exactly a rubber stamp of what applies to the oil industry. It's a little different scenario here that maybe needs clarification. I just add that.

BRIAN ROGERS: Senator Pearce and then Larry.

DRUE PEARCE: Since the -- I do vaguely remember all the difficulty on this language as it related to the spilling and cleaning up oil in the water, perhaps we could recommend a separate section

that's not part of the definition that says, for purposes of this chapter, for nontank vessels, an IMT shall be considered a PRAC, or something. So that you define -- you put it in that it will be, when you're talking about nontank vessels, and not get into the definition that to tank vessels and pipelines and -- I mean, there's a whole bunch of stuff, pipelines and other entities, that, frankly, none of us know or want to remember most of those discussions. But make it a separate section, line. Not part of the definition. But for purposes of this -- for however it gets said.

By the way, somewhere along the way the drafters do have to put their fingers on it because there's drafting standards, whether we all like it or not. So we're going to have to put up with that. But I know that there's ways that you can write the language to say under this section for nontank vessels, an IMT will be considered a PRAC. Whatever. Does that sound like a legalese?

CHARLOTTE MacCAY: That sounds fine.

BRIAN ROGERS: And a response facilitator is a PRAC.

SENATOR DRUE PEARCE: Yeah.

CAPTAIN ED PAGE: If the RP is part of the IMT in this case, does that still fit all right? Is that

all right? Essentially what you're doing is treat it like a PRAC in that they're not held liable for things that go wrong, is I think really the driving motivation. So not take on some liability that someone else should have. But like Sea-Land will probably be the IMT. In the event you have a spill, that you would be the IMT, but use a PRAC to do the spill response. So it's still kind of a squishy thing. It's not absolute. Sometimes they will be an IMT, and sometimes the PRAC will be IMT. I think what you need to see is to treat the same. An IMT, if it's not the responsible party, should be protected from getting themselves in -- legally, a jam here, be vulnerable to lawsuits. That's the intent.

BRIAN ROGERS: So, an IMT --

CAPTAIN ED PAGE: A different formula for these types of vessels than there is for tankers in most cases.

BRIAN ROGERS: This is an IMT who is not an RP, an RPF who is not an RP.

DRUE PEARCE: Back to the -- when you're talking about tankers or pipelines, the liability follows the owner of the oil. When you're talking about cruise ships, the liability actually follows the owner of the vessel. So you really did have different things that we were dealing with when we were doing those

definitions.

BRIAN ROGERS: Larry?

LARRY DIETRICK: Yeah. I'm just, I'm trying to get the evolution. I mean, I don't know if the attorneys have hit the wall on this, or not. I guess that's why this kind of surprises me. I mean, the fact of the matter is, what Rick was saying, we've just got done off about two weeks or two and a half weeks of some fairly intense interaction here on the oil response planning coordinator. We were pretty far apart at the beginning, and we've, I thought, gained a lot of ground here. We ended up agreeing conceptually that the IMT should be a PRAC, no doubt about it. And there were some arguments for and against response planning facilitators and whether or not creating them as a separate class or just creating a whole new liability scheme and people go point their finger.

So, there's a bunch of thought that went into this with the attorneys, including meetings between the attorneys. And so, this was getting narrowed down, not getting more opposed. And so, I was a little surprised here by an all-or-none position now, because I think they're fairly close, now that we agree in concept as to what needs to be done, they were actually -- my last interaction with Breck on this -- and he's not here

now -- but they were looking at ways to fix this now. And the regulatory way was one. And I didn't get anything from him that he had hit the wall with the two people that he was dealing with yet on this issue. I mean, he has since come out with his argument, and I haven't heard any counterarguments on the legal reasons or the flaws in his arguments come back yet, then, that would cause this yet. So, perhaps they're just not done with their discussions here to agree on it, because I thought they were getting closer and closer, not farther and farther away.

BRIAN ROGERS: Charlotte.

CHARLOTTE MacCAY: Well, as of, you know, a few days ago, I mean, basically, what the notes that the lawyers have say is that while possibly there's no substantive problem with these proposed statutory changes, he stated he had to confer with his client, DEC, to see if the agency would agree to these amendments. So, basically, they were waiting on him to come back and say whether or not you would support that. But I think last week --

LARRY DIETRICK: Well, I haven't seen their amendments, if they have them.

CHARLOTTE MacCAY: Which are the ones I've proposed.

So, what I think, as the lawyer for the shipping agents got more and more involved, they got more and more adamant that they needed this. I think with us nonlawyers, we're working with you, we weren't as adamant. But the lawyers --

BRIAN ROGERS: Rick.

RICK HARRIS: I agree, you know, I mean, pretty much with everything Larry said, and I think we're probably not as far away and it's just one of these things of getting all the people together in the room. And I think the senator, you know, threw out a suggestion, and I don't know that we need to belabor it anymore, other than that we're saying here, you know, the statements she made are adequate to satisfy my concerns at this point. Which is it's a placeholder, we're going to look at it and it's a placeholder, and we can look at it, we don't mess with the sacrosanct language -- and I have sacrosanct language in statute, too, that I will defend to the death. I can take you to a few places and show you where they are. So I appreciate your being emphatic about it. And we need to understand where those places are and not tread into those waters. And I think the senator just kind of offered a suggestion that says for this purpose over here. And maybe we'll go back and look at that and say,

you know, that this one, and let us test the water.

So, I think we've got it done. In your report, allow us -- you know, I mean, it's a little bit of an unfinished business, which is to figure out how to best resolve the issue, either regulatorily or statutorily.

BRIAN ROGERS: So if we say this is the intent of the group, that an IMT who is not an RP is a primary response action contractor, subject to the limitations on liability, same with a response planning facilitator. And that since we're looking at final adoption on December 1, if you guys can work it out in the next 24 days, then it's done and it goes forward at that point. Are we okay with that? Is there objection to adoption of recommendation number 29 and 31? Does this deal with the 31 issue as well?

CHARLOTTE MacCAY: Yes.

BRIAN ROGERS: Okay. That brings us to number 30, then. Number 30 was the issue of "cause or permit the operation of."

CHARLOTTE MacCAY: And this was kind of trying to define the method enforcement goes after if they do. And if I'm not mistaken, they're just trying to mirror the verbiage that's been used in the past with the tankers, where it had said "may not operate" versus "may not cause or permit the operation of." And they are

uncomfortable with the vagueness of "may not cause or permit the operation of," and who that may be netting in that they don't understand.

And I think they came up with, with Breck, kind of on some compromise language that says a person may not operate a nontank vessel within the waters of the state, or cause or permit the transfer of oil to or from a nontank vessel. And I think that culls out the people who may have committed the operation of the ship but had nothing to do with the fuel portion, or something. I'm not quite sure, but the main issue there is to define the net, and to say "may not cause or permit the operation of" seemed awfully broad. And unusual in that it's not the same language that's been used for other types of vessels.

BRIAN ROGERS: Gene.

GENE BURDEN: I think that would fit real well. Because under oil and oil products, shippers are jointly and severally liable with the owners of the oil. That's not the case in this situation. The oil is used as fuel. So, if you're shipping lumber, you shouldn't have to worry about the fact that that ship's gone out and has a problem and it comes back to you. So I think that makes a lot of sense.

BRIAN ROGERS: So this would be an amendment to

Senate Bill 273?

CHARLOTTE MacCAY: This is to amend Alaska Statute 46.04.055.

BRIAN ROGERS: Which is?

CHARLOTTE MacCAY: I don't know.

BRIAN ROGERS: That's the very first section one of Senate Bill 273, nontank vessels and railroad cars. A, a person may not cause or permit the operation of a nontank vessel within the waters of the state, or cause or permit the transfer of oil to or from a nontank vessel.

And so what you're basically dealing with is change "cause or permit to operate" in the first part of that.

CHARLOTTE MacCAY: "May not cause or permit the operation of" to --

BRIAN ROGERS: "Operate."

CHARLOTTE MacCAY: You want the words?

BRIAN ROGERS: Yeah.

CHARLOTTE MacCAY: They're really hard to reach.

BRIAN ROGERS: May not operate a tank vessel within the waters of the state, or cause or permit the transfer of oil to or from -- and so the difference is in the -- is change of the word "cause or permit the

operation of" to the word "operate" right here.

BRIAN ROGERS: Go ahead.

GENE BURDEN: I have a question about -- you know, that's just a tweak on 46.04.030, which was used for oil matters. But if you say "or cause or permit the transfer of oil to or from," are you saying, then, that if the ship pulls up at Tesoro and wants to load up with fuel, we have an obligation to check their C-plan to see whether or not they're intact before we load them?

COMMISSIONER MICHELE BROWN: You betcha.

GENE BURDEN: You like that.

BRIAN ROGERS: That's what the law says today. Right now, what you have now says, a person may not cause or permit the operation of a nontank vessel within the waters of the state, or cause or permit the transfer of oil to or from a nontank vessel unless the person has furnished to the department, and the department has approved, proof of financial ability to respond to damages meeting the requirements.

GENE BURDEN: I missed that.

RICK HARRIS: We'd love to fuel up there, but --

BRIAN ROGERS: No; actually, he can't do it unless he's got a (inaudible).

GENE BURDEN: Anybody in favor of striking that

last part?

BRIAN ROGERS: Is there a recommendation --

GENE BURDEN: I would recommend that the transfer of oil to and from --

BRIAN ROGERS: Is the group comfortable -- well, that's a separate amount. Let's deal with the first one first. Is there an objection to changing that first one from "cause or permit" to "operate"? Larry.

LARRY DIETRICK: This wasn't a question that was posed to Breck, was it, on his legal? I don't know if anybody has screened this to see which defined terms we're messing around with here. And these are all terms -- operate. A person is defined in statute. I know "operate," I think, is defined in statute. But I don't know, has anybody done the look-see at that to see -- done the check-off on that to see what may be fundamentally changed in here, or is this just a wordsmithing?

CHARLOTTE MacCAY: Again, Breck was consulted and didn't have a substantive problem with it. Just needed to go back to you guys. Take my word for that.

LARRY DIETRICK: Because I haven't discussed this -- I haven't had a chance to talk to --

RICK HARRIS: You need to discuss it with him, but, I mean, it's our understanding that he didn't have

a problem with it, but you're his client so he needed to go back and make sure it was okay.

LARRY DIETRICK: What's the substantive reason for this change? Is this just a clarifying, or is there something substantive here that your attorneys are concerned about?

CHARLOTTE MacCAY: Well, you had expanded this verbiage from what you've used for tankers, and no one understood why you were expanding it to this bigger, broader net of potential people than you have in the past, and they were not comfortable with that. And you don't have "cause or permit the operation of" in the others.

GENE BURDEN: It is expanded from oil and oil products ships. I mean, there is no requirement for a fuel seller to have any obligation to check C-plans of a ship that it sells fuel to.

LARRY DIETRICK: Right.

GENE BURDEN: This could be interpreted in that fashion the way it's presently written.

LARRY DIETRICK: Yeah, the shoreside facility can refuse to do the transfer.

GENE BURDEN: Yeah, but the shoreside facility personnel are not going to be trained or able to determine whether financial responsibility or a C-plan

is in place.

LARRY DIETRICK: And we don't want that for the nontanks.

GENE BURDEN: I'd suggest we change -- take the last sentence --

CHARLOTTE MacCAY: That's fine, too. We were just kind of messing with more than we had to propose to mess with. I don't think I have a problem with taking that out. But like I said, there was no justification for why you included that extra verbiage either.

GENE BURDEN: It was just identical to what you have for oil and oil products, but with the addition of the issue of transfer.

LARRY DIETRICK: That's simply the way it is up in 030, that transfer is in there.

GENE BURDEN: Actually, transfer --

LARRY DIETRICK: Or cause or permit transfer of oil to or from a tank vessel or oil barge.

BRIAN ROGERS: What is it under?

GENE BURDEN: No. It says, "person may not cause or permit the operation unless the oil terminal facility" --

LARRY DIETRICK: Under C.

GENE BURDEN: C. Yeah.

LARRY DIETRICK: "May not operate, or cause or

permit."

GENE BURDEN: Just identical language. It's never been interpreted to require shoreside facilities to inspect C-plans.

BRIAN ROGERS: And actually, it doesn't say that in here. It just says the shoreside facility needs financial responsibility, which it already has under the tank program.

LARRY DIETRICK: So subtle, I don't know if they're missing something or not.

BRIAN ROGERS: So, is there provisional approval of a deletion -- of a change from "cause or permit the operation of," to "operate," and a deletion of "cause or permit," subject to the same 24-day final determination that could change on December 1? I mean, give the lawyers a little more time to work on this?

MIKE O'HARA: I have a question. This is statutory change, right?

BRIAN ROGERS: Yes.

MIKE O'HARA: I'd be uncomfortable with recommending a statutory change based on the lawyers of one of the -- these are her lawyers.

CHARLOTTE MacCAY: Actually, they're not.

MIKE O'HARA: Well, whatever. I mean, they're not my lawyers or Jeff's lawyers. You know, if I

brought a lawyer in, he could say do something else with it.

RICK HARRIS: We've been working with Breck. I'm sorry. I mean, this is language that we've gone to him, and the comment that came back was he didn't have a problem with the change, but he needed to check with his client, DEC.

CHARLOTTE MacCAY: This is a change from the proposed statute, not a change of an existing statute.

BRIAN ROGERS: No. The 273, this would be a change to existing statute adopted in 273.

CHARLOTTE MacCAY: Never mind. I thought it was a proposed.

BRIAN ROGERS: Further discussion?

LARRY DIETRICK: Well, we'll consult with Breck, be glad to do that. I mean, I don't think we're conceptually opposed if there's no significant difference here.

BRIAN ROGERS: So in terms of this, what we would do is write this up as a recomme..dation, and note in the December 1st report that it has not had final approval, and then we have a vote on December 1st on that and either strike it from the report or leave it in the report based at that time. Are you comfortable with that as an approach from here? To give time -- and

clearly none of the lawyers are in the room, and that's part of our problem here? That's one of the reasons we're making as much progress as we are today.

MIKE O'HARA: It's already been to the AG. It's already been to the AG. This wording has already been to the AG, and somehow this slipped by them? This is O'Hara, by the way. Slipped by them, and we're going to fix them up? I don't know.

CHARLOTTE MacCAY: It's already been in discussion with the AG for some time and they seem to be in concurrence with it.

LARRY DIETRICK: But this isn't one of Breck's questions. It wasn't added to his question and answer list.

CHARLOTTE MacCAY: Well, no, but it also was in our very first letter to the Task Force at the beginning of this whole process.

RICK HARRIS: This isn't a new issue.

CHARLOTTE MacCAY: So it perhaps should have been, and it's been brought back up.

BRIAN ROGERS: Further discussion?

Are we acceptable that there be a placeholder in there for final decision made on December 1 on this issue? Okay. That completes this section of the agenda.

That brings us to item 6. I'm going to go real quickly through this in terms of final report outlined in element. You were provided today with the first draft of the executive summary. I'd like to get comments on that. You have, then, the bulk of the report before you. That's the recommendations 1 through 25, and now through 31. And any others that you are yet to adopt today would be in that report.

We also have a list of appendices that will be supporting data for the report. And then finally, as noted, up to two pages for any member of the Task Force to submit a concurring or a dissenting opinion on the issue to help lay out any issues. And, frankly, that's done in the hopes that we may be able to keep consensus of the group by some people pointing out some issues that become part of the record.

The proposed timetable is that -- today's Monday, the 6th -- that on Monday, the 13th, we would prepare a revised draft report and get it out to all of you by Monday, the 13th. That your comments and any editorial suggestions and that would be due back to us by the 20th, and we'd turn those around the next day. We'd also have the appendices in that report.

To the extent that there's draft legislation, we would try to have that ready by the 20th, along with

a memo basically describing the regulations. Comments on the legislation and regulation due back the 27th. We put all that together on the 29th, and have a telephone conference adoption, final meeting, on the 1st of December.

That is a fairly aggressive schedule in order to meet our needs. Breck has indicated that to the extent legislation is required, he can meet that. I think we still need some discussion of exactly what we're doing on the legislative front on today's agenda. And the issue there is how are we dealing with this? Is this going to be -- and I think this really requires the steering committee to make some decisions between now and the 20th, on legislative introduction versus administrative, et cetera.

So there's some open issues there that really require some steering committee decisions that couldn't be made prior to today. But that's the draft schedule, with the goal, then, on December 1, we adopt the final report. Obviously, there are -- we've got one item so far that could be a yes-no decision on the 1st of December.

So with that, let me ask if there are questions about the report. Charlotte.

CHARLOTTE MacCAY: The teleconference

adoption --

BRIAN ROGERS: Yes.

CHARLOTTE MacCAY: -- on December 1st. Are you calling people individually at their offices?

BRIAN ROGERS: The plan would be to have a teleconference where people come to the Legislative Information Offices or they can call in.

CHARLOTTE MacCAY: Okay.

BRIAN ROGERS: It's their choice. But a meeting of the group by teleconference, not necessarily everybody gathering here in Anchorage.

Again, part of that will depend on the complexity of where we end the day today and the complexity of decisions that need to be made. If it's fairly straightforward, there are a couple of yes-no issues, that's amenable to a teleconference. If there are major issues still requiring discussion, a teleconference doesn't work very well with everybody at multiple locations, and would have to come back here to Anchorage on the 1st of December.

CHARLOTTE MacCAY: Okay.

BRIAN ROGERS: Certainly my preference, and I think that is the case for several members, is that we not require everyone to travel here once again on the 1st of December.

Stephanie.

STEPHANIE MADSEN: I know that we're under a -- Stephanie Madsen. I know we're under a tight time frame, but, you know, certainly you recognize that, although you give us seven days from the time that the revised report will be coming out on the 20th, to where we have to make comment by the 27th, that that's Thanksgiving weekend and you're talking about three workdays by the time you receive it on Monday, you have Tuesday, Wednesday, and then you have the Thanksgiving weekend. And for those who have constituents that are not as easy to get ahold of -- and are thankful -- it's going to be somewhat problematic, I think, to get good comments back to you by the 27th. And I know that if that date slips, then the rest of your dates are out of whack. But you don't really have a seven-day review period; you really have a three.

BRIAN ROGERS: For the draft report, actually it's longer because you've already had the first draft. The second draft goes out the 13th. But on the legislation regulation memorandum, that's a good point.

GENE BURDEN: You know, the area that is probably most likely to still have some tweaks or some issues are the recommendations themselves. And I'm just wondering if it would be possible to circulate the

consensus items that we've had today in pretty much their final format even earlier. And if everybody has a chance on that, the description of how the process went and attachments and background and so forth is going to be kind of secondary to --

BRIAN ROGERS: We've got that going out next Monday, the 13th. Revised draft report on the 13th.

GENE BURDEN: Sorry.

BRIAN ROGERS: The difference on the report between the 13th and the 20th is the appendices.

GENE BURDEN: Okay.

BRIAN ROGERS: The other issue is -- and I guess we'll have to work with the steering committee, the Department of Law, and legal, on whether we can advance the draft legislation and regulations memorandum to try to get that out a little bit earlier than the 20th. We were trying to sequence work in a way, and I think Stephanie's raised a good point on that. Larry?

LARRY DIETRICK: Well, I'm the first one that does not want to violate the December 1st, but if the review loops are important, maybe -- and it's being pushed by December 1st in teleconference adoption, would it make any sense to have the contingency date for the teleconference adoption be at the end of that first week in December, so that if the Thanksgiving and whatnot is

problematic -- I mean, I do appreciate, I think, what a lot of folks will do at the table here, in terms of having to get back to their constituents and turn this stuff around. It's quite a group. But I would -- I mean, if the last call is going to be optional anyhow, we're going to try and avoid it anyhow. But that would be a potential relief valve, then, if it came to that, it would allow a little bit more time in between. Just throw that out for consideration.

BRIAN ROGERS: We'd look at Friday, the 8th of December?

LARRY DIETRICK: Yeah, that's a Friday. See, the 1st is on a Friday, that's why that makes it incredibly tough on everybody. I mean, if you just push it into the next week, folks would have the benefit of that weekend. The 1st is a Friday, the 4th is on a Monday. Pick any day that following week, perhaps, as the contingency date for a teleconference. But only if it's necessary, as you've said, Brian. I don't know if that would -- I'm just trying to address Stephanie's concern here on tight time.

STEPHANIE MADSEN: Addressing Stephanie's concerns only complicates it because the week of December 5th is a North Pacific Management Council meeting, and we've got some pretty heavy-duty issues.

Now, closer to the end of the week would work better, but the beginning of the week will be labor intensive.

LARRY DIETRICK: Your time frames in here, too, Brian, are pretty tight.

BRIAN ROGERS: I'm aware of that. I'm also aware that I lose half of my facilitation team on the 6th, on vacation, and so -- unfortunately, not my half. So I can make it work out. But we will make it work. I'll figure out a way to make it work within the schedule that the Task Force chooses. I think -- I do think that a little more time for final review is likely to yield a better result and something people are more comfortable with. I'll just need to make alternate arrangements for the meeting.

So, how long is NPMC? All week?

STEPHANIE MADSEN: All week, but I think that --

BRIAN ROGERS: Friday, the 8th?

STEPHANIE MADSEN: -- Friday, the 8th, would be --

BRIAN ROGERS: So we will try to reserve this room for both Friday the 1st, and Friday the 8th, and then see what the level of issues are and determine which of those two dates. We should know by -- before Thanksgiving, and we will try to, by the 20th, let you

know whether it will be the 1st or the 8th, if people -- are people comfortable leaving both of those dates as possibilities, with again the goal, if we're in good shape and can meet the 1st, we'll do the 1st; and if there are problems that would require more extensive, we would go with the 8th?

Okay. Contractor report, 15 minutes. We're ready to move to the next item on the agenda. Railroad, we've done. Report on legal issues, we've done. Which brings us to discussion and action on unresolved issues. We have basically the following issues. We have, under the C-plan, unresolved issues. Good news. We've adopted, we've dealt with IX-A-1, response planning facilitator as response action contractor. We've dealt with IX-A-2, a definition of a QI, because we've adopted the Coast Guard -- or the CFR definition.

So, we have the prevention issues of adoption of the mandatory requirements of state law. We have the prevention credit program, voluntary measures. And then the adoption of it and an implementation of it. We have the Blue Star vessel award, and then we have the issue of funding for the nontank vessel program.

I think, given that group of issues, I think it would be good to take about a five- or ten-minute break now and then figure we'll come in, finish all of those

issues in an hour, and be out of here by 6:15.

(Short recess taken.)

BRIAN ROGERS: We're back on the issue of prevention and we've got a couple of issues. Everyone should have received a copy of their report of the Prevention Work Group, with the recommendations on the nontank vessel prevention credit program. It's a six-page report, titled Prevention Work Group at the top. It's got a table for the Prevention Measures, Weight and Applicability; Alternative Point Systems; and Tax Credit and Penalty Reductions. So if you want to find that, we're ready for that one.

The first issue was the question of adopting the federal and international mandatory requirements of state law. Have we addressed that issue today? Okay. Stephanie.

STEPHANIE MADSEN: Because this is one I keep coming back to, and I would be -- I would move that we just require a vessel -- or the Task Force recommends that the State require that a vessel -- vessel owner simply certify that they meet federal requirements. That would be the motion.

And the hope -- or my desire is, under this proposal, if the State finds a vessel that's in violation of a federal requirement, that because of the

Memorandum of Agreement, they would forward that to the Coast Guard and the Coast Guard would do the prosecution.

I am opposed to just blanket adoption of federal and international law as state law. And I guess I would refer to the Contingency Plan Work Group minutes of the 16th and 17th where we discussed it. I recognize that the Prevention Work Group didn't reach consensus on this issue, but we were told that the main Task Force would be dealing with it, and that's my recommendation.

BRIAN ROGERS: Discussion?

COMMISSIONER MICHELE BROWN: I have a question.

BRIAN ROGERS: Commissioner?

COMMISSIONER MICHELE BROWN: Is your concern, Stephanie, with the enforcement aspect of that, or the adoption of the standards? And the reason I ask is because -- I mean, I think we made a decision early on, if I remember correctly, not to exceed what's currently in the law. But in lieu of passing our own, we would just go with what's in the law now. But I think, you know, should that law change, the federal law change, or whatever, we may want to consider do we want some prevention requirements of our own.

And so, I think the issue of merely certifying that at one point in time kind of precludes the State

from ever again saying we want some different prevention standards. As opposed to we're adopting these, now they're our own, and they become the level at which we expect everyone to play. So there's an issue of adopting that in lieu of state standards, because we should have some. And then there's the issue of dual enforcement, which you spoke about earlier. So, is it both of those?

STEPHANIE MADSEN: You know, I think that the prevention aspect of this is going to be hard to grasp, and I'm not sure -- I'm not familiar enough with the federal prevention program to know if that's a good thing or bad thing. So I'm not even speaking to this, from my perspective, from the prevention side at all. I'm talking about the dual enforcement. And my understanding, to get out of that box, then by the State requiring simple certification of the compliance with federal and international law, and that -- you know, what I just read, that if you went on board a vessel and saw a violation of a federal law, you would refer that to the Coast Guard. That's where I'm going on it.

Now, the prevention, I guess, is -- you know, I can understand where you're going, that, you know, if this federal law changes, that we would have to go back. And from my perspective, I think that's a good thing. I

don't think we should automatically adopt the federal law to be state law without some kind of a public process and discussion.

So I guess if that's what you're asking me, yes, I guess it's okay to, you know, look at the state law and, when necessary, revise the state law for those purposes.

BRIAN ROGERS: Just a note. Stephanie's recommendation has already been adopted by the Task Force in recommendation 6, which says that part of the C-plan is a prevention plan stating the applicant vessel complies with applicable federal and IMO requirements. And recommendation 20, which says affected nontank vessels must comply with applicable federal and international requirements.

So, that level has already been adopted. The only question is really -- and what Stephanie is saying -- that we not go further to make them state law.

STEPHANIE MADSEN: Right.

BRIAN ROGERS: Is there a motion to make them state law? If there isn't, then we're ready to go to the next item on the agenda.

Captain O'Hara.

MIKE O'HARA: Eric, we put that in for a reason. Do you remember what that reason was? It was

basically a base.

ERIC BRITTEN: I think basically that's what we were saying, was, in the first meeting, we didn't want to make state laws any more onerous than international or federal laws, but we wanted to be sure that those laws were lived up to.

MIKE O'HARA: Right.

COMMISSIONER MICHELE BROWN: That they meet the requirements but that they not be more onerous. And I think what this would -- there really aren't any state requirements.

BRIAN ROGERS: So is there action required?

MIKE O'HARA: I'm certainly not going to fall on my sword over it because they're required anyway.

BRIAN ROGERS: And a certification that they're being met is already a requirement under the Task Force recommendation. Larry.

LARRY DIETRICK: Yeah, I mean, part of the discussion here, I think, was, yeah, if you make them subject to state law, is a guy going to get thumped twice over the head? And the answer was yes, that's the whole purpose in doing it. If you don't want him thumped twice, then you don't. But, I mean, what is the other -- there's no other reason for doing it. Because it is nothing -- it's not any new requirement. I mean,

the prevention measure itself we're adopting here is the federal or the international requirement. So there's no new requirements here. Everything else we're looking at here is on the recommended side, so they're nonmandatory.

So, the only reason you would do this would be to -- and, I mean, it's the State of Alaska saying, yeah, if you can't even comply with state or federal law, we're really going to get mad and, yeah, we're going to thump you, too. And Breck's got a legal question that deals with how that would be handled.

BRIAN ROGERS: Heather.

HEATHER McCARTY: This is Heather McCarty. On the Prevention Work Group, we talked about whether a person could get thumped twice for the same infraction or the same whatever, and we'd speculated that they couldn't. And so we didn't think that was going to be a problem. We decided to ask. And if the answer is yes, you can, then I think that answers the question and we take out the state law part of this recommendation.

LARRY DIETRICK: It's question number 1, if you're looking for it, on Breck's legal.

HEATHER McCARTY: Yeah.

LARRY DIETRICK: And it is yes.

HEATHER McCARTY: Yes, I know.

RICK HARRIS: He said generally, though.

LARRY DIETRICK: Most of the time.

BRIAN ROGERS: There's no action pending before the group, so we're ready to move on to prevention credit. Let me turn to Deborah Vogt, who is on the line. Deborah has written up the recommendations laid out here as nine issues.

Deborah, if you can quickly run through these and then we'll see what, if anything, the Task Force wants to do on this.

DEBORAH VOGT: Thanks, Brian. This is Deborah Vogt in Juneau. Is that volume okay?

BRIAN ROGERS: Yes.

DEBORAH VOGT: The nine recommendations on the first page of this report are recommendations that came from the Prevention Work Group to the Task Force, and essentially they ask the Task Force to consider a variety of different prevention incentive programs. The work group then asked staff to develop, to flesh out how a prevention incentive program might work. And Pages 2 through the end of this report are describing that system.

The work group specifically asked staff to review a tiered system, a three-tiered system; a single-trigger system, which would entitle a person to

prevention incentive credits for -- if just a single level of prevention measures were adopted; and a specified five-measure system.

So staff got together -- and by staff I mean myself and people from DEC, and Pat Carter from Drue Pearce's set, and Paul Fuhs. And the first thing we did was go through the list of prevention measures that the Prevention Work Group had identified. And that list is on Page 3. The staff assigned a relative weight to each one of those measures. That is, we decided which ones were more important than others. And you can see there are two in the first -- the second column there. There are two at level 3, a number at level 2, and the rest at level 1.

Then, across that table, on Page 3, you can see which of those measures the work group previously decided were feasible for different categories of vessels. At the top, fishing vessels, processors and tenders, general cargo and cruise ships and container ships are -- go across. And underneath the yes and no indicates whether the work group had determined that that measure could feasibly be adopted by that category of ship.

So, down at the bottom you can see that if a ship could adopt every one of these 20 measures, it

would be able to attain a score of 33 points. Then fishing vessels could only attain a top score of 20, and so on, across the bottom there.

And that, this matrix essentially is the basis for a framework that a number of different prevention incentive programs -- upon which a number of different incentive programs could be based.

The next thing that we did was determine, of those 20 measures, which might be considered the top five. And in doing that, we set to one side those measures that could only be incorporated in a new ship, and those were measures 4 and 5. And then we also set aside any measure that was not feasible for one category or another. And, fortunately for us, we were left with five at number 2, and those became the top five measures. On the list there, they are 1, 2, 3, 11 and 18, and they appear in italics. And so those would be in a top five measures program, the measures that any ship in any category would have to attain in order to receive prevention credits.

If you turn, then, to Page 4, the staff then considered how to use that ranking system among the proposals that the work group had asked us to review -- the three-tier, single-trigger, and top five measure system -- and that suggested that in order to qualify

for Tier I, a vessel that could qualify for all of these measures, that could attain all of these measures, that Tier I would be 20 percent, Tier II would be 40 percent, and Tier III would be 60 percent of the maximum score, if you will, that that vessel could attain. So you can see across there what score each category of vessel would have to attain to reach each tier, in a three-tiered system.

Similarly, in a single-trigger system, staff suggested that 50 percent of all of the measures would be the trigger for incentive credits under that system, and so that would be 17 points in a vessel that could attain the maximum points, and so on across.

The top five measures system, each category of vessel would have to attain all five of those listed measures in order to qualify for incentive credit.

So, this is essentially a framework that can be used for tax credits, for penalty reductions, for a reduction in the frequency of spill plans -- I mean, spill drills, of C-plan review, and in fact could be used for the award program that's listed out later.

The procedural provisions of a program are then at the bottom of Page 4, and essentially are that a vessel owner would simply submit an affidavit to DEC, and the first one could be at any time after the first

certificate were issued, then the certificates would be reviewed at C-plan review. And so, it would not be an additional step for either the vessel owner or for DEC. It would simply be part of the C-plan review.

The affidavit would simply contain a statement of what prevention measures that ship -- that vessel employed, and DEC would then issue a certificate. And the analogy that occurs is just like a business license. That you simply submit the paper work and you get the certificate.

By applying for prevention credits, the vessel owner would consent to inspection of the vessel for the existence of those provisions. And some of them are just paper provisions and so I don't think that would necessarily involve boarding. But if you just -- the staff also recommends that the vessel owners be required to retain the records of any record credits for at least three years, particularly if the tax refund is claimed.

The issue you were just discussing, the issue of compliance with applicable federal and international law, was something that staff discussed, and you can see that it is an option for the Task Force to require that a vessel owner makes a statement that they comply with federal and international law in order to get the credits, and then a consequence of not complying would

be the revocation of whatever benefit the prevention program entitled the vessel owner to. I don't know if that was clear.

On Page 5, then, was our analysis of how you might apply this framework to tax credits, tax refunds, and the reduction in spill penalties. So then, the three tiers are set out, and each tier would entitle the vessel owner to -- Tier I would be 10 percent off the penalty, or a half a cent off a gallon refund on a motor fuel tax, or 10 percent of the fishery's business or fishery landing tax liability. Tier II would be 30 percent off a penalty, 1.5 cents a gallon refund, and 30 percent of the fishery's business tax. Whether those are "and" or "or" is something for the Task Force to consider. Staff didn't recommend one way or another whether a vessel be entitled to one or two or all three of those incentives.

The single-trigger system, staff suggested that meeting that bar would entitle one to 30 percent off the spill penalties, a penny and a half a gallon from motor fuel tax, and 30 percent of the tax liability. And the same would be the result for attaining all five -- the top five measures.

These requirements for spill penalty reductions and tax credits, there would be the need for statutory

changes. Those couldn't be done by regulation. And section 6 and 7, then, on Page 5 sketch out what those provisions would look like.

The motor fuel tax, currently there are a lot of end users who can claim refunds of the motor fuel tax, whether it's fuel that was purchased as highway fuel and ended up being used off highway, and Department of Revenue is kind of used to doing all that and has a form that one can fill out. And so, if one had a certificate that entitled one to a motor fuel tax refund, it would be a pretty simple procedure to claim those. Department of Revenue's provisions are that those can be claimed anytime within a year of the purchase of the fuel, and so presumably a vessel owner would simply save up the receipts and turn them in and get a credit.

The fisheries tax is an annual tax paid on a calendar year basis, and the taxpayer would simply claim a credit there on that return.

That really is the outline of a plan. It could be used -- it says in number 8 that you can use the same structure for reduction in the frequency of contingency plan review, you could use the same structure for a simple award program. And that really is the summary of the structure that we developed.

BRIAN ROGERS: Just a note. Just discovered an error on the part of the facilitation team on this. Under item 8, that note was raised originally by DEC and then withdrawn by DEC. So that should have been stricken. We were having some problems with formatting of this report, and unfortunately it looks like the one that got sent out had that note in it. That is not -- because actually DEC has suggested, since we completed this, that the -- and it may be the --

JUDY ERICKSON: It's the summary I made copies of today has it. The one you got doesn't have it. It was corrected on the version that went out, but not on my version --

BRIAN ROGERS: And DEC has actually suggested, in lieu of the reduction of spill penalty, the frequency of C-plan review would be a better, in their comments subsequent to this.

So there are the options. It's a quarter to 6:00. We have about an hour, maximum. What is the pleasure of the group in going forward on this? Actually, Paul, as part of the team on this, did you have something you wanted to add?

PAUL FUHS: I just wanted to add one thing and it has to do with the spot charters. For one thing, we did not include a category for them because -- and this

is partly at their request -- because all of these presume that you can have some control over the vessel before it gets here; and if you've just ordered it the week before, then you really can't get it.

So, rather than set up the expectation that they might make it and then not have them make it, and have them look like one of the bad actors, that was one of the reasons why we pulled that out. Also, there was a generic category of "other measures as proposed by operators." If you come up with a prevention measure that isn't on here, you could propose that to the department. And I wanted to just add those.

BRIAN ROGERS: Charlotte, and then Gene.

CHARLOTTE MacCAY: I'll see if I can say my piece once and not too often, which the committee knows well, but for the group.

What Paul says is true, and those are changes that help a problem that we find persists regardless of how you -- if you adopt this at all. To help ease the impact on us, and we appreciate that, in general in looking at this, having a pollution prevention program makes a statement, and I think it succeeds in making a statement, that people support pollution prevention, as do we. The motivational rewards we do not see as substantive, and in our case, many cases, just plain

inapplicable. There is not -- those things do not aid us. We don't feel in the state -- we can't get tax credits if we don't (inaudible) insurance in the state. A lot of these things are not providing us with any great motivation. Nor do we see them as -- nor do I see them as being substantive for anybody in the industry.

So, as such, I view the prevention credit program as a statement. I do not view it as an effective agent of change. I do not see it strong enough to create change, and I still see it as opening the door to the potential for the outside to be looking at us and saying, "Why aren't you?" And comparing us amongst each other, and who is clean and who is dirty. And with the spot charters, particularly for the people who have low-profit commodities who get kind of the leftovers of the fleet, they have very little, if any, control over the ships that they get.

So, in general I'm saying I am not supportive of the prevention credit program. If it does go through, leaving us out helps, but I don't think it totally fixes the situation.

BRIAN ROGERS: Gene.

GENE BURDEN: Well, first of all, I'd just like to thank the prevention group, I think you did a fantastic job. And I've been involved in this same

discussion in a number of states, and know how difficult it has been to put some meat on the bones of having some prevention credits that impact bottom line. And the fact that you take the charter -- I mean the spot vessels out, I hope deals with the problems that Charlotte just mentioned.

I think there are some very substantive benefits that you've identified here that do affect the bottom line, that could be served as incentives, not necessarily singling out any operator versus other operators, depending on the award program. But I'd love to know that, you know, I could reduce my exposure to civil penalties. I know how expensive it is for contingency plans to be drilled on a full deployment basis. I'd love to know I had an extra year or two. That could save me a lot of dollars. And this is the first time I've ever seen, in Alaska or the West Coast, real substantive bottom line impacts as part of a prevention program.

So I think it's great, and I hope the rest of the group will coalesce around it and come up with this as a recommendation. I think it will set an example for some other states on the coast, West Coast and Gulf.

BRIAN ROGERS: Commissioner.

COMMISSIONER MICHELE BROWN: Yeah, I agree with

Gene's sense of pollution prevention is way we want to go and incentives is the way we want to go, and I think the group did an incredible job in a short time of trying to quantify that. I guess where my concern comes in, though, is this is an exceedingly controversial area. We've been trying to do an environmental leadership analysis on a lot of our programs, that's taken two years and we're still not ready to do legislation because it's so controversial. And maybe it's the lateness of the hour now, but while I think we ought to maybe have a recommendation of pursuing looking at prevention, prevention and incentives programs, I think we'd be here all night if we're going to try to come up with specific ones, especially if we're talking about ones that require legislation. Because, you know, we're already having enough trouble, I think, focusing on recommendations 1 through 30 to make sure we get that in a piece of consensus legislation if we can. And if we start opening up things like changing the length of C-plan approvals or getting rid of civil penalties for nontank vessels only in legislation, we're going see the doors just fly with the "me, toos" running in there with a battering ram.

So, while I think this is a great first start, and I think we should continue working it, particularly

like the Blue Star program, which is something we've been actively working with the cruise industry, of looking at things administratively that we can do without legislation. I think if we want to discuss the full part of this and start looking at what needs statutes and what we want to actually endorse step by step, 7:00 is a dream on your part.

BRIAN ROGERS: Of the five measures, the reduction in spill penalty, the tax refund, the tax credit, the C-plan review, and the Blue Star, the first three are statutory, the fourth is regulatory, and the fifth is administrative. And so, basically, if you're not going to deal with it with a change in the statutes, you're limited to the frequency of C-plan review, which is part of the regulations that would come out of this group, or the Blue Star program which the commissioner could implement tomorrow without -- Gene?

GENE BURDEN: Just, I mean, maybe the group is not ready to support this, but over the years so many times people always talk about prevention credits, and when it gets down to taking an active role and actually trying to initiate them, it's always let's commit to studying them more, or let's put them out for further evaluation. And, you know, frankly, any recommendations we make here as a group may or may not be enacted into

statute. I mean, we're making recommendations. It's still up to the legislature to go with it. And if the group is supportive of these three that would require statutory, why not recommend them? The work that Deborah and the rest of the staff did, I think is great and certainly explains the framework for actually implementing some of them.

BRIAN ROGERS: In terms of the decision-making process on this, what I'd like to try is to first do a little straw poll on whether people want to try to do a prevention credit program or not. If the answer is no, we've addressed this issue. If the answer is yes, then we'd look at which of the three systems, the three-tiered, the single trigger or the five measures. And then after that, look at which among the five different possible credits, one, two, three, four, five, would come forward.

Would people be comfortable with that as a decision process that works us through this? Heather.

HEATHER McCARTY: One of the things that strikes me -- this is Heather McCarty. One of the things that strikes me about that order is that I think people might feel differently about the prevention credit program depending on the rewards. And it might make more sense to say, would you favor a prevention

credit program if it gave you tax credit and reduction in spill drill and reduction in civil penalties. The other question being, would you favor it if it only gave you a Blue Star program? I think that's a question in my mind. I don't know about any anybody else. But the reward would be part of the package. Not just whether you want to do it or not, but what comes after you do it, as part of your decision-making process. Maybe I'm just too cynical.

COMMISSIONER MICHELE BROWN: Actually, that's one of the reasons why we've had trouble on the environmental leadership, is what's an incentive is in the eyes of the beholder.

HEATHER McCARTY: Right, exactly.

COMMISSIONER MICHELE BROWN: And that's why it can take us from now till kingdom come to decide what is something that everyone in this group feels that they'll get a benefit from that's worth endorsing.

GENE BURDEN: That, to me, is the beauty of what this group has done. I mean, other than spot charters, it's hard to understand how any of these couldn't be viewed as significant incentives. I mean, they can save you money.

ERIC BRITTEN: One of the things that we did also recognize here is that it didn't have to be the

same reward for every class of vessel. In other words, just taking our group, for instance, as has been pointed out several times, we don't fuel up here, so fuel tax credit doesn't do a whole lot for us. However, reduction in spill penalties would do a lot for us.

So, you know, just as one of the co-chairs of this particular group, while I understand the difficulties that Commissioner Brown is outlining, personally, I'd be really disappointed if the Task Force didn't adopt a position on this. I mean, rather than saying let's study it some more, or whatever. Sure, it has to go through the legislative process, but when you take a look at the amount of work that the group did, not to mention staff and DEC, I mean, there's a tremendous amount of work here and I think we've achieved something that no other state or province on the west coast has achieved. And I really think if we don't give it the impetus now and get the momentum up, how are we going to re-get it up, in light of a lot of the roadblocks that are going to be there?

BRIAN ROGERS: Let me just try a straw poll on each of the five, then, and see how many would favor a prevention credit program that included them and how many would oppose one or more of them. The first issue is, following Heather's suggestion, a reduction in spill

penalties as part of a prevention program of the Task Force members -- how many would favor that as an approach? One, two, three, four, five, six, seven, eight, nine, ten, 11, 12, 13. And how many would oppose such a provision? One, two, three -- Joe, you're not a member. Okay.

Motor fuel tax refund. How many would favor a credit program that included that? One, two, three, four, five, six, seven, eight, nine, ten, 11. And how many would oppose one that had motor fuel tax?

COMMISSIONER MICHELE BROWN: Well, until I talk to Department of Revenue about what it means, I don't really know.

JOHN HANSEN: I think I'd have to say that those of us who don't fuel would probably not have any opposition to it but probably not support it either, since there's no particular benefit.

BRIAN ROGERS: Fish tax. Charlotte, did I --

CHARLOTTE MacCAY: I don't know how to go through this, because you're breaking it down, and in general I just don't support --

BRIAN ROGERS: Well, then raise your hand every time.

On fish tax, one, two, three, four, five, six, seven, eight, nine, 10, 11. And opposed? One, two --

okay.

DRUE PEARCE: Can I make a comment? I'm not opposed to fish tax and I think at one point in time when we were talking about how you could do it or would do it, or something, but while I understand the motor fuel tax is something that only those that fuel in Alaska have an opportunity to get, those ships also have an opportunity to fuel in Alaska if they so desire. Whereas --

CHARLOTTE MacCAY: No, they don't.

DRUE PEARCE: Well, not the -- perhaps not the spot charters. But other vessels.

The fish tax, unless you're a fishing vessel, you have no right to ever get some credit there. So I think when you're setting up any special category -- and I don't know that the industry needs its own special category of revenue -- I think you're trying to reach perhaps the largest denominator, as opposed to coming up with special things for a particular industry.

BRIAN ROGERS: How many --

DRUE PEARCE: It's also problematic once you get -- if you put that in, even though you've got in the original language that it doesn't apply, that the money goes to municipalities, I suspect every mayor and every assemblymember and all those folks are just going to be

reactive.

GENE BURDEN: Might want to revote on that.

BRIAN ROGERS: Does anyone wish to change his or her vote?

GENE BURDEN: I'll change mine.

BRIAN ROGERS: C-plan review. How many people would favor a credit program that affected the frequency of contingency plan review? One, two, three, four, five, six, seven, eight, nine, ten, 11, 12, 13. And how many would oppose one that affected C-plan review?

And a Blue Star program, an award program. How many would favor a credit program that had an award program? One, two, three, four, five, six, seven, eight, nine, ten, 11, 12, 13, 14. And how many would oppose? One. Okay.

Heather.

HEATHER McCARTY: I'd like to speak to the Blue Star program, because I've been real leery of it the whole time, and I'm on the prevention subgroup. And I think now that the division has been made amongst the different categories of vessels, it's a real bearable thing, it's a real doable thing, and I thank and laud the staff for their work on that. That was a really good move.

BRIAN ROGERS: Based on this, if -- let's

proceed to the issue of trigger, and then come back to this. If there's going to be a program, the highest support is for Blue Star, followed by spill penalty and C-plan review. Let's go to the trigger and then come back and look at the package and see if someone wants to make a motion.

The trigger -- we have the three proposals of a three-tiered system, a single-tiered system, and a five-measure system. Among the three, how many people's top choice is the three-tiered system? How many people's top choice is the single-trigger system? One, two, three. And how many people's top choice is the top five measures system?

GENE BURDEN: I want to vote for the first one. I'm sorry.

BRIAN ROGERS: Okay, I'm sorry. Maybe I tried to push this to a straw poll too quickly.

The issue, then, is if there's going to be a credit program that might be Blue Star or C-plan or spill prevention, should that be in the form of a three-tiered system where, depending on the number of measures, you can get one of three different results; or on a single-trigger system that you do -- you know, you get half the points, you get the credit; or should it be on the top five measures that are applicable to all the

vessels other than spot charters in this group, as the method for achieving it? Heather?

HEATHER McCARTY: I don't know. And so I'd like to hear some discussion on it, because I don't know. The only thing I can think of that differentiates them is the three-tiered system offers something for almost everybody. And that's an advantage. Other than that, I'd like to hear what other people's feelings are.

BRIAN ROGERS: Eric?

ERIC BRITTEN: Well, I think Heather came up with exactly what my thought was. Is this gives somebody an opportunity to qualify who doesn't necessarily have to do all of the things or as many of the things as somebody else does, but they still get rewarded for some, you know, some form of prevention, and to me that's really important.

BRIAN ROGERS: Other discussion among the three alternatives? Captain O'Hara.

MIKE O'HARA: Well, basically, the top five system basically took the most critical, and the easiest to do. The single trigger system is pretty easy to figure out, and it's -- you know, you don't have to carry a pump and all that stuff. I was divided between single trigger and top five, to me, the ones acceptable.

STEPHANIE MADSEN: I would just say that I lean

more towards the single trigger. Just because I think this three-tiered system is, you know, a good approach, but very burdensome as far as paying attention to it and the paperwork. And I can just see, you know, costs associated with this system versus, you know, one of the other two. So those are my arguments.

BRIAN ROGERS: Gene?

GENE BURDEN: The only problem I see with the single tier is that this isn't meant to be the definitive list of all prevention measures. So what's 50 percent of what, you know, as you go? I mean, if you add four new ones and you do six off this list and -- so, I think, you know, from the management standpoint, it's either the top five or the three-tier system is really the choice.

BRIAN ROGERS: Well, we do have, under item 20 on the prevention measures, is "other items proposed by operators." And I would assume as part of that, DEC could approve five of those and that would -- you know, or ten of them, as other acceptable measures, so someone could actually have ten others and get ten points and make that single trigger.

GENE BURDEN: Or that qualifies 50 percent, if you've got 30 --

BRIAN ROGERS: Oh, I see. Yeah, the universe

gets bigger. Well, actually, so maybe we take the 50 percent out and it's actually the number of points?

PAUL FUHS: Brian, just from a staff point, the reason why we put the 50 percent. If you do add more points and more measures, then it's still 50 percent of those total points. Even if the totals change, the percentage doesn't. So that allows flexibility in the system.

BRIAN ROGERS: Okay. Are you ready for a second straw poll on which of the three methods, if there's going to be one? How many would favor the three-tiered system? One, two, three, four, five, six, seven, eight. How many would favor the single trigger system? One, two, three, four, five. And how many the top five measure system? Okay, we've stricken top five measures, and a plurality favors the three-tier system.

GENE BURDEN: Either or.

HEATHER McCARTY: Either or.

BRIAN ROGERS: That makes it a four-tier system.

HEATHER McCARTY: Oh, yeah.

GENE BURDEN: Nothing wrong with that.

BRIAN ROGERS: Senator Pearce?

DRUE PEARCE: You're making a paperwork nightmare.

GENE BURDEN: Why don't you just change Tier II to 50 percent, and just have a 20, 50 and 60, or 50 -- 20, 50 and 70, and just have a three-tier with that.

BRIAN ROGERS: Now, in looking at the voting pattern on your choices here, basically the highest positive minus negative is your Blue Star program, your second is your C-plan review, then you start getting into spill penalty and motor fuel. You know, just in looking at where you are in trying to reach consensus, it's probably these two you're dealing with, with substantial approval, given the level of opposition to those two and less support out of the group.

So, I guess just in terms of looking at your process, if you're going to apply two measures times three or four credits, times one of them being a three-tiered system, you're getting into a level of complexity for administration that I think you need to be aware of. And particularly on these two, that means involving another state agency in determining -- in making some determinations.

I guess, having completed the straw poll, maybe that helps inform the discussion a little bit, and if someone wants to try a proposal or a suggestion for where we go from here. Commissioner?

COMMISSIONER MICHELE BROWN: I just want to

point out, when you're talking about the two that require other agencies, the whole spill penalty structure is built around -- it's not a penalty in the sense of a fine. It's liquidated damages. And when you talk about taking away damages to the State from a spill, I mean you're sort of upsetting the entire structure that has been created of how damages are collected. So, my guess is if you're going to go with something like this, you're going to be looking at counterproposals to figure out ways to assess damages. This was done in lieu of damages, in lieu of demonstrable damages. So it's not just a fine. I mean, it's a very, very complicated area.

BRIAN ROGERS: Senator Pearce?

DRUE PEARCE: You just lost me. There's a fine depending on how many -- how much volume in the water.

COMMISSIONER MICHELE BROWN: What it says in the statute is it's not like a penalty in the sense of you're being punished for doing a bad act. It's liquidated damages for damages the State can't really quantify. Because we know spills cause damage, but you can't go out there and count fish, or you can't count those things. So it's not meant as a punitive measure. It's meant to be liquidated damages. Where you get the punitive measure is if you've done something bad that

caused the spill, you get five times the penalty. That's the punitive aspect of it. But the basic penalty provisions, it's liquidated damages. And so, I mean, you're talking about -- and that was bitterly fought at the time, as well, so you really are changing the whole flavor of that one. So that one is a very complicated one, as well as the tax relief.

BRIAN ROGERS: Jeff.

JEFF THOMPSON: I just want to make the general observation that, along with the concerns of the commissioner, there are many aspects to this that are fraught with difficulties and unintended circumstances or reactions. But I'm with Eric and I'm with Gene on this. I've sat through these prevention meetings, and we've got to keep this thing alive. We may be the only state that can actually do this, and I think we've come too far and have too much invested in our time and effort to just abandon it at this point. So I just wanted to get that out there on the record.

BRIAN ROGERS: Captain O'Hara.

MIKE O'HARA: My feeling is that we ought to just send this out, let somebody else tear it down.

BRIAN ROGERS: Eric.

ERIC BRITTEN: Just following up on what Mike said. The Task Force is being asked for

recommendations. It's not our job to do the legislating, and, particularly as Commissioner Brown has pointed out, this is going to open, you know, Pandora's box. So why shouldn't we expose as much of our work as possible and let the legislature pick and choose from it? A, because that way they will know the different types of thinking that were going on in here. And B, it won't be do this or nothing. It's like here's several opportunities, what do you think.

BRIAN ROGERS: Senator?

DRUE PEARCE: Well, unfortunately, the honest answer to that question is, because we'd like to have something we could put on the table that does have some sort of consistency so we don't have to go back through what we went through last session is people saying, well, we're not sure because we don't know all the details, but we don't like it. We get back into that cycle again. So we're trying to bring specific recommendations forward.

Perhaps the way to go about this is to choose, as Brian has just done, narrow down to what the group is most comfortable with, let Debbie and others go back and come back to us with something more specific based on the -- we go for C-plan review and spill penalty, and it's single -- whatever. So that you're looking at one

suggestion rather than this menu that we've got today. And see what people think. So, at least you're closer. And in the meantime, we can all go back and look at the statutes and -- or I don't know, maybe I don't want to do that, but go back and have those discussions about whether it's a fine or whether it's -- what did you call it?

COMMISSIONER MICHELE BROWN: Liquidated damages.

DRUE PEARCE: Liquidated damages, and try to work through that.

BRIAN ROGERS: Commissioner?

COMMISSIONER MICHELE BROWN: Yeah, I guess I was just going to respond to what Mike said and Eric said, and that's that, I mean, we spent the better part of today trying to figure out how we can come up with a consensus piece of legislation to look like forest practices, where hopefully everybody says this is the way it's going to be, don't start growing tails and horns on it. And then to tack another portion on that's the opposite of that strikes me as somewhat inconsistent. They don't have to necessarily be the same piece of legislation. But, you know, I was thinking along the same lines as Drue, is pick one that there really is much more of a comfort level on, like

extending a period of C-plan, or a Blue Star program, and focus on developing that. Because I don't think you'll have quite as much controversy on those, and you also won't have the "me, toos" as strong on that. But I can guarantee you, if you start talking spill penalty reductions and then you see the crude industry out there even looking at the statute, you're going to have people coming unglued.

BRIAN ROGERS: Charlotte, and then Gene, and then Larry.

CHARLOTTE MacCAY: In recognition that it's controversial and it may get torn down, you may have a better chance if it does go out as a proposal for further review and work, you know, so it's an ongoing process. Because if this is what we want and it gets struck down, it can just be thrown out completely. If this is what we recommend be pursued and further work go into, then it has a potential for a continued life and it has a potential to become something more of us can embrace.

BRIAN ROGERS: Gene.

GENE BURDEN: Let's see here. A couple thoughts. One, every proposal this group is making is subject to the same considerations and concerns that have been expressed about this provision, and we haven't

established any boundaries that prohibited any recommendations. This was set out, day one, as a sector that we were going to look at, prevention standpoint. So I would argue that it's clearly within the purview of this group to make recommendations on prevention and prevention credits. And the legislature may or may not go with it, just as they may or may not go with the other recommendations we've made. I think we can identify a proposal, although it wouldn't affect a lot of folks, as motor fuel, maybe C-plan review, and Blue Star, as the prevention benefits that we would recommend using the system, and if you take the five -- or 50 percent rule, to keep it simple, and we can articulate that as a proposal and see where it goes.

And from the legislature's standpoint, there may be some legal issues that we're not giving enough consideration to, but you're not going to have members of the nontank transport group, the pilots or the container shippers in complaining about this. I mean, this would be almost a virtual consensus of the group here, other than maybe the spot charters. So, it would be analogous to the other recommendations.

BRIAN ROGERS: You have three of the measures that have received affirmative votes from a majority of the Task Force, 24 members here. So, three have

received a majority, two did not receive majority support. I just note that as to where you are.

GENE BURDEN: I think the comments that the commissioner's made on spill penalties really, I mean that's one we ought to pay attention to.

HEATHER McCARTY: Yeah.

GENE BURDEN: But on motor fuel, 11 voted for it and only one didn't. And I think a lot of the interest against motor fuel was a lot of folks aren't going to be impacted by that. But those who are, there are some of the smaller operators that buy their fuel in the state, and if they come up with these prevention measures, that's a way for them. If you knock out the fish tax, that's a way that the smaller operators and the fishermen would have some benefit from this. So I'd suggest motor fuel, C-plan and Blue Star, the 50 percent range, keep it simple, and go with it.

BRIAN ROGERS: Gene, and then Heather. I mean, Larry, and then Heather. Sorry.

LARRY DIETRICK: Well, yeah, I was just going to speak to the penalty provision. We talked about it a little bit before in the work group, but that is -- I mean, when the legislature built that, and when you go back -- and there's been a couple papers done on the law and how it was arrived -- I mean, it is the compensation

to the state for the damages to its natural resources. That's what's envisioned here on this statute. That's what they're -- and they use a dollar per gallon, and it's a rough gauge based on the nastiness of your oil and the sensitivity of the receiving environment, and it was the legislature's way of quantifying what the value of the damages to the state's resources were that occur from a spill. And that's how they valued it and that's why it's in there and that's why they did it.

And it's also got another peculiar thing. I mean, I can't even tell, even though we've done a lot of work on this, which statute it applies to. The other curious thing they did, there's a break here at 18,000 gallons for -- I'm not sure of all the history of why they picked 18,000, but for big ones they prescripted that the value of the -- what a gallon of oil would be with regard to a spill and the damages to the environment. And if it's under 18,000, it's assessed by the court. I'm not even sure if legally we can do a 30 percent thing on the judicial system here.

So there's a number of complexities here with regard to whether it applies to 758 or 760, or both, that we haven't got to that still need to be sorted out. And if the prevention measure -- I mean, it's kind of an oxymoron that, if you've had the spill, I mean, my

assumption is the prevention measure failed. And so, to --

SANDRA JACKSON: Why get rewarded?

LARRY DIETRICK: I mean, if you give it back, what you're giving up is the money that the State said we wanted for the damages to our natural resources. And that was to cover salmon and fisheries and all the critters that support -- are supported out there. So, I don't know, that's --

BRIAN ROGERS: So, where I sense the group is right now is not wanting to further consider fish tax and spill penalty. That using a three-trigger system. So we have three triggers times five vessels times three possibilities, for a total of 45 possible prevention credits. Some are statutory, some are regulatory, and some are administrative.

Question, in terms of staff trying to draft this as part of a report, are these cumulative? If you qualify for one, do you qualify for all three? I'm still troubled by how to try to write up these 45 possibilities in something that is a reasonable recommendation.

Eric.

ERIC BRITTEN: Gene's asking a question here and, you know, it's a good one, but you take a look

at -- you know, if you say which one's the easiest perhaps to get buy-in on, acceptance on, will receive the least amount of opposition, particularly when it gets into the legislative process, it's probably Blue Star. That's not taking any money out of anybody's pocket, not going to another agency, you know, or whatever. And that's kind of a reward thing.

But C-plan review is what's really going to start saving people dollars. And C-plan review, again, is within the scope of everything that's going on here. You know, it's like everything this Task Force is doing, is setting up the C-plan review requirements. And so therefore we're not sort of reaching into anybody else's bailiwick here.

When you get into motor fuel, then we start getting into, you know, some areas that are more departments, and this is revenue and things like this. I mean, even leaving the third one in there, to me it seems like, you know, whatever kind of reward, you know, however we choose the levels or whatever, you probably should qualify for however many of the programs we select and forward. Not just one. Because we took out the two biggies. We took out the fish tax and the spill penalty one. I mean, everybody would want spill penalty. That would be --

COMMISSIONER MICHELE BROWN: And nobody's going to get it.

BRIAN ROGERS: Heather, and then John.

HEATHER McCARTY: Yeah, this is Heather McCarty. I like the three, I think it's good, and I think people would like to see all three as a reward for any kind of program. And that's where I get stuck a little bit, because I'm not sure that my people are going to be as enthusiastic about it at the end of the process as they would be at the beginning when they had the potential for those three rewards. At the end of the process, when they get the Blue Star, maybe only one star or maybe no stars, you know, they might be disappointed in the fact that the incentive was sort of in front of them and then was whipped away. That's my only concern. I'm being really real honest with you, that's my concern with my people. And I don't know whether they'll think it's worth it if the Blue Star program is the only thing they get. It just as simple as that.

BRIAN ROGERS: And the Blue Star under the three-tiered system would be one star for one, two for two, three for three, something like that.

HEATHER McCARTY: Right. But I do favor the three tiers over the one, and I'll tell you why. I

think it's because I don't know what's going to happen under these "others as proposed by operators." That bothers me a little bit, too. That people can come as individual groups or individual companies and propose something to DEC that doesn't have any approbation by anybody else, and it's just sort of like, hey, what do you think of this, and they say, great, and all of a sudden you got, you know, three Blue Stars and nobody knows how you got them sort of thing, except you and DEC. You know what I mean. It's just a little bit sort of outside the process and could be abused. I'm not saying it would be, but it could be.

BRIAN ROGERS: Okay. Based on a recommendation that would have a three-tier system, with three credits, as laid out here, how many people would favor that type of a recommendation in the report of the Task Force? One, two, three, four, five, six, seven, eight, nine, ten. And how many would oppose such a --

CAPTAIN O'HARA: Is there something else to favor besides that?

BRIAN ROGERS: Well, at this point I'm trying to -- I don't have 12 votes for anything, so it maybe doesn't matter.

How many would -- does somebody want to try another alternative?

GENE BURDEN: Ask how many would support it with the single tier.

BRIAN ROGERS: How many would support the three-part with a single criteria?

MIKE O'HARA: I would do that. Single trigger.

BRIAN ROGERS: One.

MIKE O'HARA: I'm going to lose it.

BRIAN ROGERS: One person. Well, you can support more than one.

STEPHANIE MADSEN: I would change my vote. Then I would support that one.

BRIAN ROGERS: Okay. How many would support that one? I'm trying to find something that has a majority, if anything does. One, two, three, four, five, six, seven. Okay. Does anyone want to try something else that they think they can get 12 votes on?

COMMISSIONER MICHELE BROWN: How about just C-plan and Blue Star?

BRIAN ROGERS: Okay. How many people support a three-tier program for C-plan and Blue Star? One, two, three, four, five, six, seven, eight, nine, ten, 11. How many would support a single trigger with C-plan and Blue Star?

MIKE O'HARA: You can vote twice.

BRIAN ROGERS: One, two, three -- you can vote

as many times as you want. I'm just trying to find some combination that has -- one, two, three, four, five, six, seven, eight, nine, ten, 11, 12, 13, 14. Gets us a majority. Single trigger system for C-plan review and Blue Star, we'll write that up.

Now, that now leads to the final issue, which is funding for the administration of the DEC nontank vessel program.

COMMISSIONER MICHELE BROWN: It just got more expensive, I might note.

BRIAN ROGERS: And clearly, at 6:25 at night, not time for us to try to write a fiscal note, nor is it the Task Force's job to write a fiscal note. But I think the issue has been raised, is there a way that the Task Force can develop a recommendation that addresses the issue of funding in a way that allows the recommendations that have significant cost impacts, and, as noted by the DEC staff, that's really turnaround times and sufficient staff to review issues.

Is there a recommendation that would address the issue of funding that tells the legislature we recognize that this program needs to be funded in order to work? Rick?

RICK HARRIS: I think probably part of the problem is until we see it, you know, we get it down on

paper, it's hard to tell you how much it's going to cost from a private sector perspective and it's hard to figure out what it's going to cost from a government perspective. What I would recommend is that DEC now go back and actually prepare the fiscal notes on these various elements, and then we have the opportunity to comment on those throughout the process, including the final report.

BRIAN ROGERS: Stephanie.

STEPHANIE MADSEN: I guess I have heard, you know, through this process that the turnaround times are going to be the cost because of staff. And I think that, you know, the turnaround times are only going to be for the spot charter people. I think the people that are doing business in Alaska are willing to go through the 45-day review and wait for three years. And so, you know, in order to look at cost, you know, you really need to get a handle on how many people you think are actually going to look for this five-day turnaround. Because I think the majority of the 900 vessels that you are -- you know, that we've gotten COFRs for, are not going to be those that are going to require that five-day turnaround and will fit into your normal standard review process.

CHARLOTTE MacCAY: I don't think that

characterizes spot charters. What you're doing is a shell -- this is Charlotte MacCay. You're doing a shell plan, that's what goes through approval, and then you just sign on the boats as they come. They don't fall in that five-day turnaround.

STEPHANIE MADSEN: Well, then I'm unclear as to why it's the short -- the turnaround time is going to be so costly. That's what I just heard.

CHARLOTTE MacCAY: I don't know.

BRIAN ROGERS: As stated by staff in the meetings, the issue was one of ensuring sufficient staff, that there's never a six-day gap in any staff member due to sickness, due to vacation time, and issues such as that.

CHARLOTTE MacCAY: That kind of came up before we actually had the shell concept, that you just signed in. It was when every spot charter was going to have to go through a streamlined permit for each and every vessel. But once we get the shell and they just signed into it, that alleviated a lot of that workload.

BRIAN ROGERS: Larry?

JEFF THOMPSON: That's all identified in the shell.

LARRY DIETRICK: I think the costing and the five-day came up when we were talking earlier today

about whether or not we'd have to engage in the actual storage buying type thing, and if there was a large buying with those that came in a five-day, that would require more if that volume is high. But I think that's the only context.

I think the bigger difference, the bigger driver here in the cost, whether they're high or low, is how many go streamlined versus how many go individual. And the individual otherwise is going to be the bigger -- takes more time, more staff effort. I mean, us reviewing the four-part streamlined plan, administratively, is the easiest, lowest cost way to go. And I don't have a good feel for that right now. I mean, if we end up co-op cards and SOPEPs, it's a lot lighter than if we're going with individual reviews. And I can't quite tell, you know -- I think we're all going to need more time now that we know what the equipment pile is and how it's going to cost and where it's going to be located, for people to start working those issues.

But beyond that, if it's an individual review plan, yeah, it takes more time, and it's more labor intensive. I mean, we very much prefer the streamlined options that I think we're trying to encourage. It might not come out that way, though, I don't know.

BRIAN ROGERS: Commissioner, and then Senator, and then Gene. We'll come right down the line.

COMMISSIONER MICHELE BROWN: I had two, one of which Larry just covered. It's hard to predict since we don't know how many are going to be co-op stamps and how many will be the other individual plans. But the other factor that we're going to have to grapple with is what's the funding source. Is this going to be paid out of GF, is it going to be paid out of fees, is it going to be paid out of 470 funds? Those are big questions. Particularly when you're talking about things like prevention credits.

RICK HARRIS: How about the raw fish tax.

COMMISSIONER MICHELE BROWN: Or as a comment from the peanut gallery said, out of Permanent Fund Dividends.

BRIAN ROGERS: Senator Pearce.

DRUE PEARCE: Larry's comment that the more groups that try to self-insure, or self- -- do their own vessel fleet plans, whatever you want to call it, will require more time by DEC to do the approval. While I agree with that, you're also way out there in the future before any of those come and hit DEC's desk. I would think there are a number of entities that already know they're going to be part of a PRAC or a response action

contractor who already exists. That's going to happen reasonably quickly, those are going to start coming in and look fairly -- they're all going to look a lot alike.

Then, at the same time, DEC's going to be working on the language they would use for the shell contingency plan, and that's going to take a while to develop. But those groups, if they decide at the end of the day that they really are going to go out and do their own fleet plan, set up their own system, I don't expect to see any of those contingency plans walk through the door for approval for, pretty much until the end of the process.

So, I don't know, Larry, that you're really going to have that much additional work, in terms of hitting at the same time is what I'm trying to say. So, I guess I don't see that factor necessarily adding that much on top to what the people are going to be doing kind of out there.

Then, on the second point that the commissioner made, would be when the governor introduced the bill, and then I introduced the companion bill on the Senate side, the governor came forward using 470 funds and so we introduced the same thing. I don't remember any intense griping -- in fact, the (inaudible) never said

boo to me about using 470 funds. There is a finite amount of 470 funds, so I certainly understand that, and I think the commissioner has to -- it's part of her job to worry about going beyond that finite amount.

But, clearly, when we set that fund up, and as we've gone through preparedness and readiness in the state, that would be the logical first place to look for the funding for the program, and I don't know if we can change that now. We'll have to make sure that we keep the numbers small enough that we can fit in.

Now, that's not to say that either the railroad or the ferry system don't have to come up with their own (inaudible) to do their contingency plans, but this is for the DEC part. I don't know why it would change, is what I'm saying.

BRIAN ROGERS: Gene?

GENE BURDEN: Senator Pearce covered mine.

BRIAN ROGERS: Further discussion of this issue?

Okay, where we're going to go from here, then, is the facilitators are going to meet with the steering committee on the legislation issue to discuss sort of how we want to proceed, what we have not had the opportunity prior to this meeting to get together on that, do the vacation and other schedules. So we'll

deal with that and get back out to you on that issue. We'll have an updated report out to everyone by next Monday, and would ask that people get comments back to us on those issues, on anything that you think we got wrong as part of this. This is going to be a fairly long transcript, so I wouldn't expect that the transcript would be out, certainly not tomorrow. It's going to take Kim a while to get that out. We will post it as soon as we can get it out, to everyone.

And with that, that brings to us the final agenda item. Task Force member and public comments. Any comments from members of the Task Force before we break for the day? Yes, Heather.

HEATHER McCARTY: I'd like to thank you and the other members of your team. I think you've done a great job and I appreciate it.

BRIAN ROGERS: Thank you.

Any other Task Force -- yes, Eric.

ERIC BRITTEN: Just a comment just about the process in general. I think everybody around here has put in a lot of time and I think probably everybody sitting here feeling quite a bit of satisfaction right now, at least I hope they are. This has been just a real opportunity to see how this kind of process works. But I would hope two things. I would hope that this

isn't necessarily the end. If we look at best practices up and down the coast, we see other things happening. Jeff just left, but we see things like marine exchanges forming, et cetera, et cetera, et cetera. And we see industries taking over the ability to police themselves, under guise of different types of programs. I mean, this is like the first step, we've spent a lot of time doing this, and we are where we are. When all this sort of filters out and we get all the programs in place and we get the next couple of years under our belt, it's going to start looking a little different to us, and there will be new ideas and new ways to do things.

So, you know, I look forward to the opportunity to work with anybody here and everybody here as it continues to move, because it's, you know, prevention is a big part of it, but regulation is an equally big part of it. And none of it is going away. So I'd just like to say that I've been honored to be a member of this group and work with everyone here. And certainly I think that the dedication of our sponsor group here and staff has been admirable. Thank you.

BRIAN ROGERS: Any other Task Force member comments? Any public comments?

JOE LeBEAU: Thanks for doing this, guys.

BRIAN ROGERS: If there's no further business,

we're adjourned.

COMMISSIONER MICHELE BROWN: Thank you, everybody.

(Meeting concluded at 6:35 p.m.)

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CERTIFICATE

I, the undersigned Notary Public in and for the State of Alaska, do hereby certify:

That the annexed and foregoing proceedings were taken stenographically before me and reduced to typewriting under my direction;

I further certify that I am not a relative or employee of any of the parties to said action, and that I am not financially interested in the said action or the outcome thereof;

I further certify the proceedings, as transcribed, is a full, true and correct transcript of the meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 16th day of November, 2000.

Kim R. Behrens

Kim R. Behrens, RMR-CRR

Notary Public in and for the State of Alaska, residing at Anchorage.

My Commission Expires: 4.24.04

TASK FORCE ON MOTORIZED OIL TRANSPORT
Revised Draft Agenda - November 6, 2000
8:30 a.m.—5:00 p.m. (note: meeting will be extended into evening hours if necessary)
Anchorage Legislative Information Office
716 West Fourth Avenue – 2nd floor conference room

I. Welcome from Task Force Chair, DEC Commissioner Michele Brown and Steering Committee Members Senator Drue Pearce and Representative Pete Kott

II. Presentation by Brian Rogers, facilitator
   A. Review Task Force decision-making process and meeting logistics
   B. Update on activities since 9/20/00 Task Force meeting
   C. Review of all recommendations on Consent Agenda

III. Public Comment on Agenda Items (limited to 3 minutes)

IV. Consent Agenda

Response Planning Standard Work Group

1. *The RPS wave height planning standard is 3 feet. (Task Force adopted 9/20)*
2. *The APD&T equipment schedule is sufficiently rapid to meet the non-tank vessel program needs. (Task Force adopted 9/20)*
3. *The control and containment equipment required for a nontank vessel is containment boom sufficient to extend three times the length of the vessel and an appropriate deployment system. (Task Force adopted 9/20)*
4. Control and containment equipment required to meet the response planning standard (RPS) for a nontank vessel must be stationed within the vessel's subarea of operation.
5. The required cleanup equipment is skimming capacity capable of cleaning up 15% of the maximum capacity of a vessel within 5 days and storage capacity equal to the daily recovery capacity. The skimmer must be appropriate for the type of oil.
6. To meet the RPS requirement of "cleanup of the discharge within the shortest possible time consistent with minimizing damage to the environment," a nontank vessel must either:
   - Position the required skimming and storage capacity within its subarea of operation; or
   - Reasonably demonstrate to the Dept. of Environmental Conservation the ability to position equipment in the subarea of operation within 24 hours.
7. Nontank vessels will be allowed two years from the adoption of regulations implementing SB 273 to have in place the skimmer(s) and associated storage capacity described in their contingency plan.

Contingency Plan Work Group

8. Nontank vessel contingency plans shall only be required for vessel operation in state waters, (generally within three miles of shore).
9. DEC shall establish a streamlined process for submission and approval of contingency plans for nontank vessels, consisting of a response action plan, financial responsibility, and prevention plan.
10. DEC shall establish three alternative options for nontank vessel contingency plans (C-plans), allowing use of established PRACS (including spill response cooperatives and IMTs) , equivalent response resources, or a combination of the two. All three options will be available for plans covering single vessels or fleets.
11. DEC will complete its review of initial applications within 15 days for applicants using cooperatives, and within 45 to 90 days for applicants using equivalent response

resources. DEC will complete its review of applications for adding a vessel to an already-approved fleet plan within 5 days.

12. A response plan facilitator (RPF), acting as an agent for a vessel(s), can develop and hold a generic contingency plan that is activated by signature of a responsible party (RP). The plan will contain all the elements of a streamlined contingency plan.
13. ~~Specifications for the requirements for qualification as an incident management team (IMT) will be developed and adopted.~~ [Removed from Consent Agenda]
14. Nontank vessel contingency plans will be due to DEC within 180 days of adoption of the contingency plan regulations. DEC will conditionally approve initial contingency plans that are submitted on time. Conditional approval will remain in effect until DEC has completed review of a plan. Nontank vessel contingency plans will be reviewed by DEC every three years. DEC will stagger the initial review process.
15. "Spot charter vessel" shall be defined as a "vessel contracted to lift a specific cargo on a one time, periodic, non-scheduled or tramp basis."
16. DEC shall electronically post a listing of nontank vessel contingency plan applications and review schedules.
17. The public review process in DEC's review process for contingency plans found in 18 AAC 75.455 and 75.415 will be used as the model for review of generic contingency plans and plans using equivalent resources.
18. ~~DEC shall have statutory authority to inspect nontank vessels for C-plan compliance.~~ [Removed from Consent Agenda]
19. ~~The frequency and type of required contingency plan spill drills DEC may require of nontank vessels is one tabletop drill annually for cooperative members and no more than one full deployment drill and one tabletop drill for contingency plan holders providing equivalent resources. DEC may drill spill response cooperatives that provide services exclusively to nontank vessels a maximum of two times per year.~~ [Removed from Consent Agenda]

Prevention Work Group

20. *All affected nontank vessels must comply with applicable federal and international requirements. (Task Force adopted 9/20)*
21. A reduction in the response planning standard should not be considered in a prevention credit program for nontank vessels.

Alaska Railroad Subcommittee

22. *The Alaska Railroad will undergo a contingency and prevention plan review under the rigor of existing law for currently regulated industry. (Task Force adopted 9/20)*
23. *The Alaska Railroad risk assessment process is endorsed as a prevention measure for the Alaska Railroad. (Task Force adopted 9/20)*
24. *The Alaska Railroad should follow the RPS methodology developed by the Task Force, designed to meet a response planning standard of 15% of the maximum fuel carried. (Task Force adopted 9/20)*

Prevention Work Group (affects all recommendations)

25. DEC will periodically review all Task Force recommendations with the regulated community.

V. Discussion and Action on Recommendations Removed from Consent Agenda

13. Specifications for the requirements for qualification as an incident management team (IMT) will be developed and adopted.
18. DEC shall have statutory authority to inspect nontank vessels for C-plan compliance.
19. The frequency and type of required contingency plan spill drills DEC may require of nontank vessels is one tabletop drill annually for cooperative members and no more than

one full deployment drill and one tabletop drill for contingency plan holders providing equivalent resources. DEC may drill spill response cooperatives that provide services exclusively to nontank vessels a maximum of two times per year.

VI. Contractor Report
- A. Discussion of final report outline and elements
- B. Timetable for action on final report
  1. Revised draft report due out to Task Force members and public Nov. 13
     - Comments by Task Force members and public due Nov. 20
  2. Complete draft report with appendices due out to Task Force members and public Nov. 21
     - Comments by Task Force members and public due Nov. 27
  3. Revised draft legislation and draft regulation memo due out to Task Force members and public Nov. 20
     - Comments by Task Force members and public due Nov. 27
  4. Final report, including draft legislation & regulations memo due out to Task Force members and public – Nov. 29
  5. Task Force – Teleconference adoption – Dec.1

VII. Railroad presentation (scheduled for 11:30 a.m.)
- A. Progress on the Risk Assessment process
- B. Proposed timetable for Contingency and Prevention plan review.

VIII. Attorney General's office report on legal issues
- A. Legal Issues Memorandum
- B. Task Force Draft Legislation

IX. Discussion and Action on Unresolved Issues
- A. Contingency Plan Issues:
  1. Response Planning Facilitator as response action contractor
  2. Definition of qualified individual
- B. Prevention Issues:
  1. Adoption of federal/international mandatory requirements as state law
  2. Adoption of Prevention Credit Program for voluntary measures
     - Recommended prevention measures by vessel type
     - Options for what should be offered in a prevention credit program
       a. Reduction in civil penalties
       b. C-plan review
       c. Tax credits
     - Liability issues
     - Inspections
     - Penalties for fraud
  3. Implementation of prevention credit program for voluntary measures
     - Three options: applicability to work group recommendations
     - Applicability to spot charter industry
  4. Blue Star Vessel Award Program for voluntary measures
- C. Funding for DEC administration of Nontank vessel program

X. Final task force member and public comments

To: <jerickso@pobox.alaska.net>
From: jerickso@pobox.alaska.net (Judith Erickson)
Subject: Draft Report for Motorized Oil Transport
Cc: <broge[illegible]s@infoinsights.com>, <bheavilin@chadux.com>, <dave@seapro.org>

1. I will not be able to attend the Task Force meeting on Monday, 6 Nov as I will be participating in a drill with one of our member companies.
2. I have read your draft report and have two concerns that may need to be further addressed:

Recommendation 12 - final paragraph - the phrase "assist the vessel in arranging the initial spill response of a response contractor in the event of a spill" may need to be rephrased. I can easily interpret it as meaning that the RPF will be arranging a contract with a co-op at the time of a spill instead of in advance. I think the intent is to have a signed spill response contract as a part of the c-plan before it is approved by ADEC. If this is not the case, I believe that it should be. If the phrase is intended to mean that the RPF will act as a "qualified individual" on the part of the vessel, then I suggest that more appropriate wording be selected so as not to be misleading.

Recommendation 13 - The IMT capabilities listed in the table are way too low. If I interpret the table correctly, the responsible party only needs an Incident commander (after taking control of the spill from the QI) for spills of up to 5000 barrels of persistent oil. This is simply an insufficient number of persons to direct a spill of up to 210,000 gallons. 40 CFR 300 (the National Contingency Plan) classes any spill of 100,000 gallons into the coastal waters as a major spill. I don't believe that you can adequately address a spill of up to twice that size with only a command staff. My experience in Cook Inlet is that a 100 gallon spill of crude oil generates sufficient concern/interest for there to be 40 people in the command center, including State and Federal regulatory agencies. Spills of that size and of persistent oil will require a substantial amount of response personnel and equipment and will, in turn, require a substantial staff to ensure travel arrangements, meals, berthing, maintenance, waste stream management, etc, not to mention the actual response operations oversight. The spill will certainly not be recovered in one day and will require a planning staff to plan for future operations. In conclusion, I believe that this issue needs to be carefully reviewed and redone with a larger factor of realism included. I sincerely doubt that ADEC or the USCG would accept such a tiny IMT in the event of a major spill. As a co-op manager, I would not accept this level of management as it is not up to my staff to make such substantial corporate decisions. That is clearly the burden of a responsible party and would not be an acceptable "liability" to the current members of CISPRI.

3. If you have any questions, please feel free to call me at 907-776-7401.

Doug

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	
			Applicable?	Weight	Applicable?	Weight	Applicable?	Weight	Applicable?	Weight	Applicable?	Weight
1	*Emergency towline or dedicated mooring line with on-board means for deployment*	2	Yes	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	Yes	2
3	*On-board storage bladder or dedicated tank*	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, AIDS 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	*Participation in risk assessment process for operations*	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	*Specialized onboard training programs in prevention and response*	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
Top Five Measures* System:	All five	All five	All five	All five	All five	All five

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

*"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 previ. ısly 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 Bus 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?***

Implementation of SB273

Alaska Railroad Corporation
November 6, 2000

Alaska Railroad, pre-SB273

- Regulated under U.S. DOT for hazardous materials transport
- Not regulated under Alaska statutes
- Developed emergency response plan under provisions of Dunbar spill settlement

ARRC Response Plan

- Includes common provisions of regulated entity response plan
- Not required to be filed with ADEC
- Not subject to provisions of 18 AAC 75:
  - Periodic training
  - Exercises
  - Verification

Current ARRC plan: Training

- MOW employees 40-hour trained as first responders
- 6 supervisors/staff trained in first-level tank car course
- 2 employees trained as advanced tank car specialists

ARRC Plan: Train crew duties

- Spill response notification and safety assessment
- Stop source, if safe to do so
- Provide flag protection against following trains, per General Code of Operating Rules
- Training provided periodically

ARRC Plan: Regional Teams

- Maintenance of Way delegated first response duties
- Predominance of 40-hr trained employees in MOW
- District roadmaster first on-site commander
- Section crews, equipment deployed

ARRC Plan: Equipment

- Extensive lightering/transloading inventory at Anchorage and Fairbanks
- Additional major response vans at Anchorage and Fairbanks
- Secondary caches at strategic locations (Talkeetna, Hurricane, Moose Pass)
- Tertiary, basic first responder packages at all sections

1999-2000 incidents

- Canyon: In-train forces
- Gold Creek: Train meets in poor weather
- Roundhouse: Maintenance best practices
- Matanuska: Deferred maintenance

System safety assessment

- Prevention through safety system management
  - Track repair and maintenance
  - Quality control in car/locomotive shops on inspection and maintenance
  - Rules compliance, best practices in switching and train operation

Risk assessment

- Assess environmental and community risks associated with haz-mat transport
- Determine conditions and locations most susceptible to l/v derailment
- Use assessment to direct both prevention and response planning, with l/v derailment as focus

Risk assessment: Track

- Walking inspection of all main line track, with emphasis on curvature
- Detailed walking inspection of all switches and turnouts
- Walking inspection of yards and branches
- Gage, tie condition, rail condition, spiking and anchoring

Risk assessment: Shops

- Inspection of all rolling stock for AAR, FRA, and non-covered defects
- Emphasis on tank cars and equipment run with tank cars
- Audit of inspection for bad orders
- Audit of repair and maintenance quality

Risk Assessment: Operations

- Rules compliance and operational monitoring
- Assessment of "best practices" compared to other railroads
- Switching rules, train handling, crew coordination
- FRA compliance

Risk assessment: Schedule

- Track portion complete, data reduction and report being drafted
- Mechanical inspection 90 percent complete
- Operating audit scheduled for Nov. 11-21
- Draft findings available Dec. 31

ARRC and this task force

- Task force recommending Railroad inclusion under Title 46 and 18 AAC 75
- Awaiting Legislative action
- Prepared to implement the will of the Legislature
- Final implementation schedule based on 2001 Legislative action

What's different?

- Reformat, additions to ARRC plan based on c-plan regs
- ADEC approval per 18 AAC 75
- ADEC oversight under 18 AAC 75
  - Periodic training
  - Exercises
  - Verification

Likely implementation

- Internal improvements to procedures outside of regulatory scope
- Contract(s) with approved response action contractor(s)
- Exercises and training tailored to risks and regulatory requirements

Nontank Vessel Inspection Authority

- The proposed legislation does not create or make any new activities subject to inspection but simply extends existing authority to nontank vessels and the railroad.

- The existing language was included in the oil spill legislation passed in 1990.

- The existing inspection language allows DEC to continue to focus its inspection activities on prevention and response capability.

- The existing inspection language is not in conflict with the recent U. S. Supreme Court's decision which allows states to verify and have continued oversight for oil spill contingency plans and proof of financial responsibility.

- The Department of Environmental Conservation and the United States Coast Guard operate under a formal Memorandum of Agreement that explicitly outlines their respective roles for vessel inspection activities to ensure coordination, eliminate duplication, prevent overlap and avoid any jurisdictional conflicts under state, federal or international laws or agreements.

- All DEC staff conducting vessel inspection activitieshave appropriate training or extensive prior experience conducting vessel inspection work for the United States Coast Guard.

MEMORANDUM OF AGREEMENT

ON

OIL AND HAZARDOUS SUBSTANCE POLLUTION PREVENTION AND RESPONSE

BETWEEN

THE COMMANDER, SEVENTEENTH COAST GUARD DISTRICT

AND

THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

WHEREAS, the United States Coast Guard and the State of Alaska share a common interest and responsibility for protecting the waters of Alaska and have determined that their cooperative response to large oil spills such as the EXXON VALDEZ oil spill has permitted the State and the Coast Guard to leverage available resources, which in turn has led to better protection of our environment; and

WHEREAS, the United States Coast Guard and the State of Alaska find efficiency in government is important to the public they serve and that entering into a Memorandum of Agreement that builds upon present close working relationships and identifies areas for expanded interaction will lead to increased protection of Alaska's marine environment at greater efficiency; and

WHEREAS, the authority for the USCG to enter into this Agreement can be found in 14 U.S.C. § 141.

WHEREAS, Congress enacted the Oil Pollution Act of 1990 (OPA 90) to protect the waters of the United States from oil pollution and to plan for the effective and immediate response in the event of an oil spill, and the President subsequently designated the Coast Guard as the Federal On-Scene Coordinator (FOSC) within the Alaska coastal zone; and

WHEREAS, Congress has decided in a number of enactments, including OPA 90, not to preempt the various States from regulating certain matters associated with the protection of waters within their jurisdiction from oil pollution, which matters are also subject to regulation by the Coast Guard under OPA 90 and other statutes; and

WHEREAS, Congress explicitly provided the provisions of OPA 90 do not: (1) preempt or affect the authority of any state to impose additional liability or requirements regarding oil discharges or other oil pollution within such a state or removal activities in connection with such a discharge; (2) affect the authority of any state to establish a fund to pay for oil pollution or the substantial threat of oil pollution costs or damages, or to require any person to contribute to such a fund; or (3) affect the authority of any state to impose any fine or penalty for violation of law relating to a discharge; and

VI

PREVENTION OF OIL SPILLS

A. **Cooperative Implementation:** The Parties are coordinating their efforts to prevent oil spills in the marine environment.

To the extent permitted under applicable laws, the Parties agree to cooperate in the execution of their respective regulatory responsibilities to minimize duplication of effort. The Parties will also seek to identify opportunities for innovative implementation of vessel and facility prevention plans. Both Parties recognize the importance of encouraging cross-training in each other's regulations and rules including the areas of inspection and response.

B. **Vessel Inspections:** Each Party recognizes they may elect to independently exercise their respective examination responsibilities in accordance with applicable law, regulations and policies. The Coast Guard conducts inspection programs for the purpose of enforcing both international agreements and domestic law aboard United States and foreign-flagged vessels. The State has authority to conduct inspections for the purpose of ensuring compliance with state laws and regulations and can participate in joint examinations with federal agencies. Further, either Party may evaluate the inspection process and make recommendations for improvement or perform its own inspections in accordance with applicable laws.

1. The Parties agree to work together to avoid inconsistent requirements and to find ways to conduct vessel inspections in such a way that disruption to the industry is minimized and efficiency and safety maximized. To this end, the Parties will endeavor to exchange information and conduct joint inspections or may pursue agreements under which a single inspection may fulfill both state and federal requirements.

2. In implementing any State examination programs, the State agrees to avoid conflicts and unnecessary duplication in reviewing Federal inspection programs by on-going consultation with the Coast Guard.

3. Review of inspection records: The Parties each agree to make inspection records available to the other and to cooperatively review inspection results, subject to applicable laws, regulations, and procedures.

4. The State shall report recognized discrepancies in meeting the requirements of international agreements believed to exist aboard United States and foreign-flagged vessels to the responsible Officer in Charge, Marine Inspection (OCMI).

5. Requirements in State Waters: The Parties will cooperate to establish consistent pollution prevention requirements, and to cooperatively monitor, examine and exchange information relative to those requirements, for vessels to operate in State waters.

6. The State will promptly inform the cognizant OCMI and the Coast Guard will promptly inform the ADEC Industry Preparedness and Pipeline Program's Marine Vessel Section Manager of any situation or circumstance relative to a vessel whose condition or equipment may significantly increase the potential for an unauthorized discharge or create an unusual or an unacceptable risk to public health and safety, or the safety of navigation. Both Parties also agree to ensure joint notification when an initial report is received from Alyeska SERVS regarding any irregularity or indication of a problem which threatens a tanker or its cargo (including ballast water) as well as situations where a tanker leaves both the U.S. Coast Guard designated Prince William Sound and Valdez Arm traffic lanes (except when an outbound tanker leaves the lanes at the Hinchinbrook Entrance terminus).

7. Both Parties agree to share all applicable information obtained from their respective vessel inspections.

C. **Vessel Screening:** The Coast Guard, under federal law, through the District Commander and the Captain of the Port (COTP), has the authority to regulate the entry of vessels into the COTP zone, including those determined to be a threat to the environment. The State may establish the means by which it can determine whether tank vessels entering the waters of the State pose a substantial risk of harm to the public health and safety and the environment.

When the State determines that a particular vessel or vessels pose a substantial risk, that determination will be forwarded to the cognizant Captain of the Port (COTP). The COTP shall consider that information in making a determination under federal law as to appropriate action to be taken, if any, including the possibility of denial of entry.

D. **Tank Vessel Crewing:** The Coast Guard establishes and enforces requirements for crewing, competence, and documentation of personnel aboard vessels.

1. The Coast Guard will consult with the State, to the extent practicable, in its evaluation and implementation of additional requirements for crewing, training, and qualification requirements through the crewing standards process.

2. The Parties agree to actively promote and coordinate research projects to identify human factors which need to be regulated to prevent pollution incidents.

E. **Tank Vessel Transfer Operations:** Monitoring tank vessel transfer operations has been identified as an effective pollution prevention action.

The Parties will cooperate to monitor transfer operations involving tank vessels (as well as cruise ships, fish processors, fishing vessels, etc.), including, but not limited to, dockside transfer at facilities, lightering and bunkering operations. Each party will advise the other of violations observed.

DATE

IF A VESSELS OPERATING CAPACITY, WHILE IN ALASKA, IS LESS THAN THE MAXIMUM OPERATING CAPACITY, THE VESSEL IN THEIR C-PLAN AND THE PRAC MAY PROPOSE AND ADEC WILL ACCEPT THE ALTERNATIVE MINIMUM EQUIPMENT TO MEET THE CLEAN-UP EQUIPMENT REQUIREMENT.

STORAGE CAPACITY OF A VESSEL, THAT IS VOID DURING ITS TIME IN ALASKA, THAT CAPACITY CAN BE USED AS PART OF THE REQUIRED STORAGE CAPACITY.

PREPARED BY

PAGE

I. EXECUTIVE SUMMARY

Financial responsibility and oil spill response planning requirements have long been in place for tank vessels carrying petroleum as their principal cargo. Senate Bill 273, enacted by the 2000 Alaska Legislature, established similar requirements for nontank vessels of more than 400 gross tons, and for railroad tank cars.

The new law establishes a response planning standard (RPS) for "containment and control of 15 percent of the maximum oil capacity" of the nontank vessel or railroad train within 48 hours. Cleanup is required "within the shortest possible time consistent with minimizing damage to the environment."

The bill established the Task Force on Motorized Oil Transport and charged the Task Force with determining how to implement the response planning standard.

The Task Force recommends implementing the standard with a process that is:

- **Realistic**, capable of being implemented with available technology and expertise;
- **Effective,** providing real protection to the environment;
- **Economically feasible,** capable of being implemented without unreasonable costs;
- **Flexible,** providing a wide variety of options and choices for vessel owners and shippers to meet the requirements of the law.

The Task Force recommendations implement the response planning standard in full recognition of all federal pre-emption. They provide alternative means of implementing the response planning standard that include fleet plans, vessel agents, a streamlined contingency planning process, and voluntary spill prevention measures.

The recommendations recognize the existing framework of response planning requirements for tank vessels while providing opportunities for vessel owners to determine their most efficient means of meeting the standard. The Task Force envisions that market forces will for most vessel owners yield several alternative compliance choices.

The requirements of these recommendations apply only to vessels in state waters, generally within three miles of shore.

Summary - Response Planning Standard

The Task Force recommends the response planning standard be based on a three foot wave height.

Control and containment equipment, including sufficient boom to extend three times the length of the vessel, must be stationed within a vessel's area of operation, or be able to reach the area within 24 hours. Skimming equipment for cleanup must be able to clean up 15 percent of the maximum capacity of the vessel within five days.

Summary - Contingency Plans

For a vessel owner, compliance with contingency plans for meeting the response planning standard is a streamlined process that includes demonstration that the vessel

- meets the financial responsibility requirements of state law;
- has designated an individual who is qualified to make decisions about a spill on behalf of the vessel owner, has a response action plan that includes

1. initial notification procedures such as those contained in the shipboard oil pollution emergency plan;
2. a contract with a primary response action contractor or use of equivalent resources, to contain and control 15 percent of the maximum capacity of the vessel; and
3. a contract with an incident management team or equivalent resources

- meets applicable federal and International Maritime Organization requirements

A vessel owner can demonstrate a vessel plan through three options:

I. By contracting with a primary response action contractor for containment, control and cleanup, and by contracting with a primary response action contractor for incident management;

II. By demonstrating to the department equivalent resources for containment, control, cleanup and incident management; or

III. By a combination of A and B.

A vessel fleet, operated by a single owner or by a group of independent owners, can prepare a plan for a group of vessels, demonstrating to the department the fleet's plan using any of the three options. Vessels can be added to the fleet through a simple fleet plan amendment process. Vessel agents, acting as response plan facilitators, can prepare generic contingency plans, designed to be activated by vessels entering state waters on short notice.

The Task Force recommends that Department of Environmental Conservation act upon contingency plans under tight timeframes, provided that sufficient funding is provided for adequate staff. Public review opportunities continue to exist through review of primary response action contractor plans and by electronic posting of a listing of contingency plan filings.

The Task Force recommends a simple schedule of tabletop drills for vessels contracting with primary response action contractors and full deployment drills for vessels using alternative resources.

Summary – Prevention

The Task Force recommends that all affected nontank vessels comply with applicable federal and international requirements.

The Task Force does not recommend any reduction in the response planning standard be part of a prevention credit program.

More to come? . . .

Summary – Alaska Railroad

The Task Force endorses the Alaska Railroad Risk Assessment process, and recommends the process be followed through to completion. The Alaska Railroad should undergo a Contingency and Prevention Plan review under the rigor of existing law for currently regulated industry.

The Task Force on Motorized Oil Transport believes its recommendations meet the Alaska Legislature's request for implementation of the Response Planning Standard set forth in SB 273 and SCR 1, providing increased protection of the environment at a reasonable cost to affected shippers.