

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

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1 based on risk, we're directed that no, that's not
2 acceptable.

3 And the other circle that I think we get in
4 here pretty quickly when you're talking about different
5 response planning standards is back to a cost problem.
6 If in fact we are looking at joining a co-op and our
7 costs are going to be based on the response planning
8 standards that that co-op is going to meet, and then all
9 of a sudden we have different legislation that is going
10 to reduce response planning standards, that is going to
11 reduce or change the co-op structure. And I think that
12 we're in this circle where we're very concerned about
13 costs, but when you start talking about differences in
14 response planning standards, you've thrown all that, you
15 know, kind of out with the baby, because we're back to
16 square one, okay, now, who is this defined universe and
17 what are their response planning standards.

18 So, again, I guess this is kind of a new twist
19 we haven't heard about, at least from the notes I've
20 seen and meetings I've been in, and I would be very
21 uncomfortable today agreeing with recommendations based
22 on these recommendations resulting in a reduced response
23 planning standard for a certain class of vessel. I do
24 agree about the different classes of vessels, and maybe
25 looking at that list and in relationship to reducing the

1 response. But if we're going to be talking about
2 response planning standard reductions, then I would go
3 back and reask the question about a risk as one of those
4 variables. Thank you.

5 BRIAN ROGERS: If I could, let me proceed with
6 a little more of the presentation and then come back to
7 where we left off on the discussion, because I think
8 that may help form the discussion based on what
9 Stephanie just said. I'd like to just proceed through
10 two more things here, and then come back to the folks,
11 Ernie, Heather, Gene and Lee, who are waiting, because I
12 think the issue that Stephanie addressed may be dealt
13 with.

14 And that is, the third recommendation is this
15 catalog of vessel types, with prevention measures. The
16 issue of prevention credits, we had the work group
17 coming up with an incentive system for above -- ABC
18 recognition for prevention measures above and beyond
19 compliance. With publicity, and this was the issue
20 Charlotte was concerned about. Of publicizing those
21 vessels that go above and beyond compliance with
22 publication and DEC website, using a self-certification
23 process by vessel owners, and a process for nomination
24 of new prevention items.

25 And the slide I wanted to get to here is the

1 prevention credit one, because there were several areas
2 of prevention credit in addition to the response
3 planning standard, and actually that I think the
4 committee has discussed a little bit further trying to
5 find a way to utilize the insurance companies to offer
6 benefits.

7 A second area of discussion, and none of these
8 are ready to go forward yet and will be at the next
9 meeting, is tax credits against one of five potential
10 taxes. Corporate tax -- corporate income tax, that is.
11 Fisheries business tax. State share only; not municipal
12 share. Fisheries landing tax. State share only, not
13 municipal share. And insurance premium tax reduction to
14 insurance companies that give insurance breaks to people
15 with prevention credits. And a credit on the motor fuel
16 tax.

17 Other regulatory relief. And I don't think
18 that there was a clear sense of what that might be yet,
19 but that there might be opportunities. Reduction of the
20 civil penalties for a spill if you had undertaken
21 prevention measures and through something other than
22 gross negligence have a spill notwithstanding the fact
23 that you've been trying to prevent it, you have a
24 reduction in civil penalties.

25 And then finally, the one of the reduction of

1 the response planning standard, although I think a
2 number of -- there's certainly no consensus on that one
3 because of the kind of concerns that Stephanie raised.
4 And it may be that I was in error in trying to shut off
5 Dave Owings in trying to talk about credits, because it
6 may be that the voluntary measures and the credits are
7 too intertwined to try to talk about them separately.

8 So I'd like to go back now to Dave and then
9 continue on down the list so that we can deal with these
10 two issues intertwined. I think I made a mistake in
11 trying to separate them.

12 DAVID OWINGS: Well, the point that I was
13 trying to make was -- and I realize that I'm leading
14 back down that road to joining an OSRO, and maybe not
15 everyone wants to do that. But if -- and looking at
16 Southeast, we don't have any gaps. And so, I guess I
17 don't understand the need for reducing a planning
18 standard that we already far exceed.

19 CHARLOTTE MacCAY: (Inaudible).

20 DAVID OWINGS: I mean, we're spending a lot of
21 time working on this and so I'm just throwing the
22 question out.

23 BRIAN ROGERS: Ernie, you're next.

24 ERNIE PIPER: This whole issue right here
25 underscores not just the unique nature of the railroad,

1 to this group, but also the fact that the railroad is a
2 publicly-owned railroad. Before the governor's bill and
3 then Senator Pearce's bill appeared, the railroad made a
4 commitment to meet or beat that regulatory standard.
5 Because we believe that as a state-owned entity, when
6 DEC or when the legislature or when the administration
7 went to talk to industry about making improvements in
8 any one of these areas, that it would be very awkward
9 for the State of Alaska to go make some demands of
10 industries that they weren't willing to meet themselves.

11 So, similarly, I can go do this risk assessment
12 and this risk assessment will very clearly tell us in a
13 measurable way what voluntary measures we can take to
14 reduce our risk of derailment on the Alaska Railroad.
15 And I will say that it is measurable because there is an
16 industry standard that's almost a hundred years old that
17 measures the (inaudible) risk.

18 Having said all that, if I were a private
19 company, I could make a decision about whether I was
20 going to meet those voluntary standards, and say, well,
21 if there's really not anything in it for us, we'll just
22 have a real good response program and a prevention
23 program anyway and we'll meet the standards, and that's
24 it. But the Alaska Railroad, once this risk assessment
25 is done, is going to be in the position of saying that

1 we really don't have a choice. We really will not have
2 a choice to say "no" to voluntary prevention measures,
3 if that standard that we have set for ourselves is a
4 state entity hold.

5 That also has a cost, because these are not AAR
6 reimbursable or FRA defect reimbursable type of
7 activities. Therefore, it does lead us to prevention
8 credits or some type of reduction in response planning
9 standard or something similar to that, because there
10 will be a cost to the publicly-owned railroad to do
11 that, and that we should be able to get something back
12 to show that we're setting that standard. It's not just
13 railroads that would be in this position; it's the
14 publicly-owned railroad that's in this position.

15 BRIAN ROGERS: Heather?

16 HEATHER MCCARTY: Yes, this is Heather McCarty.
17 I'm a co-chair of the Prevention Work Group. And I
18 think that we need to distinguish here for the benefit
19 of all of us, those things that occurred and that were
20 sort of reached consensus on during the actual
21 prevention subgroup meeting, and those things that were
22 just discussed during a subgroup meeting of that work
23 group. It's kind of hard to distinguish even verbally,
24 but there was a meeting yesterday. I was there for an
25 hour out of I don't know how many, three hours maybe --

1 PAUL FUHS: Four.

2 HEATHER McCARTY: Four. Oh, my gosh. So
3 that's how much we all missed. Because those things
4 that happened during that discussion are in part
5 reflected in this document, but they were not -- those
6 things were not agreed upon by the entire Prevention
7 Work Group. Isn't that right, Paul?

8 BRIAN ROGERS: This set of issues right here
9 were all identified for further discussion.

10 HEATHER McCARTY: That's correct. And so I
11 wanted to distinguish between those two for the benefit
12 of the audience and those of us who weren't at them all,
13 and then I have more to say.

14 PAUL FUHS: And, Heather, you are correct about
15 that. And, Brian, you're not asking the Task Force to
16 take any action on any of this today; is that correct?

17 BRIAN ROGERS: Not on prevention credits.

18 PAUL FUHS: This is just a status report.

19 HEATHER McCARTY: That's what I thought --

20 PAUL FUHS: This is also, you know, maybe one
21 of the most dynamic committees. It's harder to put the
22 finger on these issues than anything. The west coast
23 has tried to do this and failed for how many years? But
24 there are some possible avenues that look like might be
25 available to us, with the P&I insurance clubs and other

1 issues of civil penalty issue that could directly
2 reflect that given economic incentive. So that's what
3 we're just slugging through. There's no action today on
4 anything.

5 HEATHER McCARTY: Exactly.

6 BRIAN ROGERS: I think the group could take
7 action on recommendation 1, which was that the only
8 required prevention measures be those that are already
9 required for vessels on an individual vessel basis.

10 HEATHER McCARTY: I was going to suggest that.
11 I'm not done.

12 BRIAN ROGERS: Heather, you're still going, and
13 then Gene, Lee and Kris.

14 HEATHER McCARTY: I would like to say those
15 subgroup meetings should be publicly noticed just as
16 much as the work group meeting as well, because I think
17 there may be some interest that hasn't been identified,
18 and that we shouldn't assume that certain people
19 wouldn't like to be there and others might not. So I
20 think that might be a practice from now on and I ask for
21 that to occur.

22 BRIAN ROGERS: The issue of number of meetings,
23 and the original attempt at it was for a staff member in
24 DEC to sit down and develop a proposal that might be
25 able to come to the group, that that was the first

1 meeting of what was a subcommittee. Those have evolved
2 over the two weeks --

3 HEATHER McCARTY: Right.

4 BRIAN ROGERS: -- to where everybody wants to
5 be at them.

6 HEATHER McCARTY: Right.

7 BRIAN ROGERS: So my recommendation to you is
8 we do away with those and only have the work group
9 meetings, because the sub work group meetings are --
10 their sort of attempts to prepare are becoming like
11 meetings themselves.

12 HEATHER McCARTY: Exactly.

13 BRIAN ROGERS: As contractors, and DEC, we are
14 concerned about volume of meetings here. I know for us,
15 as facilitators, we signed on for three. I think we may
16 have hit that already, in terms of meetings. So we do
17 want to restrict how much time we're spending in
18 meetings. But really, because of the level of interest,
19 my recommendation to you is that we not have meetings
20 outside of either the work group or Task Force.

21 HEATHER McCARTY: That would be fine. And I'm
22 still not done.

23 By my recollection, the possibilities for
24 incentives, under XI here, did not really specifically
25 include, until probably yesterday, the last two, the

1 reduction in penalties for spill and reduction in the
2 response planning standard, even though I, like
3 Stephanie, recall that that was one of the original
4 purposes for including prevention credits. And I think
5 it's a grand idea. However, we do agree to the point
6 that Stephanie got to, and I think her point was
7 extremely well taken when at the beginning of this
8 process we were told that all industries are going to be
9 treated alike. And there will be no, you know, backing
10 down from that response planning standard for everybody.

11 I think when we go at that response planning
12 standard by means of prevention credits, we are in some
13 cases getting on the edge of differentiating between
14 industries, because of the possibilities of each
15 industry meeting those prevention credit standards, so
16 to speak. And I think that's where Stephanie was going.
17 So we are sort of approaching that from a different
18 point of view. Whether we want to do that or not is up
19 to the Task Force. I was just pointing out that I think
20 that's where we're headed with that particular tack.

21 BRIAN ROGERS: Commissioner, and Gene and Lee
22 and Kris.

23 COMMISSIONER MICHELE BROWN: You can put me at
24 the bottom.

25 BRIAN ROGERS: Gene?

1 GENE BURDEN: When we start trying to list
2 prevention, what are the prevention actions, I guess I
3 would just question, is it that much value to the group
4 to really try to put together an exhaustive list of what
5 the prevention measures might consist of? Really the
6 focus is on providing an option for a C-plan applicant
7 to propose prevention measures that they would
8 individually implement for their particular operations,
9 and then negotiate with DEC in that process to try to
10 identify acknowledgment of that prevention measure, and
11 try to translate that into some sort of benefit for the
12 party. Similar to what DEC is doing with BAT. It would
13 be real easy for the department to maintain a register
14 of prevention measures that have been implemented
15 throughout the industry for information purposes.

16 I guess addressing your issue, Charlotte, I
17 think that's in the context of trying to come up with a
18 list, because we could come up with a list of hundreds
19 of prevention credits, or prevention measures. The
20 trouble has always been, as Paul mentioned, is trying to
21 translate that into some sort of bottom line benefit to
22 the person that implements that.

23 So, I think, conceptually, we ought to be
24 encouraging the use of prevention measures, I think we
25 ought to be acknowledging that that's an issue that is

1 very specialized to the applicant and, subject to DEC
2 and the applicant, reaching a consensus in the review
3 process, as well as what effect that will have on their
4 deployment strategies. If there's some way we can come
5 up with recommendations to highlight prevention of an
6 applicant or some way that might impact insurance
7 premiums, you know, I certainly support that. We
8 haven't been as successful in the past on the crude
9 petroleum shipment angle on that.

10 And I guess the last thing is that there's some
11 great ideas here, and I would hope that this group, even
12 though it may be outside the purview, would say, hey, we
13 wouldn't mind seeing these sort of things applied to the
14 crude and (inaudible) either.

15 BRIAN ROGERS: Lee?

16 LEE EGLAND: Very good. Lee Egland. Going
17 back to the senator's comments about the intent of the
18 prevention credits, during discussion of the bill it was
19 very simply stated that, you know, what can we do to
20 reduce the risk of a spill, ultimately, you know,
21 reducing our costs, hopefully. And I think it's duly
22 noted that depending upon your particular situation, the
23 area of operation, the types of vessel you operate, some
24 or none of these may be available to you.

25 Likewise, if you're going to be going it alone,

1 or going through a co-op or an established cooperative
2 to develop your response, would also have a determining
3 factor in making a potential business decision as to
4 which one of these credits would you or would you not
5 want to take on?

6 With that being said, I think the whole
7 issue -- and I would like to compliment the group on
8 taking this issue on. As we duly noted at the beginning
9 of the Task Force, this was going to be, we thought, one
10 of the most contentious groups, recognizing that it's
11 going to be very difficult to come up with a tangible
12 end result of what is it going to benefit us as
13 owner-operators to implement these.

14 So, I encourage the group to continue, but I
15 might just suggest one small revision to the language
16 for this section 7, is that understanding the report is
17 a very important part of what's going to come out of,
18 you know, this Task Force, and just some minor
19 wordsmithing to the language I think would help so it
20 would maybe take some concerns into consideration as to
21 can we or can't we? But just simply, and I'll just
22 throw out where I'm going with this, is that here's how
23 I would make the bold read: The Prevention Work Group
24 identified the following list of potential prevention
25 measures for nontank vessels that may be considered for

1 prevention credits, resulting in the lowering of the
2 owner-operators' RPS.

3 That way this isn't cast in concrete. It's
4 just something that here's the list; if you want to do
5 it, great. If it applies to you, great. But
6 understanding that when it's all said and done here,
7 this may not apply to anyone, or someone may not want to
8 do it.

9 BRIAN ROGERS: Credit.

10 KRIS MULLAN: Holy mackerel. If I can comment.

11 LEE EGLAND: Please.

12 KRIS MULLAN: What's in it for -- what's the
13 State going to give us if we follow all these prevention
14 measures? Basically, we're in a pattern here to where
15 even if we do all these prevention measures, what kind
16 of guarantee do we have that the State is going to give
17 us anything? They might just say, well, that's good,
18 you're a safe operator, thanks.

19 BRIAN ROGERS: Michele?

20 COMMISSIONER MICHELE BROWN: I wanted to try to
21 see if we could put some summary on this similar to I
22 think what Gene was saying. The prevention group really
23 has, as the way I see it, being removed from it, kind of
24 three charges. One is, is there anything that should be
25 made mandatory? I think the group has already spoken to

1 that. Two, is the threshold question of should there be
2 prevention credits that bring down the RPS? With a full
3 discussion of the issues Stephanie raised, that Dave
4 raised, you know, in the areas where there are gaps do
5 you guys want to gang up and bully the biggest ship to
6 bring the RPS -- you know, there's a lot of issues
7 there. The equity issues, you know -- and the fact that
8 it's already a pretty low RPS. So I think you have to
9 grapple with that issue.

10 If the answer is yes, you want to give
11 prevention credits, then you're going to need to define
12 so people know what, as Kris said, the State is going to
13 give you to do it. If the answer is no -- and it could
14 come out either way for any of the reasons we've heard
15 today -- then the question is, are there some voluntary
16 pollution prevention items that because we've got this
17 great talent pool here thinking through that we want to
18 encourage outside of this -- I mean, the task really for
19 this work group is should there be prevention credits
20 that bring down the RPS, because that's the specific
21 thing we have to decide.

22 But if the answer is no, you may want to make a
23 subsequent recommendation that but we do encourage the
24 State to look at these things that could help prevention
25 in ways that will offer a benefit. Be it a tax credit,

1 a reduction of penalties, an award program, you know,
2 things that we look at frequently in all our
3 environmental leadership programs as ways to encourage
4 going above and beyond, but they're not reducing
5 standards. And I think you have to take those things as
6 three separate issues to deal with them, otherwise you
7 can really get yourself caught in this.

8 BRIAN ROGERS: This is Brian Rogers, and I
9 think that's where the subcommittee work yesterday was,
10 subject to the full group, was on what at the prior
11 meeting was called the "groovy ship award." That was a
12 program that is now called the "above and beyond
13 compliance," and that these issues that are more
14 financially intangible are still under discussion. I
15 have Paul, Charlotte, and then Kris.

16 PAUL FUHS: Yeah, I was just going to say the
17 reason, as we went through this, we didn't consider the
18 response planning standard, although that was in the
19 legislation, that even if you go from 15 to 10 percent,
20 does that mean, say, you're in a co-op, Chadux needs any
21 less equipment out there. It doesn't save them money,
22 how can you implement it? Plus, you're already at 15
23 percent. That's already low. The concept came from the
24 tank program where it's 100 percent. And then you give
25 credits down, you know, you get 30 percent off for

1 double hulls or, you know, real specific items. So
2 that's really where it came from.

3 Now we're off into -- I think the most fruitful
4 thing is looking at the insurance premiums area, because
5 some of the insurance companies do give credits and
6 reductions. The question for them is if that's on an
7 ad hoc basis per vessel. Where the insurance company
8 carriers sign off on a more formalized program where the
9 State lays out and says these are the list of prevention
10 credits and if you meet this, we're going to reduce our
11 civil penalties? I can tell you the insurance companies
12 would be very interested in that because that money
13 comes straight out of their pocket and that's put in
14 there as a fine to try to affect behavior. But what
15 you're doing here is saying, well, let's take that
16 potential fine and move it onto the front end and try to
17 get some prevention from it. I mean, that's the whole
18 policy concept.

19 So if we can make that work -- maybe we can --
20 we talked with Captain Page about would the Coast Guard
21 be interested in helping provide some of the inspection
22 for this if we get the list, when they go on to inspect
23 for seaworthiness, would they look for those prevention
24 items that people said they had as a way of having a
25 realistic way to try to keep people from making

1 fraudulent claims, and he said yes, they would
2 participate in that with the inspection program with
3 DEC. So maybe we've got something there, and I guess
4 what we're just asking is let us work on this. We're
5 doing some more research with the insurance companies
6 and with our premium tax. Maybe we can come up with
7 something. If we can't make it work for dollars, maybe
8 there's an award, or maybe we throw up our hands like
9 the rest of the west coast and say, cool if you do it,
10 otherwise keep bringing your stuff in and we'll go to
11 the lowest common denominator.

12 BRIAN ROGERS: Charlotte?

13 CHARLOTTE MacCAY: Most of what I had to say
14 has been said, but I will say I participated a while
15 back in the DEC P-2 workshop that went on for a long
16 time just dealing with pollution prevention in other
17 areas, and ever finding a way to give credit for them
18 pretty much stalemated out of weeks and weeks of
19 workshops. Just focused on that. So I think it's
20 always a great idea, and it's a can of worms once you
21 get into it. And I think particularly, from our point
22 of view, an award program really sets some people up to
23 look bad, and of all things that's what I'd least like
24 to see happen.

25 BRIAN ROGERS: Kris and Mike.

1 KRIS MULLAN: On the reduction of penalties,
2 I'm assuming that's on the State end. Pharmacology and
3 also the fuel? That would be the on the State tax.

4 BRIAN ROGERS: Yes. Mike O'Hara.

5 MIKE O'HARA: Yeah. From a mariner's
6 standpoint, these are all preventers, and if somebody
7 looks bad because of an award program, maybe they are
8 bad. I mean, so what? The vetting process is supposed
9 to get rid of those bozos. That where I'm coming from.
10 Just a simple sailor. This looks like a good idea.
11 Over.

12 BRIAN ROGERS: For the first time in an hour,
13 I've got no one stacked up waiting to speak.

14 What I'd like to ask the group is, if you're
15 ready to adopt recommendation number 1 of the Prevention
16 Work Group, which is that the only mandatory requirement
17 that would be applied to a vessel are those
18 international and federal requirements that also apply
19 to those vessels. Or in the negative, that the State of
20 Alaska will not impose additional mandatory
21 requirements, prevention requirements on vessels. Are
22 you ready to adopt that recommendation? I think I can
23 turn the lights back on.

24 Second warning for everybody. Are you ready?
25 Discussion. Yes? Can you come up and identify yourself

1 for the record, and get close enough to the folks on
2 teleconference.

3 DAMON JORGENSEN: I'm Damon Jorgenson. This
4 may have been addressed earlier, but does this then
5 provide for double jeopardy for federal penalties and
6 state penalties if they don't meet the federal
7 requirements?

8 CAPTAIN ED PAGE: Already they are subject to
9 both state and federal penalties in the house bill. So
10 I don't see that that would change anything. So my
11 answer would be no -- not being a lawyer, but my answer
12 would be no, in light of what the practice is today.

13 BRIAN ROGERS: Further discussion?

14 PAUL FUHS: Brian, maybe the language is not
15 that we're going to also make these mandatory by the
16 State. I can see where Damon is coming on that. But
17 maybe it would say that the Task Force would recommend
18 that no additional measures be in this legislation
19 requirement of prevention measures above and beyond
20 what's already required by federal law. I think that's
21 the recommendation.

22 BRIAN ROGERS: Commissioner?

23 COMMISSIONER MICHELE BROWN: Yes, this is
24 Michele Brown. I guess what you're asking, Damon, does
25 the State then have the authority to look for those same

1 requirements during the inspection and take a state
2 action if they're not there, as well as the Coast Guard
3 could take that action.

4 DAMON JORGENSEN: Correct.

5 COMMISSIONER MICHELE BROWN: And, you know, I
6 think that's a question that I think we'd probably need
7 to deal with in the inspection, is that something that
8 the State would find actionable? It wouldn't be double
9 jeopardy if it's authorized.

10 CAPTAIN ED PAGE: If it was regulatory, too, is
11 the other issue.

12 COMMISSIONER MICHELE BROWN: Right. So I don't
13 know that any of the groups have actually grappled with
14 the fact that -- I think everyone should -- is the State
15 going to be looking at more requirements, and the answer
16 is no. Does the State want to retain the authority to
17 be able to ensure that the federal and international
18 ones are being met while the vessel is in state waters?
19 My guess is the group never really talked about that.

20 BRIAN ROGERS: I don't think the group did.

21 COMMISSIONER MICHELE BROWN: Is that your
22 question?

23 DAMON JORGENSEN: I just wanted to know if the
24 State was going to have its own enforcement authority
25 and group that went out to the ships to inspect for

1 these federal requirements; and if they found them, were
2 then they going to take some action against the vessel,
3 a state action as opposed to going to the feds?

4 BRIAN ROGERS: Charlotte?

5 CHARLOTTE MacCAY: The way this is written up
6 on the summary says, "This recommendation would allow
7 the state to take action for violation of federal or
8 international requirements."

9 And I think maybe the group needs to rewrite
10 this before we vote to accept it. I think all these
11 points are important and it needs to be crafted more
12 carefully.

13 CAPTAIN ED PAGE: I can see the ambiguity,
14 perhaps ambiguity seen by that. What kind of action are
15 we talking about? Bumping up the response planning
16 standards 50 percent, does he have a track record of
17 noncompliance with federal ISM regulations, and if we're
18 at a higher risk? Or would it be some other scheme that
19 directs action right at that moment? Penalty action.
20 So it doesn't clarify what is envisioned by that
21 statement. So I think I misunderstood you beforehand.

22 KRIS MULLAN: Shouldn't that be limited to the
23 state, though, for state track record?

24 CAPTAIN ED PAGE: You mean the track record? I
25 guess the point would be if the state was to look at the

1 port state information exchanged data base that the
2 Coast Guard has available for all vessels and records
3 all the violations and the patrols, problems, the track
4 record, and the state looks at that and says obviously
5 they have a bad track record with respect to compliance
6 with international and Coast Guard regulations. Our law
7 says you got to be compliant with that, otherwise we're
8 not going to give you the 15 percent response planning
9 standard. Won't even give you 50 percent because your
10 risk is greater than the other folks for towing the
11 line. Perhaps. But I don't think it was fleshed out,
12 but that's one possible option, I suppose.

13 BRIAN ROGERS: Susan Harvey.

14 SUSAN HARVEY: Susan Harvey, DEC. We have not
15 addressed how we would handle our inspection authority,
16 and at one time it got deferred to the C-plan Work
17 Group, so it's still a remaining item that warrants a
18 lot of discussion. I might just want to add in terms of
19 what we do with existing regulated community, we work
20 very closely offshore with the Coast Guard, and onshore
21 with EPA. If in the course of our inspection -- we
22 often do them together, but in the course of our
23 inspection while we are looking for being over and above
24 requirements and we observe a problem that is subject to
25 federal requirements, we certainly will alert the Coast

1 Guard, onshore will alert the EPA.

2 The way we handle it now is have, that their
3 first line course of action for them to go ahead and
4 implement their requirements, and they're very diligent.
5 They normally take our recommendations and follow
6 through on them. So I guess throw that out there as
7 that's a means of how we handle it now in a very
8 cooperative fashion with the feds, and I can't imagine
9 anything that could be better than that.

10 BRIAN ROGERS: Anyone else? I sense the group
11 is not ready to act on this until prevention has met
12 again and crafted the language a little bit differently.

13 And with that, rather than jump into the next
14 item on the agenda, we're through the first six of nine
15 items. We've still got the Contingency Plan Work Group,
16 which is really, as a work group has not met, but we do
17 want to review the preliminary subcommittee report and
18 give them any direction. We might want to spend a
19 little bit of time after lunch before that if there's
20 any other thoughts that come to people on prevention, I
21 think before completely closing out prevention. Sort of
22 leave us in the middle of agenda item 6 as we break now,
23 and there may be some items that come up after lunch.

24 My estimate is that Contingency Plan Work Group
25 and scheduling issues, we're probably at a maximum of an

1 hour for those two items this afternoon. And so we're
2 probably looking at an hour, maybe as much as an hour
3 and a half, for people just as a personal planning,
4 depending on the level of public comment that might
5 occur at the end of the meeting. But with that, I think
6 this might be a good point for the group to break.

7 We do have the issue of whether to stay in this
8 room this afternoon or to move downstairs. There are
9 pluses and minuses to each of those. There is more room
10 downstairs. There are some logistics of moving all the
11 equipment. We'll do whatever is the pleasure of the
12 Task Force in terms of the room. Anyone have a burning
13 desire to move? This is a small hot room. But maybe
14 that is why we're so far ahead of schedule. Okay.
15 Without objection, we'll stay where we are this
16 afternoon. We'll break until -- the schedule said 1:00.
17 Because we're far enough ahead of schedule, to allow
18 people time to get to and from lunch, why don't we make
19 it 1:15.

20 CHARLOTTE MacCAY: Sounds great.

21 BRIAN ROGERS: We'll go off line until 1:15.

22 (Lunch recess taken from 11:55 to 1:15 p.m.)

23 BRIAN ROGERS: Let's bring the group back to
24 order. We were on agenda item 6, basically item 6-B, on
25 further work group activities.

1 A couple things came up during the break. One,
2 we've been operating under a system with three, what
3 we're calling tri-chairs, the steering committee. Each
4 of the three work groups has three tri-chairs. For
5 those that aren't aware, for the Response Planning
6 Standard, that's Gene Burden, Lee Eglund and John
7 Hansen. For the Prevention Work Group, that's Eric
8 Britten, Heather McCarty and Mike O'Hara. And for the
9 C-plan, that's Jeff Thomas, Stephanie Madsen and
10 Charlotte MacCay. Those are the three work groups, each
11 with three tri-chairs, as of today.

12 I said I'd hold us on agenda item 6-B, so if
13 there were any further thoughts on prevention issues
14 before we moved into contingency plan, there would be an
15 opportunity for people to reflect and go on on that. So
16 let me basically turn it to Task Force members and see
17 what else, if anything, the members of the Task Force
18 want to suggest to the Prevention Work Group for further
19 discussion at their meeting next Wednesday, or other
20 issues they'd like to raise. Does anyone have anything
21 else?

22 Stephanie?

23 STEPHANIE MADSEN: I think the commissioner
24 pointed out that we really do need to resolve the issue
25 on whether these pollution prevention credits are going

1 to go to different response planning standards. And if
2 the answer is yes, then that's one path. If the answer
3 is no, then it's a different path. And I'm not sure if
4 that's such a policy call that it should be discussed
5 here at the Task Force to provide direction to the
6 prevention committee, or whether you let them talk about
7 it and bring it back to us, but I think that from my
8 perspective, that's kind of a decision point for a lot
9 of other things.

10 BRIAN ROGERS: Are you ready to engage that
11 issue as a group, as to whether the prevention credits
12 affect the response planning standard?

13 Yes, Heather.

14 HEATHER McCARTY: I think it's one of the key
15 issues and we haven't discussed it yet, so I think we
16 should. I mean, I think we have to.

17 BRIAN ROGERS: As a Task Force today?

18 HEATHER McCARTY: Pardon?

19 BRIAN ROGERS: As the Task Force here and now?

20 HEATHER McCARTY: I misunderstood you. I
21 thought you said the prevention --

22 BRIAN ROGERS: No. The question is whether
23 that needs to be addressed here in the Task Force before
24 the Prevention Work Group goes to work, in order to give
25 some guidance to the Prevention Work Group to the extent

1 to which they focus on prevention credits, addressing
2 the RPS versus other forms of prevention credits.

3 HEATHER McCARTY: Same answer.

4 DAVID OWINGS: It's really a question for the
5 State rather than a discussion point, isn't it?

6 LARRY DIETRICK: Larry Dietrick of DEC. Well,
7 it is -- I mean, we can make our input, but our input
8 goes along with everybody else's in that process, and I
9 think it's just not right -- I mean, the Prevention Work
10 Group is scheduled to meet the 27th, and it is on the
11 agenda to be discussed if you want to have several
12 remedies. And I mean, it's my full intention, based on
13 the little work session yesterday, that there's no
14 conclusion on that yet and that that was just getting
15 the materials ready for that discussion to take place
16 next week. So I'm not sure if it's ripe yet for today,
17 but it's my understanding that it will be fully taken
18 up, as Heather indicated, next week, that that's fully
19 planned.

20 BRIAN ROGERS: Commissioner?

21 COMMISSIONER MICHELE BROWN: I would recommend
22 that it be taken up in the work group first. I mean,
23 that's where a lot of heavy lifting of the issues are
24 really vented out more, and there's so many pros and
25 cons and you need to make sure everybody's working from

1 the same level of knowledge before the work group
2 starts. And if they come back and say, we don't really
3 have a recommendation but we've narrowed the issues,
4 then I think it's more ripe for the Task Force,
5 especially if it gets sent out a week in advance and
6 people can prepare for it.

7 BRIAN ROGERS: One of the advantages we will
8 have is with the completion of the prevention task force
9 on the 27th, nearly four weeks until -- and we don't
10 know exactly yet what the date is for the Task Force
11 meeting -- that's next on our agenda -- so there will be
12 ample advance opportunity.

13 Anyone else want to weigh in on this issue?
14 It's post-lunch so you got to try to keep the air flow
15 going in here. Open up this door to try to help that.
16 Yes, Heather.

17 HEATHER McCARTY: Heather McCarty. As the
18 commissioner stated earlier, I think the discussion
19 about this should precede the discussion about the
20 different measures and how they might add up, so to
21 speak.

22 COMMISSIONER MICHELE BROWN: It is a threshold
23 issue.

24 HEATHER McCARTY: Rewrite the agenda, do it
25 according to that order.

1 BRIAN ROGERS: Other thoughts?

2 CHARLOTTE MacCAY: This is Charlotte. I think
3 that extends to all the measures. I think first you
4 need to go through and cull out what are the possible
5 measures you're taking. Because if there are none,
6 there's no reason to spend time on that list.

7 BRIAN ROGERS: What are the credits that you're
8 taking?

9 CHARLOTTE MacCAY: Yeah, whether it's --
10 decrease in your response capacity, whether it's
11 something you can do through taxes. I mean, if all
12 those things end out canceling, you will have wasted
13 your time if you've been working on the list.

14 HEATHER McCARTY: The measures themselves.

15 CHARLOTTE MacCAY: The measures themselves,
16 yes.

17 BRIAN ROGERS: The work group so far has
18 identified one, the groovy ship award, as being the only
19 one that doesn't require -- but that's not a --

20 CHARLOTTE MacCAY: But there's also strong
21 opposition to it.

22 BRIAN ROGERS: Yes.

23 CHARLOTTE MacCAY: So maybe it doesn't stay in.

24 BRIAN ROGERS: Anything else on prevention
25 issues?

1 HEATHER McCARTY: I don't see it on here
2 specifically, but I see that it's on the report from
3 before, and we haven't talked about it too much, the
4 liability issue. And I believe it was Captain Page who
5 brought that up at our last meeting, or one of the last
6 meetings, I get mixed up. And I think that that should
7 be addressed, and I note in here that it says you want
8 the members to address it in writing, so that the AG's
9 office can give their opinion on that.

10 BRIAN ROGERS: That was the request of the
11 Attorney General's office, yes.

12 HEATHER McCARTY: Okay. So, may I ask if
13 anyone has done that, thus far, in terms of putting it
14 in writing, or whether we will still need to do that.

15 BRIAN ROGERS: No one has put it in writing
16 either to me or to Judy. I'd ask the prevention
17 co-chairs if anyone has put anything in writing.

18 HEATHER McCARTY: I haven't seen anything.

19 BRIAN ROGERS: And DEC has not. So at this
20 point, the liability concerns, no one has identified
21 exactly what those concerns are.

22 HEATHER McCARTY: I hesitate to restate it
23 because I think Captain Page might be able to state it
24 better, but just so the Task Force knows what that
25 means, because it wasn't really stated in this report.

1 CAPTAIN ED PAGE: I'll just make an
2 observation, when we were talking about that day in the
3 five-star program, that if it was in fact adopted by a
4 large majority of the vessels, then in essence
5 development to what we refer to as standard of care. So
6 that if a vessel failed to exercise that standard of
7 care when involved in an accident, it would very likely
8 have greater liability exposure, I think whatever,
9 however it's assessed. That would be one of the
10 concerns the industry could raise, is increased exposure
11 because of that.

12 And it's a pro and a con. Pro is that then
13 people would be motivated to make sure they weren't the
14 20 percent that didn't comply and were in the 80 percent
15 that did comply. The con would be that people concerned
16 maybe there's unintended consequences involved in the
17 standards of care that made them even more vulnerable
18 for lawsuits. This is an issue that would need to be
19 resolved so we knew where we stood on the implications.

20 HEATHER McCARTY: Thank you.

21 BRIAN ROGERS: Anyone else on prevention
22 issues? Yes?

23 MIKE O'HARA: We talked yesterday about
24 liability for the -- what was it, the --

25 PAUL FUHS: This is Paul Fuhs. If a nonprofit

1 is set up for incident command similar to the PRACs, do
2 the limits on liability extend to the PRACs, would they
3 also extend to that nonprofit? Or would it also, would
4 it require it to be addressed, to extend it to an
5 incident command nonprofit? Because it seems that might
6 be an efficient way to provide those services to
7 companies that normally don't do that. I mean, fishing
8 vessels and these others, they don't deal with oil all
9 the time. It's just something they have to put in their
10 ship to go do the rest of their business. So that was
11 another liability issue.

12 BRIAN ROGERS: And that liability issue is
13 addressed in the C-plan Work Group Draft Report and
14 there's further work to come on that.

15 MIKE O'HARA: Okay.

16 BRIAN ROGERS: For an area that had a lot of
17 strong feelings, I'm somewhat surprised, and I can only
18 attribute it to be post-lunch that people are holding
19 back right now, but I'll close out the issue of
20 discussion of prevention topics if no one else has
21 anything to say.

22 CAPTAIN ED PAGE: I'll say something just to
23 break the post-lunch syndrome.

24 Ed Page here from the Coast Guard. What I'm
25 reading here is that actually this group has a fairly

1 open -- there's no real -- I'm not trying to narrow them
2 down -- evidently, we're saying all these options for
3 us, incentives for these prevention measures still are
4 out there. For instance, the possibility of response
5 planning standards being ratcheted down, no one's said
6 to the Task Force, anyway, said take that off the table.
7 Not an option. You're saying let's explore further,
8 evaluate the pros and cons of different factors that
9 might impel or urge someone -- there's got to be some
10 benefit from doing these prevention measures, a cross
11 benefit so to speak. You just don't do them and reduce
12 risk and fiduciary benefit as far as less insurance
13 rates or less rates of -- better with respect to the
14 OSRO, PRACs and similar. That's what I'm understanding.
15 That's correct?

16 BRIAN ROGERS: Charlotte?

17 CHARLOTTE MacCAY: I'm not still not sure that
18 most people really understand where spot charters end
19 out on this. Which is why we object so much to having a
20 list. Because your list does become a standard to be
21 looked at and it becomes due diligence in court. It
22 starts to develop a life of its own. And for a spot
23 charter, there's a worldwide fleet out there and you're
24 trying to pick out of it. For us, personally, at this
25 point in time we get pretty good ships because zinc has

1 a high profit right now and they get a higher share, so
2 the nice ships come to us. If zinc prices fall and a
3 different spot charter that doesn't get as much profit
4 margin, they get what's left over in the world fleet.
5 They don't have control over whether or not they have
6 ships that have added all these things. So while it's
7 nice to think this will just cull out the bad ones,
8 there's not that many excess ships, I don't think, in
9 the world fleet that availability will get rid of the
10 ships with the lesser pollution prevention. Somebody's
11 going to get stuck with them, and it's going to be
12 whoever has the least amount of money in their
13 marketing. And it sets that whole industry up very
14 unfairly.

15 BRIAN ROGERS: Gene, and then Stephanie, and
16 then Kris.

17 GENE BURDEN: As already indicated -- this is
18 Gene Burden -- I think there's a good argument to be
19 made, not necessarily to try to make an exhaustive list,
20 but sort of the counter to your suggestion there,
21 Charlotte, is that in the event of an accident, and in
22 the event that you're trying to look at whether or not
23 parties exercised due diligence, what Alaska does here
24 will have very little relevance to what a court would
25 find in terms of liability. They'd be looking at

1 practices that are known in the industry way beyond
2 Alaska to come to that kind of conclusion. So I'm not
3 sure that the fact that we do that or not is going to
4 really address concerns about generating more liability.
5 There are literally hundreds of prevention items that
6 have been recognized as available for ships to use and
7 operators to use, both by studies that have been done
8 here, work in Prince William Sound, Washington state, in
9 California. They're all out there and those would all
10 be raised as, you know, here are some practices that you
11 knew or should have known about, in terms of trying to
12 establish whether you comply with standards.

13 BRIAN ROGERS: Stephanie?

14 STEPHANIE MADSEN: I can't see everybody so I'm
15 going to stand up. Stephanie Madsen. I guess my
16 concern is this is really a policy call, and I'm not
17 sure that I'm convinced that it's only in the pollution
18 credit committee. Because what I understand -- what I
19 hear is that there's the potential by doing some
20 prevention activities that your risk is reduced for
21 spilling oil and the State is going to allow a reduction
22 in your response planning standards.

23 Well, beyond that, I think that if we look at
24 the nonhomogeneous group of vessels you're talking about
25 here, within that class there are vessels that have less

1 risk just because of their activities. For example,
2 fishing vessels generally are outside three miles for
3 the majority of their time, and when they're coming in
4 to a port and delivering. Or you may have vessels, like
5 Charlotte's example, that may only come in once. But
6 they get no reduction because their risk is lower than
7 another class of vessels because, you know, we've
8 determined early on that that's a mess and, you know,
9 can of worms we don't want to get into. But yet we're
10 willing to get into it under the heading of pollution
11 prevention, and I think that that's a policy call.

12 And either we are willing to reward for reduced
13 risk or we're not. And I think then if we are, then I
14 think we need to talk about the difference in the
15 different vessels and their exposure to state water oil
16 spills. And I'm not advocating that we go there because
17 I'm not sure I want to get into that debate, but I can't
18 sit here and say that the pollution committee is the
19 only one, you know, that can identify where they're
20 going to get a reduced response planning standard.
21 Because if you're going to talk about risk, let's talk
22 about risk in the bigger picture, not just on this list
23 that you get to pick from and get credits. Let's talk
24 about what your activities are for the majority of the
25 time, how often you're inside three miles, and what your

1 record is.

2 And so, I guess I'm back to I think that's a
3 policy call that really in some respects is beyond this
4 Task Force. That's a policy call for the legislature
5 and, you know, the state. We can make recommendations
6 but, you know, I know that -- and I know I'm repeating
7 myself from this morning, but the message has come
8 across loud and clear during the legislative session,
9 was there would be no -- everybody would be treated the
10 same under response planning standards. And what I'm
11 hearing in this subcommittee is that that's no longer
12 going to be the policy. Potentially no longer going to
13 be the policy.

14 BRIAN ROGERS: Kris. You had your hand up?
15 No?

16 KRIS MULLAN: No.

17 BRIAN ROGERS: Okay. Anyone else?

18 ERIC BRITTEN: Just a quickie. I think maybe
19 what everybody is saving up for, everybody's marking
20 next Wednesday in their Daytimer.

21 CAPTAIN ED PAGE: Or Palm Pilot.

22 ERIC BRITTEN: Or Palm Pilot as the case may
23 be. You know, interpretation of it, whether --
24 Stephanie is saying whether we're trying to interpret
25 and classify risk, whether there is a difference between

1 risk and the way you operate your vessel and prevention
2 standards, or not, a question that came up at the
3 Prevention Work Group last time was what is the intent
4 of our charge? Are we trying to keep, quote, unquote,
5 undesirable vessels out of Alaska waters? And is this a
6 way we're trying to do it? I think the answer we came
7 up with was actually that our job was not to do that.
8 But that kind of discussion always comes into this
9 because we get so close to that area, as I think we're
10 all, you know, attesting.

11 But I think if everybody actually will spend
12 some time between now and next Wednesday trying to
13 define some of these things like such as what we're
14 talking about, is this risk, is this prevention? How
15 should it be rewarded? How should we talk about it next
16 week?

17 If we say yes, it can be considered, you know,
18 as something that can be rewarded by a reduced planning
19 standard, can it also be reduced by the list that Paul
20 gave earlier? Or if the answer is no, do we go to the
21 list? I mean, there's still a long way for this
22 committee to go.

23 And considering the fact, time -- time not of
24 the essence, but there isn't a lot of time, I think what
25 I'm asking is, come to the meeting next week but do your

1 homework. We will try to get, you know, some direction
2 and some ideas from, you know, from Senator Pearce and
3 from the commissioner, you know, to help us in our
4 endeavors, but I really feel we need to press forward
5 until we really feel sure that we have exhausted, you
6 know, all the possibilities that are out there, and then
7 either we have or have not come up with something.

8 BRIAN ROGERS: Mike?

9 MIKE O'HARA: Eric, are you saying we ought to
10 get into the quantification of risk? This is O'Hara.

11 ERIC BRITTEN: Actually, no, I'm not, because I
12 think that -- you know, we've talked about that before
13 and that really becomes part of the negotiation, you
14 know, between the vessel or the company and the SR, you
15 know, as far as what your rate is going to be. But this
16 is where it gets gray.

17 HEATHER McCARTY: Yeah.

18 ERIC BRITTEN: You know, we were talking about
19 the fact that all the other states have given up on
20 this. I don't think it's a givable upable thing
21 necessarily.

22 MIKE O'HARA: I agree.

23 ERIC BRITTEN: Although, after next Wednesday,
24 you know, we may all --

25 BRIAN ROGERS: Yes, Heather.

1 HEATHER McCARTY: Well, prevention measures are
2 the reduction of risk, for the most part. I mean,
3 that's what they're all about. So I don't think you can
4 talk about the two things separately. Just from my
5 perspective, that's where I'd be coming from. So what
6 Stephanie said about risk issues does perhaps extend to
7 other areas than prevention, i.e. how many times, where
8 do you go, and so forth. Because those are all risk
9 assessment, part of risk assessment, which I know the
10 railroad is doing. And I think that it's entirely
11 appropriate for them to be doing that. I think it's
12 appropriate for us all to be doing that, and I think we
13 probably do that as an individual industry every time
14 you go out on the water, you do a risk assessment of
15 whatever it is you're looking to risk and make your
16 decisions accordingly. So looking at the railroad as a
17 model, I don't think that it's a bad thing to do in this
18 circumstance, so prevention is part of that in my
19 estimation.

20 BRIAN ROGERS: I'm sorry.

21 COMMISSIONER MICHELE BROWN: No.

22 CHARLOTTE MacCAY: I think I just have -- I
23 hadn't really thought about it from this perspective,
24 but it's true that your ships which are potentially
25 causing the least risk are also the ships that have the

1 least potential to do any of the things on that list.
2 And so your ships of the least risk are going to come
3 out with the least pollution prevention credits and
4 they're getting penalized kind of from two different
5 directions at once, and I don't think you can be
6 selective, and I think this is a can of worms that is
7 beyond what you can get done in time for January.

8 BRIAN ROGERS: Commissioner?

9 COMMISSIONER MICHELE BROWN: What I was going
10 to say is similar to what I think Eric said, is this is
11 a subject that lends itself to a decision tree. And I
12 think if we can lay that out before the meeting to help
13 people get their thoughts in order of how far down this
14 tree do you want to go, when you see how far out on a
15 limb you're going to have to go if you take one route.
16 Because there are a lot of threshold decisions. And I
17 agree with Stephanie, it is a fundamental policy choice
18 on whether you're going to allow credits for certain
19 prevention activities. But a lot of what we're doing is
20 policy, and we do have work groups that recommend to the
21 full Task Force, and the Task Force will make a policy
22 choice in making a recommendation to the legislature, I
23 mean ultimately. None of what any of us do at any point
24 here is necessarily the decision until it goes back to
25 the legislature.

1 So, I mean, I think it needs that kind of very
2 rigorous decision tree analysis, because when I listen
3 to discussion here, we keep going all over the place in
4 terms of what we mean of prevention credits, prevention
5 measures; and then if you're going to allow credits, how
6 far down that risk do you go? And is it truly worth it
7 to spend that kind of brain power for 1 or 2 percent
8 credit on something that's already very low and just
9 creates so much expenditure in the co-op or the spill
10 response group, whatever it is, to figure out how to
11 charge rates, that ultimately it's more expensive
12 because the administrative costs go up. So I think we
13 really should put a little thought into a decision tree
14 first and some of the factors that you can take a
15 certain route that you'd have to consider so that people
16 can make those kind of choices.

17 BRIAN ROGERS: Mike O'Hara.

18 MIKE O'HARA: Yes, I would like to respond to
19 Charlotte. Charlotte, you have the impression that all
20 ships, spot charter ships, are basically pieces of junk,
21 and that's not true.

22 CHARLOTTE MacCAY: No, I don't. We have fairly
23 good ships.

24 MIKE O'HARA: That's what you're saying, these
25 people can't comply. I had a brand-new ship, it was one

1 of the nicest ships I've ever seen. Spot charter.

2 CHARLOTTE MacCAY: We don't have the control
3 over whether or not they have these things on them. So
4 like I say, right now we have great ships. We're also a
5 high-priced commodity right now. The people who have
6 the lower priced commodities are left with what's left
7 over, and they don't have control over whether or not
8 they get ships that have a lot of these amenities that
9 will get them credit or not. It doesn't mean it's a
10 piece of junk, but you're giving credit or not credit
11 over something they have absolutely no control over.

12 MIKE O'HARA: Let it go.

13 BRIAN ROGERS: Captain Page.

14 CAPTAIN ED PAGE: Ed Page here. I guess to
15 add, that I think those who are in the business of
16 cleaning up oil all realize what a difficult task it is,
17 and prevention is definitely worth pursuing a little
18 harder, and our best bucks are really placed in
19 prevention area than they are in response area. So
20 unfortunately it's a very complex problem. With any
21 luck we'll get an earlier vision, but I think it's
22 probably worth the effort. And the legislature did
23 mention, briefly albeit, but they did mention
24 prevention, so I think it's worth the extra effort. I
25 don't personally -- and this is my opinion. I don't

1 think we should mess with the 15 percent planning
2 standard. I think it's too complicated. I think it
3 doesn't fit well for the OSROs, and I think it's a
4 pretty low standard as it is. I don't think we ever
5 want to budge from that.

6 I think the answer would be some other
7 incentives. I think we had some pretty good ideas in
8 the work group when I was listening the other day. And
9 I think we find a list of small number of jewels that
10 fit the ships fairly comfortably, and our people look at
11 and kind of agree that that's palatable, makes sense, it
12 would reduce the risk, and then they could actually buy
13 into that. And in some cases, the vessel can't meet
14 those standards because of -- tramper, the consequence
15 would most likely be their insurance rates would be
16 higher or their OSRO charge would be higher, or some
17 other things to -- and that's just a consequence of it.
18 But probably worth the effort because, again, having
19 realized how tough it is to get oil back in the bottle
20 again once it goes out. That's well worth the
21 prevention efforts.

22 BRIAN ROGERS: Susan Harvey.

23 SUSAN HARVEY: Susan Harvey from DEC. I think
24 I'd like to echo Ed's comments. What we're asking you
25 to do is buy cheap insurance, and the one thing we've

1 heard repeatedly is there has to be some financial
2 incentive, and we recognize that's in the interests, but
3 there is a big financial incentive that we can't lose
4 sight of. If you buy cheap insurance in terms of
5 prevention, it ultimately reduces your total cost in the
6 event of a actual spill. So there is a built-in
7 financial incentive in putting prevention measures in
8 place to keep the oil in the container. We've got lots
9 of data on the books that it's a lot cheaper to keep it
10 in the container than clean it off the beaches. Ed is
11 shaking his head. Both Ed and I can provide you data on
12 that. So in essence there is an underlying built-in
13 financial incentive in terms of keeping it off the
14 beach.

15 BRIAN ROGERS: If I can -- go ahead.

16 HEATHER McCARTY: Can we talk a little about
17 how we're going to address these other possibilities for
18 incentive? At the next meeting? Are we going to have a
19 report, for instance, on some of these other
20 possibilities? Is that the plan?

21 PAUL FUHS: That's the research that I'm doing.

22 HEATHER McCARTY: Okay. And that will
23 include --

24 PAUL FUHS: Premium tax. Just straight rate
25 reductions of the companies, possible connections to

1 civil penalties, or anything else that might -- that
2 they might tell us would interest them in a prevention
3 program, or they'd be willing to link it to their
4 insurance rates.

5 HEATHER McCARTY: And we've already had sort
6 of -- excuse me.

7 BRIAN ROGERS: Go ahead.

8 HEATHER McCARTY: This is Heather McCarty, by
9 the way. Sorry. The co-op fees, we've already talked
10 about that.

11 PAUL FUHS: That's tied to the response
12 planning standard, but I don't know, maybe there's
13 something else that the response contractors would be
14 willing to do if they wanted to buy into the prevention
15 program. Right now it's not part of any of their fee
16 structures and it's difficult to do.

17 BRIAN ROGERS: And I think one of the questions
18 that came up in the group was whether this group can
19 make a recommendation for how the co-ops operate.
20 Concern I heard in the prevention.

21 HEATHER McCARTY: So far, yes. That's true.
22 However, I think it would be -- rather than speculating
23 about it, I think we should maybe take it off the list
24 or ask them to give a report on what their feelings are.
25 I mean, that's kind of the way I feel about it, rather

1 than just saying, well, maybe they will and maybe they
2 won't. That doesn't help me at all in determining
3 whether it's legitimate as an incentive or not. I mean,
4 obviously it's going to be a private decision, and a
5 negotiating point perhaps. But I guess I just haven't
6 heard that from them myself.

7 BRIAN ROGERS: So we will ask them to talk
8 about what they might be able to do toward prevention as
9 one of the agenda items.

10 HEATHER McCARTY: I think that would be
11 helpful.

12 BRIAN ROGERS: Is everybody okay with that?

13 GENE BURDEN: Wait a minute. This is Gene
14 Burden. We're going to ask CISPRI and others to come in
15 and explain what they can do for prevention?

16 HEATHER McCARTY: Well, it's on the list of
17 incentives, that's the only reason I bring it up.

18 CHARLOTTE MacCAY: Reduced rates,
19 theoretically.

20 GENE BURDEN: There's a disconnect there.

21 BRIAN ROGERS: Gene?

22 GENE BURDEN: I don't understand what that's
23 going to do.

24 HEATHER McCARTY: Me either.

25 BRIAN ROGERS: Charlotte, and then Eric.

1 PUBLIC PARTICIPANT: Excuse me. This is
2 Juneau. We're having a hard time hearing you, and could
3 you identify yourselves, please.

4 CHARLOTTE MacCAY: This is Charlotte MacCay.
5 Kind of following up on that, I'm somewhat vague on
6 whether or not there is any possibility from the
7 response contractors, so we should know whether or not
8 it's a possibility before we spend time on it.

9 HEATHER McCARTY: Right.

10 CHARLOTTE MacCAY: The same with the insurance
11 rate, and you mentioned that crude tried to do that and
12 was unable to do that, and is there any information from
13 that effort that could maybe keep us from wasting effort
14 if it's a dead-end, following a dead-end, if it is one?

15 GENE BURDEN: Honestly, I don't know if there
16 is. I'll see if I can dig some of that out. I don't
17 know, is the answer.

18 CHARLOTTE MacCAY: That works.

19 ERIC BRITTEN: Eric Britten, CSX. Gene, in
20 response to your question, I think where we have been in
21 the Prevention Work Group, was we made an assumption,
22 and the assumption we made was that the State had no
23 way, no right, and no authority to come to the SRs and
24 say, here's this list from the Prevention Work Group and
25 we want you to take these things into account as you

1 assess your underwriting risk, or whatever, in
2 determining your rate structure, you know, for these
3 people you're going to be selling tickets or coverage
4 or, you know, whatever.

5 And I think the question maybe that Heather
6 said, was could we get the responders to say, A, that's
7 exactly right, don't consider that; B, we're not about
8 to tell the general public how we go devising our rate
9 structure, you know, for our new associate members or
10 whatever, if in fact you even are there yet; or C, sure,
11 give us the list, we'd like to entertain it and here are
12 the parameters we'd like from you guys.

13 GENE BURDEN: Okay, thanks.

14 BRIAN ROGERS: Captain Page.

15 CAPTAIN ED PAGE: My simple mind, I was looking
16 at my car insurance and I know they ask me how many days
17 I drive to work, how many miles a year, if I have air
18 bags, exposure risk by how often I travel. Which is
19 number of port calls, in my mind, and what kind of
20 safety equipment. Do I have ABS, air bag. And then
21 they look at my track record and come up with a rate for
22 me. And they still have to pay X amount of money into
23 this big box to pay out for damages and claims and what
24 have you. But they decide that my share of that is
25 smaller than some 22-year-old driving a Miata, you know,

1 whatever, going 30,000 a miles a year down in L.A.

2 So the point is, I think life does take this
3 into consideration, in insurance or rates and what have
4 you. So I don't think it's too far a reach or asking
5 too much to say, why couldn't we have a similar concept
6 in mind, and if we reach some consensus on what we
7 believe are things that reduce risk and are doable, and
8 then for those who want to go ahead and get the ABS,
9 brakes and the air bags, or whatever risk prevention
10 mitigation measures exist, that there be some different
11 rate structure for them. And the bottom line, the
12 co-ops will still get the X amount of money they need,
13 have all the equipment by having it available. And I
14 think if it was something -- and they need to go back
15 and see if -- sitting here, I don't think that's a
16 totally novel or out of the box, inconceivable idea. I
17 think it's been applied elsewhere, many other areas for
18 that matter.

19 TOM REUTER: I'm Tom Reuter. I wanted to
20 concur with Captain Page's analogy. However, the box
21 that we're talking about is worldwide, and with the
22 different classes of vessels that have been talked
23 about, fishing, spot charters, dedicated service
24 vessels, the box is different. And so, for a spot
25 charter vessel that's on the world market that can be

1 traveling to four corners of the globe, and to come in
2 to Alaska for a 14-day period, as an example, how much
3 would prevention measures that they take to meet or
4 exceed the Alaska requirements have an effect on their
5 365-day insurance policy? I guess just a question to
6 Lee.

7 BRIAN ROGERS: Gene, and then Scott.

8 GENE BURDEN: Just to follow up. I guess a
9 frustration that I experience, when we looked at this a
10 number of years ago -- getting to be quite a number of
11 years ago, though -- is that a lot of people think that
12 you can identify these factors and you can go to a table
13 and say, for a vessel of 70,000 tons it's going to save
14 you \$5,000 a month on your insurance. It just doesn't
15 work that way. It's very specific to the vessels. Does
16 a 90,000-ton tanker, double-bottomed, double-hulled,
17 safety features, have lower insurance than others? The
18 answer is, probably in most cases it's going to have
19 lower insurance rates, but it's very, very difficult to
20 articulate with any confidence what that actual margin
21 is going to be.

22 BRIAN ROGERS: Scott?

23 SCOTT CARTER: On Captain Page's comments. It
24 would be the equivalent of your analogy of saying that,
25 well, I need a quote on my insurance, I don't know what

1 I'm driving, I don't know when I'm driving it, I don't
2 know if I have air bags or if I have brakes.

3 CAPTAIN ED PAGE: They'll give you a high rate,
4 charge you a lot.

5 SCOTT CARTER: That's kind of where we are.
6 How do we even approach an estimate if we don't have a
7 measure to go with? I'm sure it's an unknown factor for
8 us.

9 BRIAN ROGERS: Go ahead, Kris.

10 KRIS MULLAN: Kris Mullan. Also, basically it
11 follows right down to what the co-ops want to do also.
12 There's no -- lost my train of thought.

13 What they vote on, we have no say over. They
14 can say, you know what, we're going to stick with our --
15 I'll use this as an example because this represents
16 boats our size. Even though we're still adding 100
17 customers to our fleet, we're still going to keep our
18 base rates to five grand a boat. Sorry, tried to work
19 with you, it's not going to work. And so make all of
20 this here what we're trying to plan out worthless.
21 That's a concern that I have.

22 BRIAN ROGERS: Paul?

23 PAUL FUHS: Yeah. Paul Fuhs. It's not like a
24 vessel wouldn't be able to come here. You can work
25 something out if the insurance companies say, okay,

1 we'll consider it, and even if you want to formalize it
2 and do a program, that's fine. If you guys will help us
3 certify that this stuff is on board. If you get an
4 insurance break, that's great. If you can't and you
5 don't get it, so what, you keep going about your
6 business like do you now.

7 So the policy question, then, really for the
8 State is -- and Senator Pearce, I hope you don't mind if
9 I put you on the spot here for a second to see if you
10 think we even ought to be exploring these prevention
11 measures or you think there might be support in the
12 legislature to look at prevention, or we ought to be
13 just looking at, well, let's just look at when the oil
14 spills.

15 SENATOR DRUE PEARCE: There has always been
16 acknowledgement and support for -- acknowledgment of the
17 fact that the way to -- that prevention is the key. We
18 want to prevent oil spills, because once the oil is in
19 the water it's incredibly difficult to pick up and clean
20 up. We've gone to extraordinary lengths in terms of
21 prevention measures in some areas of the state,
22 primarily Cook Inlet, Prince William Sound, in terms of
23 the oil tankers, and have the state of the art system
24 that everybody else looks to.

25 In bringing the other ships into a system in

1 Alaska, which is what the bill attempted to do, and
2 something that we didn't do back in 1990 when we first
3 wrote 567, once again prevention is key. While other
4 states may not have been able to figure out how can you
5 put -- how can you decide how much risk you're lessening
6 if you do X, and figure out some way to have a reward
7 for the folks, I think Alaska should not stop looking at
8 it, because I think it's so important.

9 And from my standpoint, as a person who
10 represents the people of the state, represents the state
11 and sets what the policy is going to be, if we want to
12 do business in the state, I want to -- I would like to
13 have an incentive to try to entice the lowest common
14 denominator ships to either get better or not come. And
15 I am understanding much better now, while there are
16 tankers out there in the world that we don't want to
17 come here, I understand that while there are some cargo
18 vessels, what some of the previous events of those ships
19 that I just as soon never come in, I can understand that
20 we do have some industries that find it difficult
21 perhaps to, or the vagaries of the market dictate what
22 sort of ships they can get to come in and take their
23 commodities.

24 But I don't think we can just give up and not
25 look at it. Because during all the time that we were in

1 Juneau talking about 273, we kind of kept going around
2 in these circles of discussion. On one hand people
3 said, well, what about those of us who have done some
4 things to try to make sure we do have clean ships and
5 we've made strides. I'd like to find a way to do
6 something for those people.

7 On the other hand, you have to have some level
8 of absolute and without meeting these requirements, you
9 don't come. But I don't think that this group should
10 just quit. I think the subcommittee should continue.
11 And maybe while it doesn't look like the tax avenue
12 per se works well in terms of certain amount of
13 corporate income tax, because so few companies pay
14 corporate income tax, there are other areas, perhaps the
15 marine fuel tax or something like that. There are some
16 places where the state could provide an incentive to
17 those that go the extra mile. Not every company is able
18 to do that, but those that do should be rewarded.

19 BRIAN ROGERS: Anyone else? Gene?

20 GENE BURDEN: Just penciling out some thoughts
21 on this, and I'll get it to co-chairs, Eric and the
22 group, that it looks like that, you know, aside from
23 saying, yes, everybody agrees that prevention is
24 desirable and should be pursued by everyone, that all
25 parties should comply with federal and state laws, and

1 that this Task Force is not going to propose additional
2 prevention measures beyond existing law, then you could
3 say that the C-plan applicants would provide a
4 description of any prevention measures that they want to
5 propose to the department, and also project what the
6 prevention measure would equate to in terms of
7 percentage spill risk reduction. And I'm not sure how
8 that takes place, but there's people that are able to
9 help with that.

10 And then the department should extend the
11 credits, recognizing those prevention efforts, and then
12 you could set up a schedule where I use some prevention
13 benefits that are close to me and my company, years for
14 contingency plan, for example. And these are very
15 arbitrary, just an example, but you might have one
16 category that says if your prevention reduces your spill
17 risk 10 to 30 percent, 30 to 60, 60 to 100, whatever.
18 And that if you have on C-plan, instead of doing it once
19 every three years, in that first category it's once
20 every four years, second category once every five years,
21 third category once every six. If you look at frequency
22 of full deployment spill drills, I think -- Larry,
23 correct me -- he may be out -- if I'm wrong -- but I
24 think that's like once every two or three years there's
25 a full deployment drill that most people have. And you

1 do the same thing, you just stretch it out and say,
2 well, if you're in that first category, you'll have a
3 full deployment once every four years, second category
4 once every five, once every six. That's real dollars,
5 bottom line dollars. That doesn't change the 15 percent
6 planning standard, but that puts dollars in people's
7 pocket potentially.

8 And then, if you look at reduction in penalties
9 for spills, you could do the same thing. It's a factor
10 of one if you don't have any prevention measures. If
11 you're in the first category, it's a factor of .9, .8,
12 et cetera. What the group, say, awards, dream up some
13 awards, Alaska award if you're in the first category,
14 gold star on your forehead if you're in the middle, and
15 governor's award if you're in the top. And you could do
16 something like that and make it available, but without
17 being prescriptive in what the prevention measures
18 necessarily would be. And I'll try to put that in some
19 kind of writing and get it to you and that might help, I
20 don't know.

21 BRIAN ROGERS: I'd like to echo what Eric said
22 earlier. I'd encourage people to come to the meeting on
23 the 27th. If I understand the direction from the Task
24 Force to the Prevention Work Group, first it's to reword
25 the issue on mandatory measures to ensure what we're

1 really saying is we're not adding any new mandatory
2 measures.

3 Second, that there are significant concerns, or
4 strong concerns, over an incentive system, a recognition
5 system that might come back to bite those who are not
6 recognized.

7 Third, there are strong concerns about a
8 prevention credit system that would affect the RPS and
9 therefore not treat industry the same.

10 Fourth, that there is interest in other methods
11 of prevention credits, and that the Task Force would
12 like the group to explore those further. And that in
13 terms of the order of agenda, we should really begin
14 with the discussion of credits, and follow that with the
15 prevention measures, rather than the way we had the
16 agenda initially set up.

17 Does that capture well enough what we want the
18 work group to do next week? Anything before we close on
19 prevention? Commissioner?

20 COMMISSIONER MICHELE BROWN: I was going say,
21 you might, just to avoid some of the confusion, it might
22 be better if you called that last point "prevention
23 incentives" --

24 BRIAN ROGERS: Okay.

25 COMMISSIONER MICHELE BROWN: -- versus

1 "measures." Because if you say measures, then people
2 start thinking, are they mandatory, are they credits?
3 You're talking about a secondary program for other ways
4 to get incentives.

5 BRIAN ROGERS: The voluntary measures.

6 COMMISSIONER MICHELE BROWN: Yes.

7 BRIAN ROGERS: Or voluntary incentive. Pat?

8 PAT CARTER: Pat Carter, Senator Pearce's
9 office. Just to go back to what Stephanie and Heather
10 were discussing before. I think we were confusing the
11 difference between an incentive and penalty, and saying
12 that one therefore equals the other. We've set a
13 standard like, to use analogies, in the home building
14 business, you have homes that have to be built to the
15 Uniform Building Code. But to get a five-star rating,
16 which we have incentives, we want to encourage people to
17 build more energy-efficient homes, we've given people
18 lower mortgage rates and incentives, government
19 incentives, lower tax rates, things like that, to be
20 able to do that. It doesn't say that somebody has to go
21 out and build that home. There's lots of people
22 building homes that aren't five-star homes, but we're
23 not penalizing them for not building them. We're just
24 not giving them an incentive. So people are being
25 treated fairly and the same, it's just that people who

1 want to go the extra mile are getting something a little
2 bit -- makes it easier for them to sell their home.

3 BRIAN ROGERS: Stephanie and then Heather and
4 then Charlotte.

5 STEPHANIE MADSEN: I agree with you totally,
6 but what I hear you saying is that if you build a house,
7 you have to maintain, you have to use Uniform Building
8 Code rules. You are providing incentives to get a
9 five-star energy home, but they don't, just because they
10 build a five-star energy home, get to have lower Uniform
11 Building Codes.

12 HEATHER McCARTY: Right.

13 PAT CARTER: That's correct.

14 STEPHANIE MADSEN: But what I'm hearing -- you
15 know, the conversation earlier was by considering
16 reduction in RPSSs, you are lowering the Uniform Building
17 Code, and that's my concern.

18 HEATHER McCARTY: Right.

19 STEPHANIE MADSEN: But I agree with your
20 analogy totally.

21 HEATHER McCARTY: I do, too. This is Heather
22 McCarty. Stephanie said it. It's exactly right. If
23 the response planning standard is going to be affected
24 by this prevention credit program, then it would not be
25 a level playing field for those.

1 PAT CARTER: I see what you're saying.

2 HEATHER McCARTY: But I also agree it's an
3 important aspect of this.

4 BRIAN ROGERS: Anything else on prevention?
5 Yes?

6 TERRY MURPHY: I think when you're talking
7 about --

8 BRIAN ROGERS: Terry.

9 TERRY MURPHY: Terry Murphy with Alaska Chadux.
10 When you're talking about affecting the RPS, the
11 difficulty there is the OSRO is still going to have to
12 meet the maximum vessel RPS for that region, we still
13 have to pay that cost. How do we recoup that cost to
14 our members, considering right now that our full members
15 right now all have these prevention measures in place,
16 they meet ISO and everything else. I mean, there's no
17 incentive to them. It doesn't decrease their fees at
18 all by, you know, this. How do we equate that to new
19 members coming in? These are issues that we have not
20 approached as far as prevention credits. We basically
21 charge by capacity.

22 KRIS MULLAN: This is Kris Mullan. Also
23 talking about tankers, too, though, and tank forms.

24 TERRY MURPHY: But even our associate members
25 that we have right now that are not, that's by capacity.

1 The full members pay by through-put. How much they put
2 through in a year. Or transfer. And that's different.

3 KRIS MULLAN: I was going to say, you can't
4 compare that to what we're talking about here.

5 TERRY MURPHY: But even the associate members
6 are by capacity, so if you're running 50,000 barrels,
7 that's what you're charged at. That's not to say that's
8 what's going to be charged in the future. There are
9 alternative funding programs that are being looked at.
10 And we're trying to simplify it. We have a complicated
11 system to some degree right now, and trying to make it a
12 little easier for people to get it through and so our
13 folks understand it and make it work right, too.

14 BRIAN ROGERS: Eric?

15 ERIC BRITTEN: Well, interestingly enough, just
16 sort of bouncing off what Terry is talking about,
17 basically what Terry is saying is we don't take risk
18 into account; we take capacity into account. And I'm
19 not saying necessarily this is the way that you choose
20 to move forward. But if that's the case, you're saying,
21 we don't care whether it's a Panamanian-flagged ship
22 that's 77 years old and it's driven by oar power, or,
23 you know, a brand-new vessel that meets every
24 possible -- like the brand-new Tote vessels, and you're
25 saying you don't take any of that into account.

1 One other area that this opens up for
2 discussion, however, is if there was some sort of a
3 matrix that was designed, that was agreed upon as fair
4 to all parties because maybe it delved into classes,
5 would it be possible then for the responders to take a
6 look at whatever kind of rating or whatever that came
7 out of this matrix when they are actually trying to
8 figure out what part of the pie each associate member
9 has to pay for? In other words, you're saying it's
10 going to charge -- it's going to cost you \$100,000 to
11 operate and that's flat. The question that we're all
12 talking about here is how does it get allocated and is
13 it fair and is it not fair and what effects and
14 everything else.

15 TERRY MURPHY: Right, and I see your concern.
16 This is Terry Murphy with Alaska Chadux. I don't know
17 if I can really answer that, but I would say that I
18 think one of the first things that would come up is how
19 is that rating certified. You know, how does Joe Blow
20 here, he says he's got this rating, and Sam over here is
21 different. How is that certified? Because we want to
22 make it equitable. We want to make sure that we're
23 getting a fair deal, because if somebody, heaven forbid,
24 says something that isn't true, then the OSRO is the one
25 that is out there cleaning up the oil from the incident,

1 the initial and stuff like that. And then it all comes
2 back in the end, and I think that's an issue that would
3 have to be thrown in there.

4 ERIC BRITTEN: And your exposure is greater
5 than --

6 TERRY MURPHY: Yes, I mean, is the State going
7 to certify it? Is the OSRO the one that's going to have
8 to certify that? I mean, now you're talking an
9 inspection program and maybe getting bigger, I don't
10 know.

11 BRIAN ROGERS: Senator Pearce is next, followed
12 by Captain Page, Gene.

13 SENATOR DRUE PEARCE: Actually, I'll wait.

14 BRIAN ROGERS: Ed?

15 CAPTAIN ED PAGE: I was going to ask, and I'm
16 sure I know the answer, but I would assume that there's
17 a different rate -- the vessel came in once a year into
18 your AOR, area of responsibility, but their rate is
19 different than some vessel that makes 20 port calls a
20 year in the AOR, so is there a trip basis -- that's an
21 exposure of risk already. Is that the case, or does
22 everyone have the flat rate no matter how many times
23 they show up?

24 TERRY MURPHY: Terry Murphy. That's an area
25 that really we've discussed it, but we haven't come to

1 any final answer because we didn't know what was going
2 to be required and everything.

3 CAPTAIN ED PAGE: Right.

4 TERRY MURPHY: But we do understand that it
5 might be different for a spot charter that comes once a
6 year versus somebody, a fishing vessel that's operating
7 around the coast for six months at a time. And I can't
8 give a fair answer there, but it's being considered, you
9 know, we're looking at that. I mean, it would somehow
10 tie in to capacity still, but it would be at a lesser
11 rate.

12 CAPTAIN ED PAGE: The point I'm trying to make
13 is elsewhere around the country they come through, spot
14 charter, they have a special rate for someone that comes
15 in once, or different people plying up and down the
16 coast all the time.

17 TERRY MURPHY: Right.

18 CAPTAIN ED PAGE: Already there's an exposure,
19 risk scale, fee scale, that exists. And what they're
20 looking at now, the group is saying that (inaudible)
21 element to that. Because there is a scale. Not flat.
22 We're saying it's a flat rate. It's really not. How
23 many times you come into the AOR, and there might be
24 another factor. And, you know, prevention stuff up
25 there that might --

1 TERRY MURPHY: Terry Murphy. That's distinctly
2 possible. It's just something that has not been
3 discussed at any of our meetings.

4 BRIAN ROGERS: If we could defer further on
5 that until you've had a chance to respond. I have Gene
6 and Lee, and then I'd like to, if we can close, out the
7 discussion on prevention and move on on the contingency.

8 GENE BURDEN: I'll make it real quick. As a
9 participant in a response action contractor, CISPRI in
10 this case, I know that any flexibility to recognize
11 prevention features of one of our members, for example,
12 is going to be contingent on getting the rest of the
13 members to concur with that.

14 And just as in CISPRI, the membership in CISPRI
15 has some similarities, but it's also got a lot of
16 differences between the members and their operations.
17 You're going to run into the same thing with these other
18 co-ops. And sometimes it's going to be quite a
19 challenge to come up with something that is universally
20 acceptable to the people that fund these co-ops, and
21 volume typically is what has served as the basis for
22 that. And then coming up with some agreed amount for
23 spot vessels to come in is certainly a practice that's
24 been employed a lot.

25 But coming up with a credit, we just put a

1 double-hulled tanker in and there's nothing on the
2 horizon that is going to reduce our contribution to
3 CISPRI, I don't think. And, you know, so even though
4 Doug might like to do that, it's just not possible.

5 BRIAN ROGERS: Lee, and then we'll close out
6 the discussion.

7 LEE EGLAND: Lee Egland, Crowley. I'm also a
8 board of director of Alaska Chadux Corporation, one of
9 the founding members. Gene almost took the words right
10 out my mouth as far as the response organizations are
11 not insurance companies. We don't deal with risk.
12 These service organizations provide a service. It's not
13 to say that there couldn't be some consideration when
14 determining a rate, on how are we charging based on
15 volumes. But, as noted, it's a very difficult issue to
16 address because of the diverse memberships that we have.
17 Existing members, full time, and associate. We
18 considered and/or provided some information to the
19 legislature about rates, taking into consideration
20 changing our rate schedule in order to address the spot
21 market.

22 So I think in CISPRI, I'm sure, as well as
23 SEAPRO, you know, in the future when -- if this comes to
24 pass, that we're going to have a whole new group of
25 members that we're going to have to address their

1 concerns. We are not for-profits. We're only here to
2 serve our members as they desire. and we have to take
3 that into consideration at all times. So I'll leave you
4 with that thought.

5 KRIS MULLAN: This is Kris Mullan. For all --
6 I'll use actually fishing industry as an example.

7 CAPTAIN ED PAGE: Wonder why.

8 KRIS MULLAN: If I understand correctly, most
9 fishing boats are going to be an associate member; is
10 that correct?

11 LEE EGLAND: If you were to join today, that's
12 correct.

13 KRIS MULLAN: Okay. What is our guarantee that
14 there's going to be some flexibility there, or even have
15 a chance for voting privileges? You know what I mean?
16 Everybody that's on -- like you represent Crowley, very
17 big company, you guys have a lot of tank farms,
18 refineries. I mean, you know, we're just a smaller
19 portion here, and no matter how many of us are involved
20 here, we still have no say on what's going to happen.

21 LEE EGLAND: Well -- Lee Egland -- to answer
22 your question, I think, you know, there are no
23 guarantees in life.

24 KRIS MULLAN: Right.

25 LEE EGLAND: And I can't assure you that what

1 your rate is going to be, as well as our current
2 associate member bylaws, the way they read, are you
3 going to have voting rights? Today they don't. But
4 that's not to say that, you know, if we get 300 new,
5 what we would call associate members, that there's going
6 to have to be some future consideration so that they do
7 get a say. You know, we're adaptable. But at the same
8 time, you have to understand that the members that have
9 put these organizations together, just not a Chadux,
10 have spent a lot of time and money over the years
11 developing these organizations. And it gets a little
12 complex from the standpoint of how much you pay.
13 Associate members currently do not buy in on depreciated
14 capital. They pay a fee for compliance. They don't pay
15 for buying in on past capital that's already bought.
16 They don't buy into a proportionate share of the
17 operating expenses. You got to remember there's two
18 sides to the story.

19 KRIS MULLAN: Right.

20 LEE EGLAND: If you want a say, there's always
21 a price to that process. But again, I'll leave you with
22 this. That the Chadux Corporation, for which I was the
23 co-chair or the chair of our legislative committee that
24 was working very hard to assist the legislature when
25 they went through some of the work group sessions on

1 SB273. And we're committed, we're flexible. But, you
2 know, until we know what's required and how that's going
3 to affect, you know, our existing membership, we can't
4 commit to anything.

5 BRIAN ROGERS: I'd like to remind people that
6 we said we were going to cover this issue of the
7 relationship with co-ops and price at the prevention
8 meeting, and there are some people that would like to --
9 I'm getting a sense of the group we'd like to move on
10 and leave that, the Task Force having delegated it,
11 wants to keep it delegated.

12 GENE BURDEN: That's the last time you try to
13 wake up the group after lunch.

14 BRIAN ROGERS: We did get things going. I
15 learned a lesson.

16 KRIS MULLAN: We're kind of stuck here not
17 knowing what we're going to get offered, and the co-ops
18 are saying, well, we don't know, you know, and we're
19 kind of going back and forth here and getting nowhere.

20 BRIAN ROGERS: Senator Pearce, do you want to
21 close this one out?

22 SENATOR DRUE PEARCE: I don't know if I'll
23 close it off, but a couple of things. First of all, as
24 we've heard both from Chadux and from CISPRI, they base
25 what they charge on volume. So, if you walk in the door

1 and your ship carries X, and 15 percent of X is whatever
2 it is, you're going to get charged the same as everybody
3 else based on that volume. So, when -- if they have to
4 bring in -- if they have to add equipment -- a lot of
5 the areas of the state is covered. Those areas where we
6 have to add equipment, that cost of that equipment will
7 then be spread over all the people who are being covered
8 on the base of this volume.

9 So I don't see -- I'm missing something, and a
10 lot of people keep saying, well, we don't know what it's
11 going to cost. There's some fee per volume, and I don't
12 know whether it's per barrel, per skimming capacity, I
13 don't know how you do it, but there's a fee. And if
14 it's based on volume, then everybody's being treated
15 pretty much the same way. So, I guess where is all this
16 fear? I'm missing -- I'm disconnecting on some part of
17 this discussion.

18 But also, if we're based on a volume, that must
19 somehow be based on the planning standard that's in the
20 law, in 567, for the tankers. Let's say that you had to
21 meet, well, my skimming capacity, 15 percent, and 72
22 hours, whatever it was. So what you charge is based on
23 that volume. And you walk in the door, here's my ship,
24 and this is my volume, and they're going tell you, okay,
25 this is what it's going to cost you to be covered.

1 While they haven't yet dealt with what to do
2 with those ships that just come once or seldom, as
3 opposed to often, and they do need to do that, I don't
4 understand why, if the law reduced the planning standard
5 based on having encapsulated tanks, like the Tote ships
6 for sake of an example -- if the law said if your
7 risk -- the risk is reduced by, we consider this risk
8 reduced by, say, some percentage, because you have done
9 this, and so the planning -- take the 15 percent and you
10 reduce it by whatever the number is, I don't know why if
11 you base on volume, your volume just went down and your
12 charge just went down.

13 So when Gene said we're not going to get any
14 reduction because of our new double-hulled,
15 double-bottomed ship, that's something that I think
16 could be fixed if we wanted to go there. And I'm not
17 saying that we necessarily need to go there. But if
18 you're really basing it on volume, then there's no
19 reason you can't. Because you have changed that
20 standard, which is what you're basically charging on a
21 standard. You have to be able to put in, clean up, have
22 boilerplate capacity to clean up a certain amount in so
23 much time. If that so much comes down, then your fee
24 ought to go down. Am I wrong in the way you described
25 how your fees work? I know it's not happening now, I

1 understand that. But if that's the way your fees work,
2 then that could happen.

3 TERRY MURPHY: They'd have to agree on that.

4 SENATOR DRUE PEARCE: Yeah, if people don't
5 want to do it that way, that's a whole other discussion.
6 But if we want to -- I think telling somebody that
7 they're a five-star tanker versus having -- costs of
8 making these changes are enormous. Tote ships
9 discussing \$6 million, it's costing them \$6 million, to
10 put in \$150 million building the new ships, so they tell
11 us, to put in all of these new prevention capabilities
12 that they are doing and, you know, we're going to see
13 the costs of goods and services in Anchorage go up
14 because of that. But they've made the decision they
15 think it's important and so they're doing so.

16 I certainly, back when we were writing 567,
17 then this year when we were looking at 273, from my
18 personal standpoint -- I'm not speaking for the full
19 legislature because I can't -- I see no reason why we
20 shouldn't be able to use some sort of a reduction for
21 that sort of major prevention measure. Take the whole
22 list, can you get into the 1 percent or 3 percent? No,
23 of course you can't. But when new vessels come on line,
24 I don't know why we couldn't. You're not being treated
25 differently if everything is based on volume. And

1 you've got a certain boilerplate capacity that you're
2 looking for.

3 BRIAN ROGERS: The group wants to move on. I
4 still have people wanting to speak. Stephanie?

5 STEPHANIE MADSEN: Well, I guess my concern,
6 Senator Pearce, is that although that particular
7 person's rate is going to go down, following your logic,
8 the overall expense to the co-op is not. And so all
9 you're going to do is you're going to shift that
10 reduction to everybody else in that co-op. Because, as
11 you heard, there's not only the capacity charges, but
12 there's the depreciation, there's the operating, there's
13 other expenses, and I'm not sure that that's going to go
14 down because somebody's response planning standard went
15 down inside that co-op. And so I guess, I don't mean to
16 debate, but I'm saying that I think that it's a little
17 bit more complicated than just an assessment on capacity
18 reducing the co-op's expense doesn't quite follow that
19 path. I do recognize that for that individual operator,
20 it may. But I guess our concern is that other co-op
21 members are going to have to take up that slack, given
22 the current structure of the co-op.

23 BRIAN ROGERS: Senator Pearce?

24 SENATOR DRUE PEARCE: There's only -- well, I
25 don't know. You have to look at the regions and the

1 ships that are driving what the largest ship is. And I
2 don't know that, whether -- if you've got one that is so
3 out of balance because the biggest ship that appears
4 just once is twice as big in terms of capacity than
5 anything else, I don't think it's fair that everybody
6 has to carry the cost, frankly, if that one ship comes
7 in once in a while. That particular ship ought to have
8 to carry a little bit more. But that's obviously
9 discussion for next week.

10 BRIAN ROGERS: Caution everybody then to stay
11 tuned and don't miss next week's prevention meeting. We
12 start at 10:00 a.m. I believe we're on the second
13 floor. Next week, 10:00 a.m., on Wednesday, the 27th,
14 for prevention.

15 It's now 2:35. My sense is we have perhaps a
16 half an hour to go. Do people want to take a break or
17 work right through? Do it? Okay. What I'm going to do
18 here is in about three overheads go over a subcommittee
19 report and then ask that the folks who are there -- I
20 wasn't, but I'm going to try to cover the primary issues
21 that came out in that report.

22 This is a subcommittee of the C-plan Work
23 Group. The C-plan Work Group will meet for the first
24 time on the 16th of October. Basically, the Department
25 of Environmental Conservation has presented a first

1 order proposal for streamlined contingency plan for
2 nontank vessels. And there's a one-page description
3 that Susan Harvey presented to the RPS group that looks
4 like this, as to the contents. That simple C-plan
5 consists of initial notification, and SOPEP would be an
6 example of what that piece of the response action plan
7 would be.

8 Second, the membership in the co-op would
9 de facto demonstrate that the equipment is available.
10 Alternatively, a vessel could show equivalent
11 capability. The prevention measures are voluntary. And
12 that they have spill management capability. That they
13 deal with prevention plan by rule. And then the best
14 available technology would be shown either by co-op
15 membership or by regular review of equipment.

16 Several models for allocating C-plan
17 responsibility have been discussed. Again, the
18 subcommittee will be presenting and discussing these
19 with the full work group at the first meeting. An
20 example would be an owner-operated C-plan with response
21 action contractor membership. A second might be a fleet
22 plan for consistent charters. A third would be a
23 shipping agent or marine exchange that had C-plan and
24 incident command responsibility.

25 Without a co-op, the C-plan would be more

1 complex. The individual vessel would need to
2 demonstrate that that entity met the same contingency
3 requirements as the co-op does. Basically, the C-plan
4 would need to show how the party meets the response
5 planning standard. And the recommendation that the
6 subcommittee is making to the full work group is to
7 adopt the concept of a streamlined contingency plan.
8 Again, that's not a recommendation to the Task Force
9 yet. It's a recommendation to the work group.

10 The outstanding issues. There are issues of
11 enforcement, in terms of penalties on the COFR,
12 penalties if there is not a C-plan. Process for public
13 notice and review. And the issues of drills and
14 inspections.

15 So that's the quick and dirty of yesterday's
16 first subcommittee meeting and where the C-plan Work
17 Group will begin at its meeting which is currently
18 noticed for the 16th of October.

19 Let me stop again here, turn the light back on,
20 and see if there are other issues on C-plan that --
21 first, from any of the members that were there
22 yesterday, that that brief review, what did I miss?
23 Again, the meeting finished at 4:30 last night, and this
24 presentation had to be ready by 11:00, so it's quite
25 possible that I missed something there.

1 Paul?

2 PAUL FUHS: One oversight. In the C-plan you
3 have to show your COFR.

4 BRIAN ROGERS: Okay. Gene, and then Charlotte.

5 GENE BURDEN: First comment. I guess I'm a
6 little bit troubled by saying the C-plan would
7 necessarily be more complex if you're doing it on a
8 stand-alone basis. It's not going to be any more
9 complex. You're going to have the same obligations to
10 demonstrate that. It's not going to be as convenient,
11 probably, for the department, but it's not going to be
12 any more complex.

13 And secondly, I really strongly support
14 having -- recognizing that there's going to be some
15 C-plan holders that have never done this before, you
16 have small operations, and this would be a great
17 opportunity to have C-plan Handholding 101 by the
18 department for certain groups. So I think there's a
19 transition phase, I think, probably here for C-plan
20 holders to have some assistance by the department on
21 completing that. And call it preparation or training or
22 whatever you want to call it.

23 BRIAN ROGERS: Charlotte?

24 CHARLOTTE MacCAY: Just because we are kind of
25 crunched for time, and one of the things in the report,

1 why are we waiting until the 16th of October to address
2 this?

3 BRIAN ROGERS: Judy?

4 JUDY ERICKSON: Well, we tried to schedule for
5 the week before and there was a big Coast Guard event
6 which several members here were participating in. And
7 that was two days of the week. And on Friday there was
8 another one of the -- I think that was when Chadux was
9 having --

10 TERRY MURPHY: We have our thing in the middle
11 of the week.

12 JUDY ERICKSON: They're doing something, too.
13 And a lot of DEC people were invited to that. So that
14 moved us to the 16th. We could possibly -- we have not
15 formally noticed this yet, so we could move to possibly
16 Friday, the 13th.

17 CAPTAIN ED PAGE: Good luck.

18 JUDY ERICKSON: That's why we ended up there.
19 We really tried for the 11th, and we thought we were set
20 on the 11th, and we were asked by Task Force members to
21 delay.

22 BRIAN ROGERS: And the situation for notice
23 right now is because notice goes out in the Journal on a
24 Wednesday, has to be ten days notice, we effectively
25 have to give two weeks notice from a Wednesday, so the

1 earliest we could meet would be the end of the first
2 week in October. And scheduling, as you might expect
3 with this group, has been and will continue to be
4 clearly a challenge, with 24 members and with each of
5 your own schedules and the schedules of the support
6 team.

7 KRIS MULLAN: If you can give the airlines at
8 least two weeks notice, plane tickets are cheaper.

9 BRIAN ROGERS: And we have tried to make sure,
10 in all cases we have given at least two-week notice. We
11 also are -- 10:00 is a late starting time, but for
12 Juneau-arriving participants that does allow this to be
13 a one-day trip. And that's one of the reasons for
14 starting prevention as late as we are next week. The
15 schedule changes in October and we can actually start
16 moving things up. But as of next week, it's still a
17 late arrival.

18 Anything else on C-plan, any other advice we
19 want to give? Again, this is -- originally, we had not
20 even anticipated having any C-plan, but clearly we were
21 making -- if you recall, your discussion at the last
22 meeting was if we're not making headway on response
23 planning standard and on prevention, then why even worry
24 about C-plan, we're not getting anywhere. I think the
25 feeling is we're making some headway and therefore we

1 advanced this to try to get things rolling.

2 So while we do have some time left, what are
3 the things people want to pass on? Heather, I think,
4 and then Eric. And am I missing anybody else?
5 Stephanie.

6 HEATHER McCARTY: This is Heather McCarty. I
7 might be asking the same question Eric is asking. I
8 notice that we were talking about leaving inspections to
9 the Prevention Work Group. And that's what the agenda
10 item on our Prevention Work Group is all about, the last
11 number 4 on the old Prevention Work Group agenda.

12 Are we going to make recommendations from the
13 Prevention Work Group as to inspections having to do
14 with C-plan issues? Is that what that means? I'm just
15 curious.

16 BRIAN ROGERS: I'd leave that up to the chairs.
17 Yes, Deborah?

18 DEBORAH VOGT: I've got from the meeting that
19 the C-plan group concluded that the only inspections
20 that were going to be necessary were those for --
21 whether prevention measures were on board or not. That
22 there would be no other C-plan inspection requirements.

23 HEATHER McCARTY: Okay.

24 BRIAN ROGERS: But again, that's subject to
25 decision by the work groups and ultimately the Task

1 Force. And inspections, I think several people have
2 suggested that we have to address that issue, but it's
3 fairly late in the process, because until we know what
4 it is we have to inspect for, we really don't know what
5 we want to do.

6 HEATHER McCARTY: That was going to be my
7 point. This is Heather McCarty. If we're meeting next
8 week on prevention, we may not know if there's any other
9 requirements we should discuss in the inspection area.

10 BRIAN ROGERS: In which there might be new
11 areas addressed at C-plan.

12 HEATHER McCARTY: Yes.

13 ERIC BRITTEN: Eric Britten. Just one word
14 here jumped out on this C-plan page here, and actually I
15 think it's part of Gene's and Lee's group's discussion
16 more, but I see this term, "best available technology."
17 Considering what Commissioner Brown's department is
18 going through with the feds and the issue of Red Dog,
19 this is a term that just scares the dickens out of me.
20 Is this involved in the spill response standard
21 discussion?

22 BRIAN ROGERS: Go ahead, to response. Gene.

23 GENE BURDEN: It's currently a requirement
24 under Alaska law, both statute and under the Alaska
25 regulations, for spill response. So I presume that's

1 how that got incorporated.

2 ERIC BRITTEN: I guess my only comment is I
3 hope that the relationship within the state continues to
4 be like it is, as opposed to some of the interpretations
5 that could be taken.

6 BRIAN ROGERS: Stephanie, Susan, Jeff, and
7 Charlotte.

8 STEPHANIE MADSEN: I was just looking for Paul
9 and Jeff to help out in the liability question, because
10 I don't think that's on our list of things that need to
11 be followed up and we did talk about that. Maybe Jeff
12 can verbalize it better than I.

13 JEFF THOMPSON: Jeff Thompson. Stephanie, the
14 advice that came out of yesterday in terms of the
15 liability discussion, which has been an ongoing issue,
16 was to synthesize our questions in writing to Breck
17 Tostevin, which I haven't had a chance to do yet but I
18 intend to do this week, to submit to him and to the
19 facilitator staff, dealing with specific liability
20 questions in terms of the definition of PRAC, can that
21 currently in Alaska law, can that amenity be extended to
22 an organization that develops initial response
23 capability or offer spill management capabilities as
24 well. This is in context to either a vessel agency or
25 nonprofit organization, i.e. the marine exchange being

1 given a fire wall of immunity at least as far as Alaska
2 law in terms of if they function in this regard.

3 BRIAN ROGERS: Susan?

4 SUSAN HARVEY: I was going to provide a little
5 information to respond to Heather's question on
6 inspections. The two things that we inspect for right
7 now, one is prevention measures, are they in place, if
8 they were required. So that's why it got passed off to
9 the prevention group. The other thing that we inspect
10 for is our spill response equipment on-site. If you are
11 going to use a membership in a co-op, we could do that
12 through the context of our drill and exercise program.
13 We have a good relationship and work with them very
14 closely, so I don't think we'd need to go out and
15 inspect and validate that beyond what we already do with
16 the co-ops. So, if you are using a co-op, the
17 inspection issue is solely a prevention issue if there
18 are prevention issues that come out of this Task Force.

19 If you're going to have your own response
20 equipment, we're going to have to keep in mind that
21 there will be some inspection requirement if do you an
22 equivalent equipment standard.

23 Eric, on your question about BAT, this one
24 comes up quite often, and Gene actually facilitated the
25 BAT workshop and so he knows a lot about this. But just