

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2835 SCOMM 123. TASK FORCE ON MOTORIZED OIL TRANSPORT, 2000

1 contract. So, for example, if a nontank vessel owner
2 comes to Chadux and says, we want you to provide a spill
3 management team for us, to meet this regulation -- and
4 that's what Larry was saying, is he needs to know, how
5 does he determine whether you've got enough meat in your
6 plan that says you meet the requirement? Well, they've
7 got two people. They've got their QI, which is a
8 company representative; and an incident commander. And
9 if you identify, that means you don't -- you're not
10 having to -- to me, identify means you don't have to
11 have them under contract, right? Because that's where
12 the money decision's going to come in. If you, as a
13 company, or Chadux or SEAPRO as a spill organization,
14 has to have a contract for a spill management team to
15 commit to -- that is going to be committal to provide
16 people, then he needs to know that, then that's a cost
17 to him. But if you're just going to identify, like you
18 got up there, which is fine, then, you know, just like
19 you identify salvage, fire fighting and lightering, you
20 don't have to have a contract for them but you can
21 identify them, which is okay. It's your version of the
22 yellow pages.

23 These folks, whether it's a co-op or a company,
24 they can deal with that. But just like you said, if
25 they know they've got to have nine people, whether it's,

1 you know, the positions, if they need X amount of
2 people, then they're going to have to get them. So, I'm
3 just saying the way I interpret that is, identify, that
4 means there's two people you're going to have a name,
5 and then you're going to maybe identify someone else who
6 can fulfill other functions, that they're not going to
7 have to be under contract.

8 Do you understand what I'm saying, Larry?

9 LARRY DIETRICK: Uh-huh. It would be a plan or
10 procedure.

11 LEE EGLAND: Right.

12 LARRY DIETRICK: Not verified.

13 LEE EGLAND: Correct. Because at the end of
14 the day we need to find out how much is this going to
15 cost to do this, whether you're going to do it
16 internally or hire it out. Well, this method right here
17 that's written on the board, to me, is probably, there's
18 going to be no cost to it because the particular
19 companies are going to do it themselves, and they may
20 come to Chadux or even put in their plan, open up the
21 yellow pages and just list three or four different spill
22 management teams. But they're not going to have to have
23 a contract with them in order to provide those people.
24 They've identified them.

25 BRIAN ROGERS: Lee said one thing that's

1 important. He said, "at the end of the day." We're
2 actually hoping that will come. I would point out to
3 people, we started this morning with five open items and
4 we've done two and a half, and have five and a half to
5 go. And that is for agenda item five of ten.

6 So, without trying to limit debate at all, I
7 would encourage you to economize on comments so that we
8 can make our way through the agenda. Certainly, it may
9 be that we're going to have to refer some of these
10 issues to additional work group meetings that were
11 unanticipated or something like that, because at the
12 rate you're going, we're not going to make it through.
13 Just as a warning to everyone. We've been an hour and a
14 half on incident command so far. And where we are right
15 now is on this issue of what beyond the two is going to
16 be required and what that means.

17 LEE EGLAND: I make a motion -- Lee Egland --
18 that you accept that language.

19 BRIAN ROGERS: With this in?

20 LEE EGLAND: Understanding what "identify"
21 means.

22 BRIAN ROGERS: Okay. That at a minimum
23 identify the QI and IC by name. They may be the same
24 person. Now, and you're saying with this language in?

25 LEE EGLAND: Sure.

1 HEATHER McCARTY: The last sentence.

2 BRIAN ROGERS: Is in. According to that
3 proposal.

4 RICK HARRIS: If we clarify what "identify"
5 means.

6 BRIAN ROGERS: Identify the QI and IC?

7 RICK HARRIS: Right.

8 BRIAN ROGERS: By name?

9 RICK HARRIS: But he took it further than that,
10 to identify the individuals who would perform the RP
11 functions or the ICS --

12 ERNIE PIPER: No.

13 BRIAN ROGERS: No; he's saying what's up there.
14 The RP must be prepared to staff the ICS --

15 RICK HARRIS: I see.

16 BRIAN ROGERS: Is everyone okay with that one?
17 Let's take a five-minute break and then proceed to
18 Alaska Railroad.

19 HEATHER McCARTY: Did we approve it?

20 BRIAN ROGERS: I asked if everybody was
21 comfortable, and I didn't hear any objection.
22 (Short recess taken.)

23 BRIAN ROGERS: We have a request here for
24 another agenda change. Breck Tostevin's wife is at home
25 ill, and so what I want to do is deal briefly with the

1 legal report now. Actually, what I really want to do
2 is, in order to speed the agenda, the impression that
3 I've gotten is that memorandum addressed the questions
4 that were raised. We haven't had any follow-up
5 questions coming out of the memorandum that was e-mailed
6 to everybody last week. And so, if there's any
7 follow-up, let's deal with that now, otherwise let's let
8 Breck get out of here.

9 So, Breck, do you want to come up to the table
10 and see if there are any questions. Are there
11 questions? Charlotte.

12 CHARLOTTE MacCAY: Well, the spot charter group
13 has been in communication with Breck, I think, since
14 giving him questions, so I'm not sure what you mean that
15 there haven't been any.

16 BRIAN ROGERS: None have been addressed to me,
17 I guess, would he -- or I wasn't aware of any.

18 CHARLOTTE MacCAY: Once he gets through what he
19 gets through, maybe they'll be taken care of, and I can
20 leave them until then.

21 BRIAN ROGERS: Here he is. I think he
22 basically wanted to address any follow-up questions that
23 people had.

24 BRECK TOSTEVIN: Hello, this is Breck Tostevin
25 from the AG's office. If anyone had any clarification

1 on what I said here -- I'm not looking for any further
2 questions. I thought maybe someone could ask me like
3 what is the meaning of life and I could try to opine on
4 that, too. But I wanted to have an opportunity for
5 people to ask me on points on what I said in the memo,
6 if they didn't understand what I was saying, then I'd be
7 happy to clarify. Other than that --

8 CHARLOTTE MacCAY: Part of the reason, I don't
9 have your memo, so -- I'll let people do that if they
10 have them. Otherwise, I need to see what your comments
11 are on some of the things that the spot charters raised
12 since then.

13 BRIAN ROGERS: Stephanie.

14 STEPHANIE MADSEN: This is Stephanie Madsen.

15 Could you go over, on the last question,
16 basically the question about DEC inspecting vessels for
17 compliance. And the two options, that we could either
18 request that the State adopt the federal regulations, or
19 just ensure that the C-plan holder or responsible party
20 signs that they're in compliance with federal law.

21 I guess where I'm going, Breck, it seems like
22 there was a recommendation for the two options. We
23 could either adopt federal law, and the State could
24 prosecute violations of federal law. Or, we could just
25 have the applicant certify that it complies with federal

1 law, and just go with the Memorandum of Agreement
2 between Coast Guard and DEC about how they report and
3 prosecute those violations under state and federal law.

4 I guess what I'm looking for is not to
5 duplicate or have the State prosecute a violation of
6 federal law by adopting -- maybe I'll just be quiet
7 there and let you -- I guess where I'm wanting to make
8 sure is that by adopting federal law, my understanding
9 is that gives DEC authority to prosecute violations of a
10 federal law. Or, if we have the applicant sign that it
11 is in compliance with federal law, DEC boards the vessel
12 and finds that you are out of compliance with federal
13 law, the protocol is that DEC notifies Coast Guard.

14 That's the system that I would like to see in
15 place. That we have the Memorandum of Agreement between
16 DEC and the feds, and that they notify each other when
17 they're inspecting the vessel, that they notify the
18 party that those laws are applicable under, and that we
19 don't have DEC prosecuting a vessel for being out of
20 compliance for a federal law.

21 BRECK TOSTEVIN: Okay. That doesn't seem like
22 a legal question to me. I mean, you're putting forward
23 your position on how to adopt the prevention measure. I
24 guess I would say, is if you had a certification
25 requirement that said that an operator had to certify

1 they were in compliance with federal law, and if DEC
2 inspected the vessel or the Coast Guard inspected the
3 vessel and found that it wasn't in compliance with
4 federal law, then the remedy for that would be in
5 violation of your C-plan. And things can happen, your
6 C-plan could be suspended or it could be revoked.

7 BRIAN ROGERS: Larry?

8 LARRY DIETRICK: Let me take a stab and see if
9 I understand. First of all, I think this is with regard
10 to the prevention measures if we adopt the federal or
11 IMO as a mandatory measure, and then we go on board and
12 inspect and notice something out of compliance with
13 either the federal or international requirement, what
14 would we do?

15 STEPHANIE MADSEN: That's one aspect of it.

16 LARRY DIETRICK: I mean, because one of it is
17 inspection, and then the other is an enforcement. From
18 an inspection standpoint, that is covered under our
19 current MOA, which you all should have here.

20 So, if we notice some of those, we report them
21 to the Coast Guard. That's how we handle those right
22 now. We wouldn't -- if we don't have a prevention
23 program here, mandatory, if we don't adopt one for
24 mandatory prevention measures, we wouldn't even be
25 looking at them. If we inadvertently noticed one, we

1 would refer to the Coast Guard. So that's what we do
2 onboard.

3 Now, there's the second question, I think, that
4 you're asking, is would the State enforce then? Let's
5 say we noticed it, we referred it, and the Coast Guard
6 validated it, okay, it was out of compliance with
7 international law, could the State then also take an
8 enforcement action.

9 STEPHANIE MADSEN: Uh-huh.

10 LARRY DIETRICK: That's a different question.
11 So, the inspection part is real clear as to what we
12 would do. Whether or not we would enforce, I think,
13 depends, one, whether or not we adopt the prevention
14 scheme at all. Because if we don't, then we wouldn't.

15 If we did, then Breck has dealt with that as a
16 question. I forget which one. You asked -- one of the
17 questions that was posed was, from an enforcement
18 perspective, was what would the State do if there was a
19 noncompliance with a federal or international
20 requirement? Would it also then become a violation of
21 some kind of state law, would it be a double jeopardy
22 situation? Breck has responded to that one in the legal
23 memo. And the answer was?

24 BRECK TOSTEVIN: Yes. Generally, yes.

25 STEPHANIE MADSEN: And I guess --

1 BRIAN ROGERS: Go ahead.

2 STEPHANIE MADSEN: If the Task Force
3 recommended that that not be, is there a way that either
4 you do one or the other and it's not subject to
5 penalties by both state and federal? Or is it
6 because -- if you sign that you're in compliance with
7 federal law, in your C-plan, and then you're not in
8 compliance with your C-plan, you're going to get
9 penalties from the federal government for not being in
10 compliance with federal law, and you're going to get
11 penalties from the State for not being in compliance
12 with your C-plan?

13 BRECK TOSTEVIN: Potentially.

14 STEPHANIE MADSEN: So you're going to get
15 penalties -- for the same violation, you're going to get
16 two penalties?

17 BRECK TOSTEVIN: Yes. If you certify that
18 you're in compliance with federal law, and you're not,
19 then you've violated your C-plan.

20 GENE BURDEN: That's not a particularly unique
21 situation, though, is it?

22 BRECK TOSTEVIN: No, not that I know of.

23 CAPTAIN ED PAGE: If you're in violation of
24 federal law anyway, you'd be subject to penalty action.
25 The deal here, I guess, would be that you would be

1 subject to additional penalty action by the State above
2 and beyond what's imposed by the federal government, is
3 kind of what I see the intent is, anyway.

4 LARRY DIETRICK: If the prevention program is
5 adopted and included this as part of that.

6 CAPTAIN ED PAGE: But, I mean, are we adding
7 anything on prevention there? Actually, the same
8 prevention measures that already exist by Coast Guard
9 and IMO still exist. We haven't added anything in this
10 case. You're just making a linkage to the C-plan
11 regulations, I think is what I see. I guess I don't see
12 any added value to that, in my mind. But certainly
13 that's your -- other than the fact that it gets
14 additional penalty action. If that's what the intent
15 is, then I can't argue with that.

16 BRECK TOSTEVIN: This is Breck Tostevin again.
17 As I understocd the idea behind the certification would
18 be to say to get a state contingency plan approval, you
19 need to certify that you met these requirements. And
20 one of the consequences of not meeting the requirements
21 would be that you couldn't get a state contingency plan.
22 That there was a state step to allowing a vessel to
23 operate in the state's waters.

24 BRIAN ROGERS: Commissioner.

25 COMMISSIONER MICHELE BROWN: This is a question

1 for Breck and for Larry. I can't recall the case where
2 we have ever sought penalties for that. What we are
3 more likely to do is revoke a C-plan, so you would lose
4 your authority to operate. I mean, if it was based on a
5 certification that you were in compliance with these
6 federal standards, we found that you weren't -- the
7 federal prevention, we found that you weren't -- isn't
8 it more likely that what we would do is revoke than file
9 a penalty action? I mean, I just can't think of a case
10 from the past where we have sought penalties for a
11 C-plan violation, short of a spill. I mean, there
12 hasn't been a spill. It's more of you're not in
13 compliance with your C-plan, therefore we're going to
14 have to revoke it or modify it or do some action to
15 bring you into compliance.

16 BRECK TOSTEVIN: Bring into compliance.

17 COMMISSIONER MICHELE BROWN: Or revoke your
18 C-plan. So, I mean, there's a penalty of you not being
19 able to operate, certainly is a penalty. But not a fine
20 in the sense of I think Stephanie was talking about dual
21 fines. Although, theoretically, I think that is
22 possible. I just can't think of a time when we have
23 ever done it.

24 BRIAN ROGERS: Stephanie.

25 STEPHANIE MADSEN: Well, this is where I was

1 going with this, is that under the Contingency Plan Work
2 Group minutes, on the last page, it said that the Task
3 Force will be asked at its November 6th meeting to
4 determine whether federal and international vessel
5 requirements should be adopted by state law. According
6 to Assistant Attorney General Breck Tostevin, if the
7 State adopts the federal and international requirements,
8 they can be enforced under state law as well as federal
9 law. Alternatively, the State can require the vessel
10 owners simply certify that they meet the federal
11 requirements. Under this State proposal, if the State
12 finds a vessel owner in violation of federal
13 requirements, a violation would be forwarded to U.S.
14 Coast Guard.

15 And that's what I'm asking. And you're right,
16 I guess maybe this isn't a legal question. But my
17 preference is that the State requires vessel owners
18 simply certify that they meet the federal requirement;
19 and that if the DEC went on board, then they would
20 notify Coast Guard for prosecution. And I guess --

21 BRIAN ROGERS: I guess I'd like to ask that,
22 for this portion we're just trying to make sure we've
23 got all the legal issues covered, and not the policy --
24 the policy questions we'll come back to. We've still
25 got five to go, plus however many more there may be.

1 Charlotte?

2 CHARLOTTE MacCAY: There are a couple of things
3 that the spot charter group had proposed to Breck, I'm
4 not sure if it was before or after this -- I'm assuming
5 after -- in amending statutory definitions. Where we
6 wish to amend the definition for response action. Are
7 you familiar with what I'm asking for there?

8 BRECK TOSTEVIN: Yeah, I guess I'm not -- I'm
9 not in a position at this point to talk about amending
10 the statute or anything like that. I think we're in
11 agreement, basically, on the general concept that
12 incident command system is a response action contractor,
13 if that's what you're getting at.

14 CHARLOTTE MacCAY: Well, there's a series of
15 things that in spot charter trying to find a way to make
16 a very complicated group of vessels fit into this plan
17 in an easily feasible manner that needed to be done in
18 statutory change in order for there to be the comfort
19 level for people to take on that task. And one of those
20 was to define response action to mean -- so it's in both
21 sections the same -- to mean an action taken, respond to
22 a release or threatened release of oil, including
23 mitigation, cleanup, marine salvage, incident management
24 team services, or removal of a released or threatened
25 release of oil.

1 And basically what it comes down is the lawyers
2 will, in counseling the vessel agents in particular, are
3 not going to counsel them to do this unless some of
4 these things are in place.

5 BRIAN ROGERS: So, we'll take up as number 29
6 the definition of response action.

7 CHARLOTTE MacCAY: The other one is one we had
8 asked for earlier to amend the words "may not cause or
9 permit the operation of," which is not consistent with
10 how it's read other ways -- otherwheres -- to, "a person
11 may not operate a nontank vessel within the waters of
12 the state, or cause or permit the transfer of oil to or
13 from a nontank vessel." Which is more acceptable than
14 "may not cause or permit the operation of." They may
15 seem minor, but they're important to these people.

16 And then there's basically three places in the
17 regulations and also in statute where they want to very
18 clearly include a definition of IMT as a PRAC, so that
19 it is very clearly covered in that liability protection.
20 And, discussion has gone on through this whole process
21 of whether or not they can live without that, and it's
22 highly recommended by their counsel that they need to
23 have these changes made.

24 BRIAN ROGERS: So, we have --

25 CHARLOTTE MacCAY: I don't know where these

1 fit, but when I tried to bring them up earlier, then I
2 was put to legal, and the legal discussion is being
3 confined to this memorandum. So if I'm out of place, I
4 apologize. I'm not quite sure where to put these
5 things.

6 BRIAN ROGERS: Your question, in terms of a
7 legal question, you're saying --

8 CHARLOTTE MacCAY: There is probably more of
9 a --

10 BRIAN ROGERS: And this is really more of a
11 policy issue, you want to define each of these issues,
12 each of these terms, or actually redefine the -- or
13 change the language on "cause or permit" as
14 recommendations of the Task Force.

15 CHARLOTTE MacCAY: Yes. And why that would not
16 be okay. I recognize there's always a fear of a change
17 to the statute turning into a Christmas tree and things
18 being tacked onto it, but there are things you can do to
19 minimize that risk by having a very tight title to that
20 legislative action, so that it's hard for anyone else to
21 get in there and add anything else different to the
22 statute.

23 BRIAN ROGERS: So, is the legal question
24 whether that statutory definition change is required in
25 order to achieve what you're trying to achieve?

1 CHARLOTTE MacCAY: We believe it's required.
2 It's a request to include it. But when I tried to bring
3 it up before, I was told to do it in a legal session.

4 BRIAN ROGERS: That's why I'm asking. Can you
5 address that issue, Breck?

6 BRECK TOSTEVIN: In my opinion, an incident
7 management team is a response action contractor. An
8 incident management team responds, under contract, to
9 the responsible party to provide oil spill response
10 services.

11 What Charlotte is saying is that different
12 attorneys have a different view, that they would have
13 more comfort if the words IMT were inserted in the
14 statute. But in my opinion, that the statute is very
15 broad and you don't actually have to have that listed as
16 an example.

17 CHARLOTTE MacCAY: And basically, I mean, it's
18 a difference of legal opinion, and if you're on the side
19 that's not at risk, it seems broad enough; and if you're
20 on the side that's at risk, it doesn't seem broad
21 enough. It may be difficult to bring all these spot
22 charters under an umbrella of an agent if these changes
23 aren't in place. We're seeing an unwillingness for them
24 to do that, which for us, of course, is problematic
25 because we don't know how we would do it without an

1 umbrella type shell.

2 BRIAN ROGERS: Larry.

3 LARRY DIETRICK: I'm just wondering here. It
4 sounds to me, we don't have a disagreement in concept on
5 the part of Task Force. If we don't have a disagreement
6 in concept -- I mean, statutory language drafting is
7 something that I think is a step that has to be done
8 yet. And if it's attorneys talking about how to frame
9 that, it seems to me the direction from the Task Force
10 here is clear. We agree they would be included. Breck
11 is saying they would be. And they're saying, well, they
12 might not be. But the Task Force is agreeing that they
13 qualify as a PRAC, and that to me should be instruction
14 to the drafters, when we get to the point where the bill
15 is drafted, to figure out legally whether or not -- I
16 mean, I'm just wondering if that's beyond this task
17 force now as to actually get into drafting challenges
18 here that are normally done by the attorneys at a later
19 date.

20 BRIAN ROGERS: Charlotte.

21 CHARLOTTE MacCAY: I think what we're doing is
22 looking for a recommendation that the statute be
23 amended, as appropriate. And not just on the IMT, but
24 also on the wording that is different here than it was
25 with the tankers about "may not cause or permit the

1 operation of," and on the response action language.

2 LARRY DIETRICK: But is there a difference
3 in -- but it sounds like --

4 CHARLOTTE MacCAY: I don't think we expect it
5 to be written today.

6 LARRY DIETRICK: At least with the IMT, there's
7 no disagreement here on what we've agreed to as a task
8 force.

9 CHARLOTTE MacCAY: Yeah.

10 LARRY DIETRICK: There's a battle of whether or
11 not it's got to be in or out of the definition. So,
12 what's the disagreement on the second one? I mean, it
13 seems to me that we agree that the IMT is a PRAC. So
14 the other -- what's the problem with the definition for
15 response action contractor? I wasn't quite clear. I
16 mean, other than knowing that -- whether to put it in or
17 take it out. Is there a disagreement in concept here on
18 something?

19 BRIAN ROGERS: That's this one here, the
20 response action?

21 LARRY DIETRICK: Yeah.

22 CHARLOTTE MacCAY: Response action itself?

23 LARRY DIETRICK: Yeah.

24 CHARLOTTE MacCAY: We may agree it fits in
25 there, but we feel it needs to come out of this task

1 force if there is a recommendation for statutory change
2 to support what happens.

3 On the response action, they want a definition
4 of it that says an action taken to respond to a release
5 or threatened release of oil, including mitigation,
6 cleanup, marine salvage, incident management team
7 services, or removal of a released or threatened release
8 of oil.

9 Breck, maybe you're familiar with what's
10 particularly different in this request.

11 BRECK TOSTEVIN: It's the same issue as 29 and
12 31, they're just two different definitions.

13 CHARLOTTE MacCAY: So, basically you're adding
14 an incident management team services?

15 BRIAN ROGERS: So, 29 and 31 are related issues
16 and really come down to whether the statute is adequate
17 today and covers it or whether it doesn't.

18 LARRY DIETRICK: But there is no disagreement,
19 though, that the IMT is or should be a PRAC.

20 CHARLOTTE MacCAY: Right. There's just a
21 disagreement that we need this other support in order to
22 give the comfort level to the agents for them to take
23 this on, because otherwise they're wavering. And
24 without them, the spot charter component is going to
25 fall apart.

1 LARRY DIETRICK: Wasn't this a legal issue,
2 though? I mean, if we agree that the IMT is a PRAC, and
3 if it's not necessary to do a statute, but it's still
4 there, why is that a problem?

5 CHARLOTTE MacCAY: We do think it needs a
6 statute.

7 LARRY DIETRICK: So it's just two different
8 attorney opinions?

9 CHARLOTTE MacCAY: Yeah.

10 GENE BURDEN: You got a case where you got a
11 recommendation that the group recognizes IMT is the same
12 as -- is covered by a response action contractor in
13 state law, and if in fact there's a requirement to
14 clarify that by statute, the group supports it. End of
15 story.

16 BRIAN ROGERS: Commissioner?

17 COMMISSIONER MICHELE BROWN: My only concern --
18 again, we don't have a concept problem, but all the
19 recommendations are just -- this is the concept that
20 this group endorses and how you would meet the response
21 planning standard. Nowhere does it say, and this one
22 has to be in statute and this one has to be in reg and
23 this one has to do this and that. And I think those are
24 legal drafting questions that come out of the concepts
25 that the Task Force lays forward. And I think, you

1 know, if we're going to start doing it for one or two
2 recommendations, do we have to now go back and vote, do
3 we want this in the statute, how do you want it worded,
4 do you want this or -- ultimately, it's going to -- leg
5 drafting or the AG's office are going to have to sort
6 this out.

7 CHARLOTTE MacCAY: I guess it's just a feeling
8 amongst -- and I'm not a lawyer, so, you know, these
9 aren't my passions particularly. But, is that without a
10 recommendation from the Task Force, that it will be
11 difficult to get the statute open. And that if we don't
12 do that, will we have failed in providing some sort of a
13 mechanism to pull spot charters into the C-plan network?
14 Because otherwise it's really going to fall apart if
15 you're leaving it up to the individual vessels. They're
16 obviously not going to understand or be capable of
17 pulling together a C-plan, when they come here for three
18 days once in their existence.

19 So, I mean, my theory is if this recommendation
20 doesn't go through and we can't access the statute, then
21 we kind of fall out of this process. Even though we all
22 have a nice feeling of where it should go, it's not
23 something strong enough that anybody picks up. So I
24 think it's just looking for a recommendation that the
25 statutory language be addressed, because this is

1 somewhat of a unique situation in handling the spot
2 charters.

3 BRIAN ROGERS: In terms of the legal question,
4 I think we've framed what we can frame, which is either
5 you do or you don't define it, depending on which
6 lawyer -- in statute -- which lawyer you listen to.

7 In terms of what we need Breck here for, that's
8 a policy issue we'll get to after we deal with 18, 19,
9 26, 27 and 28, we'll get to 29, 30 and 31. Are there
10 any other legal issues that we need to raise? Any
11 questions that fall out? If not -- yes, Bob.

12 BOB HEAVILIN: Yeah, Bob Heavilin. I think
13 that there was a discussion, and I know that our general
14 counsel for Chadux had, I think, oh, maybe tried to
15 insert some language when this legislation was being
16 crafted, and that was regarding the liability issue
17 regarding a co-op being the plan holder. I don't think
18 that's really ever been resolved, has it?

19 BRECK TOSTEVIN: To actually be a C-plan
20 holder, a co-op?

21 BOB HEAVILIN: Yes.

22 BRECK TOSTEVIN: Yeah, I answered that. That
23 was number 6.

24 BOB HEAVILIN: So, you're saying that we can't,
25 a co-op could not be the -- we are the C-plan holder,

1 that we're not afforded any immunity there?

2 BRECK TOSTEVIN: If you were the C-plan holder,
3 you would have the liabilities of a C-plan holder. And
4 I detail kind of what those liabilities are, what
5 liabilities a C-plan holder has, as opposed to what a
6 response action contractor has.

7 BRIAN ROGERS: Jeff.

8 JEFF THOMPSON: As distinct from an RPF, a
9 facilitator who then has the RP sign off a C-plan,
10 thereby absolving that person of any liability.

11 BRIAN ROGERS: And that's why we specifically
12 took the word "hold" out of that discussion of a
13 response plan facilitator, because a response planning
14 facilitator is a response action contractor, not a plan
15 holder.

16 Any other legal follow-up? If not, we'll
17 proceed. Rick.

18 RICK HARRIS: I just have a couple. One is
19 just generally a comment, is that you've, at the
20 beginning, Breck, fairly well qualified your statements
21 to say that these are not attorney general opinions.
22 These are informal or otherwise. Which, I mean, they're
23 guidance for the group. But at some point in time I
24 think some of these questions become critical and
25 certainly require them to become more formal. Because,

1 again, it sets a lot of the administrative record for
2 the process.

3 The second part -- I'm looking at Page 8, and
4 it's item number, I guess it's 9, dealing with response
5 action contractor. And it's about three paragraphs
6 down. I see that we're talking about preplanning and
7 drafting of C-plans would not be considered response
8 action services because a contractor would not be
9 responding to the release or threatened release of oil.
10 And then you talk about, you say the term threatened
11 release, while not specifically defined, has been
12 generally interpreted to involve a substantial threat.

13 And I see those, "generally interpreted," those
14 are the kinds of words I write when I don't want to fess
15 up to my boss what I've done or going to do and, you
16 know, I get a little bit nervous when I see those kind
17 of phrases. They're really qualifications, they're not
18 emphatic and they're not succinct, in saying that it has
19 been interpreted to not result in this, but -- because
20 it's important, because we're talking about the threat
21 posed by the normal operations of a vessel in the area.

22 When you put that qualifier in there that the
23 normal operations has generally not been interpreted to
24 be a threat, I then get a little bit nervous.
25 "Generally" means that there is an opening, and I need

1 to understand under what circumstance that opening
2 exists. If you take out the phrase "generally
3 interpreted," but says has been interpreted to not do
4 this, then I have much more comfort. So I don't know if
5 I'm raising a legal question, or is it just simply a
6 drafting issue in that particular statement?

7 BRECK TOSTEVIN: The reason I used the words --
8 Breck Tostevin. The reason I used the words "generally
9 interpreted" is because there isn't a specific statutory
10 definition in that section of the statute.

11 RICK HARRIS: Is not?

12 BRECK TOSTEVIN: There is not a definition.
13 And what I did is I pointed you to another section of
14 the statute that did have that definition and I think is
15 analogous. We're talking about responding to a
16 threatened release, which is -- there is some kind of
17 imminent harm that the release is going to occur. The
18 vessel has lost an engine and it's being driven toward
19 shore, a release hasn't happened yet but it's a
20 threatened release. In that case it's like a spill
21 response or you're responding to a threatened release
22 where there's, you know, a substantial threat that it's
23 going to occur.

24 CAPTAIN ED PAGE: I know in federal law it's
25 kind of a determination by the federal on-sea

1 coordinator. If he or she determines it's a substantial
2 threat, it's a substantial threat.

3 RICK HARRIS: And I guess I only ask the
4 question because when I see that, I wondered why it was
5 qualified. What you really are saying is that you had
6 to go to another part of the statutes to pull a
7 definition forward, so that may or may not -- if there
8 are some statutory amendments being made, that may be
9 worthwhile to consider making that a little bit more
10 solid so that you don't have to use the terms "generally
11 interpreted."

12 Because when I see that, if I got an official
13 attorney general's position, or statement, from you, you
14 would still be making that kind of a statement, which is
15 a qualification. And in those cases I would think that
16 we would want to try to make it clear what we're doing.

17 And the only reason I'm pointing on that is
18 because then we drop down to the next sentence and then
19 you start talking another issue about involvement, and
20 again, contractors are not generally exposed to
21 liability. That's the next paragraph down, about one,
22 two, three -- four lines on the right side. You see
23 "are not generally exposed to liability."

24 And each time I see that, I have to stop for
25 just a minute and say what does that mean? I mean, if

1 it says they are not exposed to liability, I understand
2 that. When it says they are not generally exposed to
3 liability, there is then a series of circumstances
4 where --

5 BRECK TOSTEVIN: I guess I don't know where
6 you're talking as far as --

7 BRIAN ROGERS: Page 8, the third paragraph,
8 beginning, "However, as noted above..."

9 RICK HARRIS: And then, what causes me to get
10 even more nervous is then we drop down to the last
11 sentence there where we start shifting it to, well, even
12 if there is a liability, no matter how weak, it really
13 can be taken care of as a contract between myself and
14 the IMT. And every time I've had the State tell me,
15 well, you take care of it in a contract between you and
16 this other entity, then all of a sudden I see that
17 myself and that other entity in the State's eyes are
18 really just one. I mean, the State's going to go after
19 that group. You know, I can't go to you and say, well,
20 I have a contract with this guy, so you go sue him, not
21 me. Don't come after me for your enforcement; you go
22 after him. And as a practical matter, I don't think the
23 State will do that. I think they're going to look at
24 both of us setting out there and say, collectively,
25 we're going after you, too.

1 So, I only raise those questions because when I
2 see qualifications, and particularly in dealing with
3 these liabilities, and then assignment of the
4 responsibility to a contractual relationship between
5 myself and a third party, I all of a sudden start
6 saying, you know, either we're trying to make the
7 statute do something that we shouldn't and we need to
8 fix it, or I only raise it as question, you may say, let
9 me go back and look at this and I think I can write the
10 words more emphatically to cover your concerns.

11 BRECK TOSTEVIN: The problem is -- this is
12 Breck Tostevin. The reason I can't write the words more
13 emphatically is because, like I said at the very
14 beginning of the memorandum, is that the courts haven't
15 addressed a lot of these provisions. So I'm giving you
16 my best interpretation.

17 And my second point I would make is that the
18 reason there are qualifications in there is I'm
19 generally talking on, speaking to certain hypotheticals;
20 and you change the facts, then your liabilities change.
21 If you make special promises to people in your contracts
22 or if you engage in services outside of the norm that
23 might get you into another area of liability, that's the
24 reason there are those kinds of qualifiers in there.

25 So, one, the courts haven't interpreted these

1 provisions, and I'm giving you my best interpretation.
2 And, two, I'm responding to a certain sets of facts; and
3 if you change the facts, then you get a different
4 answer.

5 RICK HARRIS: If I may.

6 BRIAN ROGERS: Rick.

7 RICK HARRIS: I guess the commissioner told me
8 just a little while ago, and I agree with her, is
9 that -- it's on a totally separate issue, but she said
10 let's not -- you don't want to go to the courts because
11 no matter how much passion you have, you never know what
12 the courts are going to do.

13 And what we're trying to say is let's look at
14 the statute and if you needed to have a more definitive
15 statement -- and maybe it's the regulations, I don't
16 know -- but if we need to address these issues so we
17 take away the vagaries and the ambiguity, or at least
18 try to narrow it or limit it, is the only thing I'm
19 asking.

20 And, as I say, when I see these things, it's
21 telling me that you're in actually kind of an awkward
22 position. We don't want to depend upon the courts. If
23 we can do a very good job as a group, and also within
24 the legislative and the regulatory drafting, if we can
25 do a good job, then we have a pretty solid situation and

1 don't have to deal with the courts as much as we might
2 have to otherwise. So all I'm asking is, is there some
3 different ways we ought to approach these to make these
4 responses more bulletproof?

5 BRECK TOSTEVIN: I don't think I have an
6 answer.

7 RICK HARRIS: I think that all I'm asking is,
8 is that we recognize that this group, there are some
9 vagaries and some ambiguities within what we're doing at
10 this point in time. There are some uncertainties and
11 it's not a perfect world and we'll never expect to take
12 care of all of them, but there are certain areas that
13 are critically important to us that are being regulated,
14 and it's critically important for us to be able to
15 bring, for example, the ship's agents in, who we think
16 are excellent parties to control a lot of what's
17 happening here. But if we can't bring them in, if we
18 can't build their comfort, then we lose, as Charlotte
19 said, the opportunity to go forward.

20 So, all I think I'm asking in this thing is to
21 say, is to recognize that there are potentially some
22 ambiguities or some weaknesses that exist, and that we
23 need to have those addressed at a point in time before
24 we try to finalize this. I mean, I think in the report
25 all we have to do is to say, here are some of the

1 potential legal issues that may exist. There's very few
2 lawyers in this room, but if we can address -- recognize
3 them here, then we don't just walk away and forget it.
4 So that when we're standing in front of a committee,
5 we're able to say we've raised these issues, these are
6 what we need to address, here's one solution. And then
7 hopefully we can find a path that everybody's agreeable
8 to the language, we keep it very narrow, very tight, and
9 we're successful in implementing.

10 It's just my own experience, we did that in
11 forest practices, where we passed two bills through the
12 legislature virtually unamended. Spent a lot of time
13 working with the legislature, and we spent a lot of time
14 working in this very kind of group. And somebody tried
15 to change, in the legislature, a comma, and everybody
16 stepped up and said, no, we've agreed to this, no
17 changes. So, I think that we have plenty of room and
18 plenty of time to work through that process so that if
19 there is indeed statutory change needed, we can have it
20 done in a professional manner so that it doesn't open up
21 the Pandora's box.

22 BRIAN ROGERS: The issue that you raised, we
23 can deal with as part of this 29 and 31, defining
24 response action, and if C-plan drafting is not part of
25 response action or --

1 RICK HARRIS: As well as some of the other
2 functions we defined for the ship's agent, which was
3 delivering the C-plan to the ship, receiving notice back
4 from the ship that they had indeed received --

5 BRIAN ROGERS: The response planning
6 facilitator function.

7 RICK HARRIS: Right.

8 BRIAN ROGERS: Gene?

9 GENE BURDEN: Just one comment. I think it's
10 important to recognize that any statutory changes made
11 in any of these areas invokes a geometric expansion of
12 the interested parties in this arena. And the
13 complications we've had in coming to grips with some of
14 these issues is really expanded dramatically once you go
15 in and start tweaking this with some of the definitions.
16 That makes Drue's job -- Senator Pearce's job even more
17 interesting.

18 BRIAN ROGERS: Anything else on the legal
19 issues? Yes, Sandra.

20 SANDRA JACKSON: I have a question. Is SEAPRO
21 considered a C-plan holder?

22 BRECK TOSTEVIN: No. Unless you hold -- have
23 you been issued a certificate of approval by DEC with
24 your name on it saying you hold --

25 SANDRA JACKSON: No, but we have a contingency

1 plan.

2 BRECK TOSTEVIN: You have a response plan.

3 SANDRA JACKSON: A response plan.

4 BRECK TOSTEVIN: They're different things.

5 SANDRA JACKSON: Okay, so we're not?

6 BRECK TOSTEVIN: No, you're not. Not to my
7 knowledge, at least to my knowledge.

8 LARRY DIETRICK: Do you have a crude oil
9 tanker?

10 SANDRA JACKSON: Not that I'm aware of.

11 BRIAN ROGERS: Okay. If we've finished with
12 the legal issues, let's proceed to the Alaska Railroad,
13 and I'll hand out --

14 LARRY DIETRICK: Thanks, Breck.

15 ERNIE PIPER: Having cleverly extended the
16 discussion about ICS, and then strategically inserting
17 an attorney in front of me, we can probably dispense
18 with my work fairly quickly, because we're in the
19 midafternoon sugar dip and I know that we will be losing
20 people quickly.

21 If you can look at your presentation here, I'm
22 going to sort of skip through the first part of it, and
23 the meat begins on Page 3, and talk about the things
24 that specifically affect this committee.

25 Just by way of background, before this bill the

1 Alaska Railroad was not a regulated entity for purposes
2 of oil spill response, or oil spill transport under
3 state law. However, this is the Alaska Railroad
4 Corporation Emergency Response Plan that includes oil
5 spill response, that was written in 1991. It was an
6 outgrowth of the Dunbar spill settlement. And it was
7 updated in 1993, and when I started using it in 1999, we
8 began to find that there were a lot of areas that had
9 not been substantially updated since the mid 1990s. And
10 we're in the process of doing that now. Some are
11 ministerial, some are more substantive. Some involve
12 updating training for individuals, some involve putting
13 new training for individuals who replace those who have
14 passed on.

15 Back on our meeting on the 6th, we had a lot of
16 questions about what a new plan was going to look like
17 for a regulated Alaska Railroad, and based on the
18 comments that have come out of the Task Force, you know,
19 it appears that substantially if you have a contract
20 with a response action contractor, you have an emergency
21 management team that meets the criteria that DEC
22 establishes, you're pretty much on the way to getting
23 where you need to go. Would that be fair, Larry?

24 LARRY DIETRICK: Got her started.

25 ERNIE PIPER: Right. And for the purposes of

1 what this means, strictly from the standpoint of the
2 legislation, the Alaska Railroad wasn't subject to the
3 regulations that you can sum up in the periodic
4 training, the exercises and their verification. And
5 what this legislation will do is change it so that we
6 are part of that, and that will arrange a little bit
7 more about how the plan is put together and how it's
8 tested.

9 I will skip on to Page 3. And if you look at
10 the slide about 1999-2000 incidents, we're talking a lot
11 in here about response planning and contingency
12 planning. But what is underscored in the incidents at
13 the Alaska Railroad over the last year, is that really
14 what you're looking at are systems failures, more -- not
15 just active errors that produce spills or derailments
16 and spills, but also what behavioral scientists and
17 system scientists call latent error. You know, those
18 things that are imbedded in an organization through
19 long-time management principles, culture, decisions,
20 resource allocations, that can accentuate what an active
21 error does. And in the transportation industry this
22 isn't uncommon, and you can see it right there in
23 spades. That led us to, in December, go for a system
24 safety assessment, part of which has to do with this --
25 an outcome related to this legislation. But part of it

1 more to the long-term management practices at the Alaska
2 Railroad.

3 If you look nationally at train accidents, 30
4 to 35 percent of all train accidents every year are a
5 result of human factors, and that's a designated defect
6 code under the Federal Railroad Administration. Another
7 30 to 35 percent involve track defects, track geometry,
8 you know, how -- the gage, tie condition, misalignment,
9 cross level, all those kinds of things that affect how
10 the train rides on it. And then another, less than a
11 third tend to be mechanical.

12 What's interesting is that you find that over
13 half of the train accidents that happen every year
14 happen right in yards during switching operations, and
15 more than half of those occur at one to nine miles an
16 hour. So, while you see in the news, both here and
17 Outside, sort of the graphic pictures of derailments
18 that occur on main lines, primarily where you run into
19 trouble on railroads is in the yard. And the simple
20 reason for that is that's where you do most things. You
21 know, there are more events happening, there are more
22 decisions that human beings have to make, there are more
23 rules, both formal rules and implied rules, that have to
24 be followed. And I know Captain Mike would be well
25 aware of that sort of thing in bridge management.

1 We got Rail Sciences, which has been our chief
2 contractor on a number of operating changes, to first of
3 all come in and say we were going to systematically look
4 at our track repair and maintenance, our quality control
5 in the car and locomotive shops for mechanical. And
6 then rules, compliance and best practices, and switching
7 and train operation. Those three major areas that I
8 noted, you can run into trouble with trains.

9 The fourth piece of it is to assess the
10 environmental and community risk associated with HAZMAT
11 transport. And that all comes together. The branch of
12 it that really goes into this legislation on the
13 contingency plan is to determine the conditions and
14 locations that are most susceptible to what's called L/V
15 derailment, and that's a ratio of between the lateral
16 forces exerted on the rail and the vertical forces. And
17 the very short version of that is that 1.0 is a certain
18 derailment, and then down from there you get less risk.
19 But you can measure that, it's an industry standard, and
20 it's a 100-year-old calculation. And our objective is
21 to use the work being done in the risk assessment now to
22 identify those locations, see if they match up with our
23 existing planning. If so, augment or verify it. If
24 not, improve it in those areas.

25 The first part of it was the track portion that

1 we got done before it started snowing on the system.
2 And we did a walking inspection of all main line track,
3 with the emphasis on curvature. Eighty percent of all
4 derailments involve curve, whether it's a turnout or a
5 curve. That's where bad things can happen. And we
6 literally -- there were eight of us and we literally
7 walked every curve on the Alaska Railroad.

8 We also did a walking inspection of all the
9 switches and turnouts. And in that you look at rail
10 condition, tie condition, the spiking patterns, the
11 anchoring, those things that keep the track where it's
12 supposed to go. And we went through our standard
13 operating procedures and tried to match them up in the
14 field to what we saw. I mean, are we doing what we say
15 we do with track maintenance and standard repair
16 procedures?

17 We then went into the shops to do our
18 mechanical audit, which we completed last week. So we
19 now have two-thirds of the operating portion of this
20 done. The track work, the data from the track
21 assessment, is in data reduction and drafting right now.
22 The mechanical inspection was just completed last week.

23 We looked at all of our fleet. Not every
24 single car, but a very significant sample. I would say
25 far beyond a statistical sample. Anywhere from 10

1 percent to 40 percent of our fleet. And looked for
2 defects that existed on those cars, according to the
3 Association of American Railroad Standards and the
4 Federal Railway Administration. And then also what we
5 call noncovered defects. Those things about rail cars
6 that you really would like to be able to correct before
7 they become a problem. And they are in such arcane
8 areas as wedge rise, side bearing clearance, and other
9 aspects of the rigging of that car. I call it sort of
10 the waist down. You look at the tank car from the
11 bottom of the belly down to where it hits the track, and
12 that's where you're looking for most of your problems.

13 We emphasized the tank cars, for obvious
14 reasons. Most of our fleet is post-1990. So they're
15 relatively new cars. They're mostly leased.
16 Nationally, 99.6 percent of all tank cars run on
17 railroads are part of a leased fleet. Railroads do not
18 operate tank cars. We own more than most railroads do,
19 although we don't run the ones that we own very much.

20 We also audited our inspection techniques for
21 what in the railroad industry is known as bad order.
22 What defects did our inspectors see, did they do a good
23 job at locating them, and then did our repair facilities
24 properly follow up on those inspections with repairs?

25 Interestingly, on the track portion, what you

1 find is that we -- the main thing that the Alaska
2 Railroad needs to work on is improvement in its standard
3 operating procedures. And again, this is a little
4 arcane and I won't go into it. But most Maintenance of
5 Way manuals on railroads say that under certain
6 conditions these are how you spike, these are how you
7 anchor. And the Alaska Railroad has tended to do that a
8 little bit more based on individual roadmaster
9 experience. And while we've got very experienced
10 people, you want to make sure that you have a more
11 standardized approach to it.

12 The tie condition on the Alaska Railroad is
13 vastly improved than it was five years ago, and it is
14 substantially better than most regional railroads.
15 Mostly thanks to the federal money that we've received
16 for tie replacement and anchoring.

17 On the mechanical side, we have found that
18 generally, the tank cars, the hoppers, the most used
19 cars in the fleet are all well above AARS and FRA
20 standards. There are a few exceptions that we need to
21 pay more attention to. And this is getting back to the
22 fact that we run trains, not tank cars. And
23 interestingly, the tank cars look great, in terms of
24 their mechanical condition, but there's a class of car,
25 if you'll notice down in the yard there's a train that

1 goes out every night that has the trailers on the top of
2 it, those articulated cars. That runs with tank cars
3 coming south. And we discovered that those articulated
4 cars actually need, beginning today, a fair amount of
5 work in a couple of key areas. So that's just to show
6 you how the risk assessment comes into play in terms of
7 derailment prevention, which in turn prevents fuel
8 spills.

9 Operationally, we will be monitoring our best
10 practices, our rules compliance, and what's known in the
11 industry as operational monitoring, beginning on the
12 11th. We'll do that for ten days, with about seven
13 people going out through switching operations, road
14 operations, and other specialty operations on the
15 railroad, checking FRA compliance and compliance with
16 our own standards. We expect that with the number of
17 people involved, we'd hoped to have all this done by the
18 1st of November. It's really looking more like we won't
19 be done until the end of November. And a draft set of
20 findings will be available before the end of the year,
21 December 31st.

22 As far as this, the railroad and the Task Force
23 are concerned, we fully expect we're going to wind up
24 under Title 46, and administrative code section on
25 contingency planning. We don't know exactly how that is

1 going to take shape in the current legislative session,
2 but we're ready to do what we have to do.

3 In the meantime, we are proceeding on the
4 assumption that if our contractual discussions follow
5 through to fruition the way we expect them to with
6 response action contractor, and our training plans
7 follow through with what we have planned for now,
8 between now and the end of January, that we would be
9 substantially in compliance before approval by the 1st
10 of February. And then, the risk assessment will tell us
11 some of the other things that we may want to do about
12 our prevention plan.

13 Again, the final place for an approved plan is
14 largely going to depend -- in part will depend on what
15 the outcome of the current legislative session is and
16 what that schedule is that gets set up. But I think
17 we're well ahead of the curve right now.

18 BRIAN ROGERS: Any questions for Ernie from
19 members of the Task Force? Must have done a good job.

20 ERNIE PIPER: Well, like I said, I think the
21 good job was done when I delayed those other things
22 ahead of me.

23 SIMON LISIECKI: Timing is everything,
24 absolutely.

25 ERNIE PIPER: Pre-lunch there might have been

1 more questions.

2 BRIAN ROGERS: So, are there any other
3 recommendations for the railroad that should go on our
4 list? We're up to 31. Any others, or are people
5 comfortable that our existing recommendations cover the
6 issues that you want for Alaska Railroad? Lacking any
7 suggestion to the contrary, then you're off the hook.
8 As long as you complete, carry out.

9 ERNIE PIPER: We're moving.

10 BRIAN ROGERS: Okay. It was pointed out to me
11 off line here, there is a difference between what the
12 Task Force is doing under SCR1 and SB273, having to do
13 with the legislation. Our legal task under the bill was
14 to deliver a report on recommendations to implement the
15 response planning standard. The senate concurrent
16 resolution does ask for recommendations concerning
17 statutes and regulations. The former would require only
18 regulations, the latter would require statutory, any
19 statutes that are necessary as well. And I'm getting a
20 sense that there are differing expectations as to the
21 extent to which legislation may or may not be required
22 to carry out.

23 The law sets response planning standards,
24 Senate Bill 273. We're determining how to implement
25 that under the law, which would be the regulatory

1 approach. We are coming back around on several of these
2 issues and saying, oh, but we need statutes in order to
3 implement the statutes. And I think there's some
4 confusion in the group on that. I want to raise that
5 issue now. We're going to have to discuss that at some
6 point today as to how we sort of resolve the differences
7 between the two versions of what we are, and that may
8 affect some of these decisions.

9 Have I further confused everyone? Well, we
10 actually do have the issue of legislation as part of the
11 agenda. It was originally under the attorney general's
12 office report on legal issues, and I think that's the
13 point at which we will discuss anything having to do
14 with Task Force legislation.

15 It's 3:15. We have one, two, three, four,
16 five, six -- those are the same -- seven recommendations
17 to go. And then we have the prevention -- we have the
18 unresolved issues from RPS and prevention. Hopefully,
19 some of these will move faster. I've been off on my
20 estimates of time all day today, though. Maybe we can
21 turn these around. Maybe we'll get a little further in
22 the rest of the day than we have so far.

23 Next issue on the agenda is inspection. Number
24 18. Stated that DEC shall have statutory authority to
25 inspect nontank vessels for C-plan compliance. And that

1 was pulled off the consent agenda before the meeting
2 started. And I think, Jeff, that was your request.

3 JEFF THOMPSON: Yeah, if I may, Brian, thank
4 you. Jeff Thompson.

5 I need to ask my co-chairs to assist me here
6 because, as I recall, we dealt with inspections late in
7 our C-plan meeting, and I just -- I knew we had
8 discussed it and we had made several observations, but I
9 don't remember going to where we were recommending
10 statutory authority for inspection. Obviously, DEC, if
11 we submit a C-plan, they have to have the ability to
12 check the facts of that C-plan, that's understood. But
13 I don't recall going there, and you can correct me
14 because I just may not remember.

15 But I also -- in view of that, I would like
16 also to kind of go back and revisit the memorandum of
17 understanding between DEC and the Coast Guard just to
18 see, ultimately, is it necessary to give DEC statutory
19 authority to inspect nontank vessels for C-plan
20 compliance.

21 I'm looking to Charlotte and I'm looking to
22 Stephanie to set me straight.

23 CHARLOTTE MacCAY: I was going to try to stay
24 out of it.

25 BRIAN ROGERS: Senator Pearce.

1 SENATOR DRUE PEARCE: Charlotte and Stephanie,
2 if you want to make a comment first.

3 CHARLOTTE MacCAY: I don't remember anyone
4 having a lot of objection.

5 STEPHANIE MADSEN: I don't remember talking
6 about how it was necessary to allow authority, but I
7 don't know enough to know whether we talked about
8 statutory authority or not. But I do recollect that
9 there were three things that we talked about in the
10 C-plan group to inspect. And that was that you had your
11 financial, your COFR on board. In relationship with the
12 COFR, you may confirm the fuel capacity of the vessel,
13 in relationship to the COFR. To make sure that you had
14 your SOPEP on board. And your contract with your
15 response action -- there were three things that we
16 decided that were appropriate for DEC to inspect when it
17 came to C-plans. But that's as far as I recollect.

18 CHARLOTTE MacCAY: And I don't think I had a
19 particular -- I didn't think we dispelled they had the
20 authority to inspect, and I guess we didn't talk about
21 how they got that authority. Personally, my tendency is
22 to say we'll recommend yours if you recommend mine. But
23 I don't particularly see a problem with it, other than
24 the issue of opening up statutes.

25 BRIAN ROGERS: Senator Pearce.

1 SENATOR DRUE PEARCE: Thank you. Before they
2 described the different memorandums between the Coast
3 Guard and the state. As a veteran of writing statutes,
4 and then the departments do the regs, we have to in the
5 statute give the department the authority to do just
6 what Jeff said, which is -- well, it's obvious -- that
7 the department has to be able to check and make sure
8 that you are meeting what you say you're meeting in your
9 contingency plan. Without statutory authorization, they
10 don't have that authority. So it has to be in statute.

11 JEFF THOMPSON: Jeff Thompson. If I may,
12 Brian.

13 BRIAN ROGERS: Go ahead.

14 JEFF THOMPSON: I think what -- Stephanie is
15 right. We talked about the fact that these three things
16 would have to be checked. We just never got to the word
17 "statutory" that day. And I think that's probably what
18 my hang-up is, which really is not a hang-up at this
19 point, other than to say that I would like just a little
20 bit more discussion, since we have this opportunity. I
21 know it's late in the day. But maybe Larry could, if I
22 could ask Larry, just as your normal scenario as to how,
23 through the MOA with the Coast Guard, that because ports
24 take control -- and Captain Page and Captain Hutmacher
25 are well familiar with that program -- how that liaison

1 with the Coast Guard -- the Coast Guard is going to be
2 able to perform a lot of that inspection for you. And
3 is that the intent of DEC in relying upon the Coast
4 Guard? Because SOPEP is a CFR requirement, it's a
5 federal requirement that the Coast Guard checks on.

6 As far as the membership in a RAC, or a PRAC,
7 which is one of the aspects we discussed, I don't think
8 there's federal -- corresponding federal statute for
9 that. But again, you know, as you envision it, Larry,
10 do you think the Coast Guard's going to really help you
11 out with this, in terms of -- again, I mean, unless
12 you're looking to really expand DEC's staff to be able
13 to add a bunch of inspectors for these vessels, because
14 there's quite a few vessels that will be coming into
15 this pool. So I was just wondering what your feeling on
16 that is.

17 LARRY DIETRICK: Yeah, Larry Dietrick with DEC.

18 Well, I haven't actually talked to Ed yet about
19 how we do it, but we do do that with the Coast Guard on
20 all the other inspection programs, so our inspection
21 programs are fully coordinated with them ahead of time.
22 I think Ed or one of his other people at an earlier
23 meeting discussed the criteria they used to select
24 vessels to target for inspection, based on certain
25 criteria. So that vetting process already is in process

1 and they follow those guidelines, and our folks get with
2 theirs, they go through the criteria, and some fall out
3 and we do some and they do some. Clearly, Coast Guard
4 is probably doing the bulk of them. We do a few now,
5 but not very many.

6 With regard to the nontank vessels, I don't see
7 it working too much differently in terms of how we
8 interact with the Coast Guard. It would still be a
9 process where we get together. I think an example that
10 we've talked about at one of the earlier meetings, I
11 don't know if it was on the side or not, but in the case
12 of Dutch Harbor. If we were sending a vessel inspector
13 out to Dutch Harbor, we would do it in coordination with
14 the Coast Guard out there and go through their screening
15 criteria. And for the most part, the need for an
16 inspection capability to maintain the integrity of this
17 program isn't so much to check 100 percent every vessel
18 that is under a requirement here, as it is to screen for
19 the ones that are not.

20 So if you're in Dutch Harbor and you've got the
21 list of who is coming and going and you're working with
22 the Coast Guard, and a lot of the vetting process you
23 can screen out by records check, okay, who is coming in,
24 who has got their SOPEP, a state Certificate of
25 Financial Responsibility, state C-plan, et cetera, and

1 you can make a decision then as to whether or not you
2 need to board them. And in most cases those will
3 probably be random and they'll be few and far between,
4 just because the items that we have on the list here are
5 not, you know, they're not too extensive.

6 On the other hand, there will be a name of a
7 vessel coming in and they won't pass a records check.
8 That one will get targeted for boarding. And that
9 was -- that will be when we need to go on board, verify
10 whether or not they have the SOPEP, a Certificate of
11 Financial Responsibility, co-op membership card, issue
12 with the volume capacity or whatever.

13 And so that's the capability you need, then, to
14 maintain, I think, some integrity in the system.

15 CAPTAIN ED PAGE: If I can.

16 LARRY DIETRICK: Go ahead.

17 BRIAN ROGERS: Captain Page, and then Rick.

18 CAPTAIN ED PAGE: There are a couple items here
19 in the letter of agreement that we've been pursuing
20 before on a continual. One comment is find ways to
21 conduct vessel inspections in such a way that disruption
22 to industry is minimized. And efficiency and safety
23 maximized. So, if you minimize duplication effort, as
24 offered before in previous discussions that, at the
25 subcommittee, I can't remember where. But in the course

1 of doing our inspections, the State would like us to
2 check, have some documentation. We would do that and
3 report back to State. We wouldn't enforce state law.
4 We would report back to State.

5 And some other provisions of that where -- in
6 this MOA it talks about a single inspection may fulfill
7 both state and federal requirements as to minimize
8 duplication effort, minimize disruption to the industry,
9 also be more efficient overall. So again, we're willing
10 to do that, and we've done that in the past in other
11 areas. So I think it's already kind of scripted in the
12 way we conduct business.

13 And I guess, on the other hand, if we suddenly
14 don't do our job right because Congress decides not to
15 give that money to the Coast Guard, the State is saying,
16 well, then we don't have to sit and wait for the Coast
17 Guard to do this; we can go ahead and get it done
18 ourselves. But I think in the present regime, the way
19 we're staffed and whatever, I think we can minimize
20 these disruptions, duplicative disruptions.

21 BRIAN ROGERS: Rick Harris?

22 RICK HARRIS: My only comment is, on 18, as I
23 read the explanatory paragraph, I see a variety of
24 things which I don't know why it requires that you have
25 to go on board the vessel. I mean, to see that you have

1 a contract with the response contractor. I mean, those
2 are all types of things that the ship's agent would
3 normally have or we would have available. And I guess
4 as I looked at this, I couldn't see anything maybe other
5 than confirming the quantity of fuel on a vessel that
6 really required a ship inspection.

7 So, I mean the rest of it is paper, it's moving
8 paper around. It's, have you got your COFR, do you have
9 your C-plan, do you have your certificate of insurance.
10 I mean, those are -- that's paper stuff that, logically,
11 the ship's agent, as we've already identified them in
12 many cases -- at least from the spot charter basis out
13 of Southeast, we've identified them as a potential
14 entity that really becomes a collector of all of that.
15 So, if someone wants to know, you know, the relief days
16 in port at Hoonah, which it is, I think, and somebody
17 wants to know what's there, the ship's agent is the
18 excellent candidate to get ahold of that information.
19 So, I'm going, why do you need to go on board a ship to
20 get it, because it's already been sent to someone else,
21 because we've chosen to make them the conduit to receive
22 all that, as well as to communicate that all back to the
23 ship.

24 BRIAN ROGERS: Does DEC want to respond before
25 I go to Captain O'Hara?

1 LARRY DIETRICK: Yeah. Larry Dietrick.

2 Yeah, there's some items here. And I think the
3 paragraph here captures some of them, but there's some
4 undecided items here yet that's not clear. As to
5 whether or not we'll end up with some things on board
6 that we would check.

7 For example, the storage capacity may or may
8 not be an issue here, I think, when we get to, what's
9 the number, 27, 28 -- yeah, I mean, if we've got to get
10 in. That why I raised the issue before, if we're going
11 50 percent fuel loads or something, and then those have
12 to be verified periodically, then that becomes an item
13 that we would do on board.

14 Similarly, the prevention thing. It depends,
15 there may be prevention items to check that may be so,
16 maybe not, depending on the prevention program, I think,
17 that's ultimately adopted here.

18 And as well, there may or may not be response
19 equipment items under the C-plan that some vessels, I'm
20 not totally sure may not still choose to put on board.
21 So, in addition to the paper requirements, there are
22 those items that I would point out that might become
23 candidates, but we're just not quite to the end yet.

24 RICK HARRIS: And I don't have a problem. The
25 only thing I want to make sure is, is the ship thinks

1 that he has sent the paperwork to the responsible agent,
2 then all of a sudden DEC climbs on board and says, where
3 is this, this, and this. And they say, our agent has
4 those. I mean, we shipped those to that entity with the
5 intention that that would be the conduit by which that
6 information was collected.

7 So, all I'm saying is, as we go through and if
8 we identify things, you know, you don't come to me and
9 ask me for something that I don't have -- I mean, I may
10 have control of, but I've shipped it over to someone
11 else to say, here is my contact on this. And so, as we
12 go through this, I'd like to make sure we narrow it down
13 to in fact physical things that are on a ship. If
14 indeed we're moving the paperwork to a ship's agent for
15 the insurance and these other kinds of things.

16 LARRY DIETRICK: I'd just like to point out
17 again, it's the vessel that's without that will be the
18 vessel that, through a vetting process, would become the
19 target. And if the expectation is that we're going to
20 be boarding 100 percent or anything close to that, in
21 terms of nontank vessels, to check paperwork, the answer
22 is no, we are not. I mean, we're talking probably about
23 less than 5 percent here of the vessels. And that would
24 only be after a vetting process that we go through with
25 the Coast Guard ahead of time before we board vessels.

1 And I would like to dispel the notion that
2 we've kind of heard some rumors about the DEC black
3 helicopters that come swooping down. We don't have
4 them. And we don't board any vessels without trained
5 people that have beaucoup experience and that hasn't
6 been coordinated with the Coast Guard ahead of time, and
7 haven't gone through some kind of screening process
8 before we even make the decision that it's worthwhile.
9 And even when we do do that, that's done in port at a
10 designated location where the Coast Guard is usually
11 already carrying out that kind of activity. So, we're
12 reasonable guys.

13 BRIAN ROGERS: Captain O'Hara. And then
14 Senator Pearce, Jeff, Stephanie, Scott, Eric, and
15 Charlotte.

16 MIKE O'HARA: I just want to ask Senator Pearce
17 if this had been considered in the original legislation.

18 BRIAN ROGERS: Senator Pearce.

19 SENATOR DRUE PEARCE: It was in the legislation
20 until it got to the House something or other committee,
21 and Representative Phillips pulled it out. I don't
22 think the explanation at the table, frankly, was very
23 good about inspections. So, it dropped out on like the
24 last committee -- second to last committee on the House
25 side.

1 BRIAN ROGERS: Do you have another?

2 SENATOR DRUE PEARCE: Yeah. Number 18, the way
3 I read what is here, and you have to look at the fact
4 that last sentence for C-plan options 2 and 3, the
5 department would have the ability to inspect. So, them
6 having the authority to inspect is for all the different
7 opportunities to have C-plans, and option 2 and option 3
8 are if the vessel -- a group of vessels in the fleet
9 wants to have their own, like Stephanie and Heather have
10 been talking about. So, you need that authority because
11 then DEC doesn't have a PRAC to go to or somebody else.
12 They have to go to the fleet or the individual ship.

13 But I would think, in the explanation that you
14 were given, Rick, you would never hand over to an agent
15 or anybody else your original documents. They stay on
16 the ship and you give them copies. You know, I'm not
17 saying that DEC needs to come aboard just to look for
18 those if you've given them to the agent. But your
19 Certificate of Financial Responsibility, probably the
20 original stays in the vault somewhere. And even the
21 ship has a copy, but the ship does never sail without a
22 copy, I would think. Am I wrong?

23 MIKE O'HARA: No; you're right.

24 SENATOR DRUE PEARCE: Certificate of
25 airworthiness, that never comes out of my airplane,

1 ever.

2 BRIAN ROGERS: Jeff?

3 JEFF THOMPSON: I was just going to -- I had a
4 couple of points, and Senator Pearce I think answered my
5 first question. That is, I'm a little confused, we're
6 talking about how the charter deals with statutory, and
7 that maybe the charter of the group were exceeding that
8 on some -- I didn't quite understand what you were
9 saying about that. But basically we're being asked to
10 recommend this because it was taken out of the
11 legislation, so it needs to be put back in?

12 SENATOR DRUE PEARCE: Well, could I?

13 BRIAN ROGERS: Yeah.

14 SENATOR DRUE PEARCE: Unless DEC has the
15 authority to make sure that you have met the
16 requirements, there is no way for them to verify that
17 you've met the requirements. And so, there does need to
18 be a verification process. Now, maybe verification is a
19 word people are much more comfortable with than
20 inspection, because for the -- well, I heard lots of
21 comments, for the ten years that we've had 567 in place,
22 I have yet to hear a horror story of DEC going off and
23 boarding a ship and doing awful things and having people
24 that were unqualified and so on and so forth. I've
25 never heard one. I think I would have heard one, you

1 know.

2 And so, there seems to be all of this intense
3 worry that some employee of DEC is going to take it upon
4 themselves to go out and inspect a ship and look for
5 things in the holds that aren't any of DEC's business.
6 That's not something that they have ever done, and I
7 would think it's not something they're going to start.
8 So, maybe rather than talk about inspection, we should
9 talk about the ability to verify, if that word has some
10 connotation that people get nervous about.

11 BRIAN ROGERS: Jeff, if you want to respond.

12 JEFF THOMPSON: Yeah, if I may. Following up
13 on the senator's comments, Brian, I would like to make a
14 motion to replace the word "inspect" with "verify," for
15 recommendation 18. And I just have one more follow-up
16 question, if I may, for Larry.

17 Larry, it says here in the explanatory
18 language, to verify quantity of fuel. Is that the
19 actual fuel on board that would be germane to our
20 further discussions on 27 and whatever, or is that fuel
21 capacity?

22 LARRY DIETRICK: Well, it could be either one,
23 depending on where we go here.

24 BRIAN ROGERS: Stephanie, and then Scott and
25 then Eric and then Charlotte.

1 STEPHANIE MADSEN: This is Stephanie Madsen. I
2 guess, from a fishing vessel or a fish processor
3 perspective, you know, right now when we get boarded by
4 Coast Guard, it's most always at sea. Because our
5 schedules, we don't report to anybody that we're coming
6 to town. I mean, we're not required to report,
7 necessarily, unless you're a catcher vessel reporting to
8 your processor that you're going to come in. And even
9 that can change based on, you know, your catch or
10 weather or breakdowns or anything like that.

11 So there's no reporting system to where Coast
12 Guard is going to know when we're coming and going from
13 port. So it's going to be, I think, from a fishing
14 perspective, you're going to rely on Coast Guard a lot
15 more than you might anticipate, because most of these
16 boardings are going to be at sea.

17 Two, though, on the other hand, I would hope
18 that since DEC also has the authority to inspect
19 processors, floating processors, that there isn't a
20 duplicative system here for those processors that are
21 fixed, that stay in one place and process. That we
22 don't get a DEC health inspector come, you know, one
23 week and we get inspected, and then we get an inspector
24 from the spill division to come in and inspect. And I
25 would hope that there would be some kind of an approach

1 to where if we're going to a verification system, that a
2 person from DEC that's going aboard a vessel has a
3 comprehensive list of things that DEC would like
4 verification on.

5 We're not looking forward to having to pay any
6 more increased fees to get our permits, or the cost of
7 doing business goes up because now we have to fly DEC
8 out. And, primarily, you're not going to get -- we're
9 not on the road system, so you're not going to easily
10 get to a place where you're going to do a verification
11 of paperwork.

12 So, I do believe that many of my members want
13 the alternative compliance; and then, because of the
14 alternative compliance component, DEC is going to have
15 to have the authority to verify and inspect. But I do
16 hope that there's some very well coordinated effort
17 amongst DEC personnel and with Coast Guard because, as
18 you've heard all along, we're an animal of a different
19 color and it's going to be, you know, it's just not
20 going to be able to be handled the same way that you've
21 been able to handle other vessels.

22 BRIAN ROGERS: Before I go to Scott, Eric and
23 Charlotte, let me ask if anyone objects to 18 with a
24 substitution of the word "verify" for "inspect." Are
25 there any objections from members of the Task Force?

1 Stephanie?

2 STEPHANIE MADSEN: I'm not objecting, but I
3 would like to know where it would be appropriate my
4 request that the State require a vessel owner simply
5 certify the federal requirements, and not adopt the
6 federal requirements. And I go back to our minutes,
7 Contingency Plan Work Group, there was two ways that we
8 could do it and that that decision was going to be made
9 on November 6.

10 JUDY ERICKSON: Stephanie, that's on the
11 agenda.

12 STEPHANIE MADSEN: Oh, that is later?

13 JUDY ERICKSON: Under prevention.

14 STEPHANIE MADSEN: Okay, thank you.

15 BRIAN ROGERS: That's right. That's under the
16 prevention portion.

17 STEPHANIE MADSEN: Okay.

18 BRIAN ROGERS: Is there objection to adoption
19 of 18 with the substitution of "verify"?

20 HEATHER McCARTY: I don't object. I just want
21 to ask a question.

22 BRIAN ROGERS: Okay, go ahead.

23 HEATHER McCARTY: Larry mentioned that he might
24 include the inspection for voluntary prevention measures
25 in this place as well. Should we put that in, or should

1 we wait until we've talked about the prevention stuff?

2 BRIAN ROGERS: That would come under the
3 prevention, because we don't know if they're going to be
4 prevention measures, voluntary prevention measures, or
5 not, so that's all under the prevention discussion. And
6 should that happen, we might amend this or we have a
7 separate thing on inspection for prevention purposes.

8 JUDY ERICKSON: Brian, would you just read the
9 way the recommendation is.

10 BRIAN ROGERS: It would read: DEC authority to
11 verify. The Task Force recommends legislation to give
12 DEC statutory authority to verify nontank vessel C-plan
13 compliance.

14 Commissioner.

15 COMMISSIONER MICHELE BROWN: I don't have any
16 objection to that, but I do think when it comes back to
17 turning the whole document over to drafters, what
18 they're going say is the easiest thing is to go into
19 26.04.060, which is what it says, in all oil programs
20 DEC has the authority to inspect for any provisions of
21 law. And what's missing in there is the word "nontank."
22 Every other kind of facility is covered. So the
23 drafters are most likely to say the easiest way to
24 provide that verification is to insert it in that
25 section. So it may, the word "inspection" may come up

1 again.

2 BRIAN ROGERS: Further discussion? Is 18
3 approved as changed? Eighteen's adopted.

4 Which brings us to 19. Drills. The drills, I
5 think the issue -- I had questions from primary response
6 action cooperatives, contractors, about the drill
7 schedule. Also had a suggestion for a slightly
8 different schedule on this. I'm not sure where the
9 group wants to go with number 19 as it stands now.

10 Heather.

11 HEATHER McCARTY: Maybe we could hear from the
12 people who made those suggestions.

13 BRIAN ROGERS: Does anyone want to suggest an
14 alternative on 19? It may that be the question -- that
15 from the time this was stricken from the consent agenda
16 till 3:30 this afternoon, that the questions were
17 answered and there's no longer an objection.

18 STEPHANIE MADSEN: Mr. Chairman.

19 BRIAN ROGERS: Stephanie.

20 STEPHANIE MADSEN: My understanding is that
21 number 19 reflects the work that the Contingency Plan
22 Work Group did, and we worked out -- this reflects what
23 the C-plan Work Group did.

24 BRIAN ROGERS: Correct.

25 STEPHANIE MADSEN: And I guess I was absent

1 this morning to know who requested this to come off the
2 consent agenda, but --

3 BRIAN ROGERS: Well, questions were raised by
4 Bob Heavilin in a phone conversation, and then DEC had
5 some questions, but I think those both of those
6 questions may have been resolved.

7 Bob?

8 BOB HEAVILIN: I'll have to think about what my
9 question was when I talked to you on the phone.

10 BRIAN ROGERS: Your question was --

11 BOB HEAVILIN: Exclusively?

12 BRIAN ROGERS: -- this idea of a spill response
13 cooperative that provides services exclusively to
14 nontank vessels.

15 BOB HEAVILIN: Right.

16 BRIAN ROGERS: A hypothetical new co-op,
17 because the existing co-ops are drilled as part of the
18 RP drill. In this case, you don't have RP drills and so
19 there would be no way to drill a PRAC that was -- a
20 cooperative that was only providing to nontank. This
21 was to try to make sure there wasn't a loophole that
22 allowed somebody to come in and not ever get drilled.

23 BOB HEAVILIN: I suppose I agree with that. I
24 just don't know if by opening that up to where DEC then
25 would have that authority to start drilling those folks,

1 is where I would want to see it go.

2 I guess the other thing, too, is on the first
3 sentence there, on the explanation, spill drills are
4 currently conducted in the tank vessel regulated
5 community for responsible parties. And that probably
6 should read for plan holders.

7 BRIAN ROGERS: Yes.

8 BOB HEAVILIN: You're not an RP until you have
9 a spill.

10 BRIAN ROGERS: Right. In the description, plan
11 holders would be more accurate than responsible parties.

12 Is there any objection to adoption of
13 recommendation 19?

14 RICK HARRIS: What was the change?

15 BRIAN ROGERS: In the first sentence after the
16 bullet. It's for plan holders.

17 Is there an objection to 19?

18 LEE EGLAND: Just a question. I'm sorry. The
19 sentence here where we talk -- and I'm not sure -- if
20 the idea is we're trying get to the PRAC that is doing
21 some exclusive response contracts for the nontank
22 vessel, I mean, why limit this to a co-op? Why don't
23 you just put recommends that a PRAC provide services, so
24 it covers anybody and everybody, right? Otherwise,
25 you've just got this, two different organizations, so

1 it's a PRAC that provides exclusive services; now you've
2 caught them all.

3 BRIAN ROGERS: Is that a better wording? Does
4 anybody object to that? I think that was the intent of
5 the group.

6 Yes, Heather.

7 HEATHER McCARTY: I just have a question. Does
8 that last sentence refer to tabletop drills or a full
9 actual deployment.

10 BRIAN ROGERS: Full deployment.

11 If there's no objection to 19, with the
12 substitution of "PRAC" for "spill response
13 cooperatives," we've set a record for getting one of
14 these done today, and maybe that's good for the rest of
15 the day. Is there an objection? Hearing none, we're
16 okay on 19.

17 That brings us to the six issues that have been
18 identified as issues. And I guess the question I would
19 have for the group is, do you want those dealt with now,
20 under the items removed from the consent agenda, or on
21 the discussion and action on unresolved issues? We can
22 do it in either place.

23 CHARLOTTE MacCAY: Now.

24 BRIAN ROGERS: Now? Okay. Any objection to
25 now?

1 Okay, the issue of defining capacity. This is
2 the one that came up earlier today, and what do you do
3 if the capacity is something other than the fuel
4 capacity of the vessel. Does anyone have a
5 recommendation that they'd like to try to float on the
6 issue of defining capacity? Yes?

7 JOHN HANSEN: I do. Since I was the one who
8 raised the issue this morning and opened that Pandora's
9 box, let me throw out some words that we can then
10 discuss. And I'll just read what I've written here:
11 The maximum operating capacity is defined as the total
12 fuel tankage of the vessel or the actual fuel volume
13 that the vessel will not exceed while in Alaska waters.
14 And then we could add, certified by the vessel owner and
15 approved by DEC.

16 So, what I'm basically saying is that we have
17 two options. One, go for the full tankage option
18 according to the ship specs, or go for the option where
19 you will not exceed a certain amount. And that amount
20 would be the defined maximum operating capacity. And
21 the owner would commit that that would not be exceeded
22 over some time frame, and it would be subject to some
23 kind of approval process, verification by DEC.

24 BRIAN ROGERS: Comments on that proposal?
25 Captain Page.

1 CAPTAIN ED PAGE: I guess the only comment,
2 Captain O'Hara brought up before, and said that -- I
3 guess I'm assuming that approval process entails not
4 just validation that that's really all they're going to
5 carry, but also takes into consideration some of the
6 safety issues that we had mentioned earlier, so you're
7 not suddenly bringing it so low that now they don't have
8 the reserve fuel capacity that would cause some other
9 problems. I'm just assuming that. Without having the
10 safety word in there, I guess without some extra
11 verbiage that goes into the safety considerations. I
12 think we understand that and that's kind of what that
13 approval means. So if someone says, well, we're just
14 going to run on vapors and keep the fuel down and coast
15 into Juneau and out of Alaska waters. I would expect
16 that 99.99 percent of the time that operator is going to
17 take that into consideration and do the right thing, but
18 if they're trying to save a couple bucks, they might
19 push the envelope a little.

20 Mike, is that kind of how you see it?

21 MIKE O'HARA: Yeah, that's pretty much, safety
22 aspect.

23 This is O'Hara. This is again for the spot
24 folks, because the line hauls know the weather and they
25 know how much fuel they're going to use. I mean, they

1 know all this stuff. But a foreign ship, foreign
2 master, is not aware of what goes on in Alaska. And
3 running into the ice in the winter. So -- I think --
4 and also, it seems so me that if you use the actual fuel
5 volume, your ship will be delayed up by Adak. So I
6 think, I would guess that you'd have to go by maximum
7 operating capability, or capacity, unless you've got a
8 lot of time to wait.

9 CAPTAIN ED PAGE: But then again, if they run
10 out of fuel, at least they're not a pollution threat
11 anymore.

12 RICK HARRIS: I'm glad you said that.

13 CAPTAIN ED PAGE: There are some other issues,
14 too.

15 BRIAN ROGERS: Scott Carter.

16 SCOTT CARTER: This is Scott Carter. Like I
17 stated earlier on this topic, I don't see that this is
18 going to be a big problem with the spot charter
19 industry. Three quarters of the time the ship is not in
20 port anyway and don't have any chance to change any fuel
21 status on board. So they're going to come in with what
22 they have and that's it, so I don't think that's a
23 concern.

24 CAPTAIN ED PAGE: I think it's only the liners,
25 who are really the biggest, that push the threshold up,

1 and they can easily -- they'll make a smart decision on
2 that.

3 BRIAN ROGERS: Jeff.

4 JEFF THOMPSON: Yeah, just as Captain Page was
5 saying. In the instance of Dutch Harbor, we have just a
6 few ships that really push the standard far beyond what
7 the average is. And in the case of the language that
8 John's proposing, it would be appropriate to take that
9 upper standard and look at what it is really in order to
10 get a very accurate assessment. Because working with
11 whatever co-ops and whoever else is going to be involved
12 in spill response out there, we need to have an accurate
13 number that reflects more the reality of the situation.

14 BRIAN ROGERS: Larry.

15 LARRY DIETRICK: Yeah, I'd be interested in the
16 verification system. I mean, this is one where the
17 State's had experience, it's not worked well, and as a
18 result has gone to this concept since '90. And the
19 threshold to -- the verification threshold that's been
20 accepted to date has been to mechanically isolate the
21 capacity of the tank. That's the way it runs right now.
22 And that's accepted.

23 Now, if we're not doing that, then I would just
24 ask the group, then, how do you expect the department to
25 verify that, if you want to maintain a level playing

1 field for all operators and not have a huge -- I mean,
2 because the population of boats here is much higher to
3 the verification issue here if people are going to
4 report fuel, is not something that's -- number one, how
5 do we do it; and number two, what would you expect as a
6 frequency?

7 BRIAN ROGERS: Senator Pearce.

8 SENATOR DRUE PEARCE: Larry, if you think of
9 the two, the C-10s going in and out of Dutch Harbor,
10 let's say you mutually agree with them that in the long
11 length of time between now and when this is going to go
12 into effect that you take actuals of every time they
13 come in, which is on a regular basis, how much fuel have
14 they actually got in the tanks -- and we know that gets
15 reported to somebody already. And then you take
16 whatever that number is over the -- over an analyzed
17 period, so you've got all seasons somehow, and you, I
18 don't know, add 5 percent, you know, put a little bit.
19 And then they certify to you that they're going to come
20 in with not more than that amount of fuel. If they do
21 come in with more than that amount of fuel, later on
22 down the road, and they have an event and they spill
23 more and they weren't prepared, guess what? It's going
24 to cost them a whole bunch. So, one would think that
25 there would be kind of a self-enforcing. I can't see

1 either of the companies we're talking about wanting to
2 take on the additional liability of throwing on more
3 fuel than they said they would, than they're ready to
4 deal with.

5 So, couldn't we -- wouldn't you think that
6 you'd be able to work out, since we do have a long lead
7 time, some sort of a way to come up with a mutually
8 acceptable volume it uses to drive the planning
9 standard -- and I'm only talking about Dutch Harbor --
10 to drive it for that region? Those are the two
11 aberrations.

12 BRIAN ROGERS: Larry.

13 LARRY DIETRICK: I mean, the idea of reducing
14 the volume of fuel on board is good, because that's the
15 way you mitigate the damage to the environment. You
16 change the risk of a spill occurring and you reduce the
17 volume that can be spilled. And that's definitely --

18 SENATOR DRUE PEARCE: Well, I'm not trying to
19 get them to reduce. I'm trying to get them to be able
20 to tell you what their true amount is.

21 LARRY DIETRICK: Well, right, but by reducing
22 that volume, I mean, going with actuals as opposed to
23 the maximum capacity, they're more reducing the volume
24 that could be spilled potentially.

25 SENATOR DRUE PEARCE: Yeah.

1 LARRY DIETRICK: And the system that can be --
2 the system that we would use to verify that, I guess,
3 yeah, I think that's something that can be worked out.
4 It's not something we're using anywhere else in the
5 state right now, so I just want to make sure everybody
6 understands that. And if you want a level playing
7 field, then what -- you know, and we want a verification
8 system, what is it going to look like, what is it going
9 to be like, or do we want to not have one? I mean, not
10 having one is also an option, I suppose.

11 I mean, working with them and establishing
12 those numbers on actuals, getting it certified by the
13 ship agent, having that forwarded to us, are all
14 possibilities. In the end, usually you need to have
15 some capability to spot check to maintain the
16 integrity --

17 SENATOR DRUE PEARCE: Sure.

18 LARRY DIETRICK: -- of a system on that scale.
19 But open to ideas.

20 SENATOR DRUE PEARCE: Two big issues that seem
21 to drive this discussion. One is Dutch Harbor and those
22 two lines of huge vessels that drive something beyond
23 anybody else's capacity. And then the second one is the
24 spot charter question, and what I'm talking about
25 doesn't fit their question.

1 LARRY DIETRICK: Uh-huh.

2 SENATOR DRUE PEARCE: But I was trying to deal
3 with one thing at a time.

4 LARRY DIETRICK: Yeah.

5 BRIAN ROGERS: Okay. I have Jeff, Eric,
6 Charlotte, Rick, Captain O'Hara on this issue. But I
7 have a question, and that is my assumption is that we're
8 dealing with anything in this certified by owner and
9 approved by DEC. We're not talking about the five-day
10 turnaround on something like that. Which means that
11 this doesn't work, that this would not be in effect for
12 a spot charter, because there's no way -- I mean, DEC
13 has said we can do 15 days, we can't do five days,
14 except on something that is very routine. Something
15 like this is nonroutine. That's all the discussion, and
16 everyone accepted those time lines. So, I guess the one
17 issue I'd raise here is, this really doesn't apply to
18 spot charters. You're only dealing with the regular
19 carriers on this.

20 SENATOR DRUE PEARCE: The cruise ships --

21 BRIAN ROGERS: The cruise ships, yes.

22 SENATOR DRUE PEARCE: Except they may already
23 have an agreement beyond this, because they've already
24 got all those tanks down there. APL and (inaudible).

25 BRIAN ROGERS: Because the discussion of

1 regulatory time lines, basically, DEC has committed to a
2 five-day turn turnaround on routine matters, and
3 anything that is alternative compliance or an
4 alternative to the basic formula, they said 15, or 45 to
5 90, depending on the issue. And so, a spot charter, at
6 least under the discussion that was in that group, was
7 something that we needed five-day turnaround on, and
8 therefore it would have to be the routine matter and not
9 something that is an alternative compliance. At least
10 that was something accepted by that work group, and
11 we've already adopted those time lines. And so, when we
12 put something in here, you know, unless you are
13 reopening those time lines --

14 CAPTAIN ED PAGE: If I could just add, that
15 works fine because the spot charters don't really have
16 the huge fuel amounts. It's the cruise ships and the
17 liner containment ships that carry the most oil. I
18 think that works fine.

19 BRIAN ROGERS: I may have opened up another can
20 of worms here and extended the discussion myself, so I'm
21 sorry. I've got Jeff, Eric, Charlotte, Rick and Captain
22 O'Hara. Have I missed anybody that is seeking the
23 floor? If not, Jeff.

24 JEFF THOMPSON: I was just going to allude to
25 my earlier comment in regards to the vital statistic of

1 fuel on board a vessel at any given time is a very
2 important primary statistic. And although I appreciate
3 the fact that verification independently is really
4 necessary, it's the purview of the chief engineer aboard
5 most vessels that the amount of fuel on board is very
6 accurately known at all times, for some obvious reasons.
7 Operating class being a primary one.

8 So, I like Senator Pearce's suggestion that
9 with the cooperation of APL and NOL, their parent
10 company, and we can -- in Dutch Harbor within the next
11 year, have the chief engineers, as they call, report
12 through their office what their quantity is on board,
13 what they've burned to get to Dutch Harbor, what they
14 have on board. We can get a really good idea as to what
15 that is. Because it's going to be consistent, because
16 again, as Captain Page pointed out, it's a liner trade,
17 and much like the cruise ships in Southeast, it's a
18 known route on a known schedule, and therefore the
19 amount of fuel required is known. And these vessels
20 generally will plan to bunker in the most cost-effective
21 place. I'm not sure where that is. But at some point
22 in their cycle, they're in Dutch Harbor with a certain
23 amount of oil. And it could be less than half of what
24 their capacity is, very easily. So this is what we need
25 to establish because it really would make a big

1 difference in that region. And I think we have time to
2 do that.

3 BRIAN ROGERS: Eric.

4 ERIC BRITTEN: Well, just following up on what
5 Senator Pearce was talking about. Not only do we have a
6 chance to measure what's in the vessels when they are in
7 Dutch Harbor but, as Jeff said, it's all a matter of
8 record. You can go back as far as you want to go. And
9 what then the actual measurements would do is simply
10 confirm that those are close to right on. And the only
11 thing that would ever change that is change of class of
12 vessel that calls in Dutch Harbor. And certainly that's
13 something that everybody's concerned about. So, yeah.

14 BRIAN ROGERS: Charlotte.

15 CHARLOTTE MacCAY: On the issue of this
16 verification, I think if the owner is certifying it,
17 that's a whole different level of violation if you get
18 into it. I mean, that would be fraud, knowingly
19 misrepresenting documents. The temptation to do that is
20 not very high. I mean, the tradeoff of what you get to
21 knowingly violate records I don't see being there, so I
22 don't think you have a big risk there.

23 But I do think that the concept can go, and I
24 think you could still recommend, so we get through the
25 day, a work group that figures out how to get DEC

1 comfortable with verification and how it goes through
2 the approval process. Because I don't know, but perhaps
3 in a spot charter, if you go through the records you'll
4 see that you've never, ever exceeded 75 percent fuel
5 capacity, or whatever. And maybe there is a simple way
6 that, in your approval process for your shell plan,
7 which isn't going to go after your 15-day process,
8 probably -- maybe, maybe not -- that you could still
9 have the vessels coming in if they certify. And I hate
10 to close the door on that, but I hate to waste today
11 beating it around the table.

12 So, knowing there's a risk that we may or may
13 not fall out of it, I still think it's worth passing the
14 concept and then letting a work group work out the
15 details of verification and approval and who is likely
16 to fall in or fall out.

17 BRIAN ROGERS: We don't have any work group
18 meetings scheduled, so that would involve, what you're
19 saying is set up a new work group to deal with that?

20 CHARLOTTE MacCAY: A small work group, whether
21 it's with or without this process. Whether it falls
22 after this process or during this process.

23 BRIAN ROGERS: Rick.

24 RICK HARRIS: I think I don't need to say much.
25 I concur with what Charlotte said, and I still think

1 that this is a statement that can apply both to tank and
2 nontank vessels and still meet the schedule. I think it
3 is possible to go back and look at what is the record or
4 the history of fuel that's on board spot charter vessels
5 coming into the area, and we can begin to develop a plan
6 that sets a threshold that then really sets what
7 equipment you need to have. I mean, that's what this is
8 about, is trying to determine what equipment. And if
9 you see these vessels always coming in and they're
10 always at 60 percent or 70 percent of capacity but never
11 go above that, then we should be able to say that's the
12 threshold and that's the equipment requirement that they
13 have to have.

14 I gave Senator Pearce just a -- I went and I
15 said, Paul, how much fuel do we have on a vessel, so,
16 you know, he was able to call very quickly. I know what
17 their capacity is, and how much is persistent and how
18 much is nonpersistent, and, you know, how much they've
19 got on vessel -- or on board. So, all we have to do is
20 go back to those records and we can figure that out, and
21 I think we can develop a strategy that would work.

22 So, I don't know that we need to create another
23 work group, but what I would suggest, as I had said at
24 the beginning, is that in your C-plan if you want to
25 plan for something less than maximum capacity of the

1 total vessel, you can do that at that point in time, and
2 then you go to DEC and work it out. You know, so if I
3 have -- if I can go into the vessels that I charter and
4 I can show that every year, you know, we're never more
5 than 60 percent of vessel capacity, this amount of
6 gallons, then I can put that right into my C-plan, it
7 becomes part of the generic C-plan, and I have to tell
8 them if I have a vessel coming in that's more capacity
9 than that. It's a simple question. You're coming in,
10 do you have more fuel on board than this? And if you
11 do, then I have to let Larry know and we've got to take
12 care of that problem by making sure that I've got enough
13 equipment to meet that response requirement. So what I
14 would do is immediately run over to SEAPRO or someone
15 and say, I need to make sure I've got more equipment
16 available, they can say you've got the equipment
17 available, and we go ahead.

18 BRIAN ROGERS: I guess that brings us back to
19 the issue of time lines. And the time lines that were
20 there earlier, that would be not -- that would be an
21 amendment to a C-plan, which under the time lines we
22 adopted earlier today would be a 45-day turnaround.

23 RICK HARRIS: I'm not sure that I would call
24 that a material or significant amendment to a C-plan. I
25 mean, I have a C-plan that says here's a capacity. If I

1 have a vessel that comes in and it's, you know, 500
2 barrels or 200 barrels over that capacity, and I can
3 come to them and say I'm over the capacity by that
4 amount and, by the way, I have that amount of additional
5 equipment available to me, and I can attest to both of
6 those things in one statement, I don't think that's a
7 material modification of a C-plan. If I was going to
8 bring in a new IMT or a new co-op or something like
9 that, I would say that's modification. But I view this
10 as a fairly minor adjustment, as long as I have a
11 solution.

12 BRIAN ROGERS: Captain O'Hara and then Lee
13 Egland.

14 MIKE O'HARA: Yeah, addressing Larry's comment
15 about blocking off a tank. As a sailor, I would
16 strongly not support that. The ship's crew uses the
17 fuel as ballast, shift from tank to tank for stresses
18 and for draft, air draft, et cetera, et cetera. So,
19 it's something that would just destroy some of the
20 capability of the ship. Over.

21 BRIAN ROGERS: Lee Egland and then Jeff.

22 JEFF THOMPSON: Class wouldn't allow it anyway,
23 Mike.

24 LEE EGLAND: Yeah, Lee Egland here. I'm not
25 sure, I think we're getting hung up on this DEC

1 approval. You know, from a tank barge industry
2 standpoint, we turn in the contingency plan that's got
3 all this information in it, for which there's a
4 statement in there that said here's the maximum
5 operating capacity. DEC, before they approve a plan,
6 don't come out to our barge and verify that that is the
7 capacity. That's why I don't understand -- maybe I'm
8 misunderstanding this issue relative to time lines and
9 approval.

10 I like the wording that John's come up with. I
11 mean, basically you're going to turn in your plan, it's
12 going to have a quantity in it, and DEC is just going to
13 take that at face value with a certifying statement that
14 everything in that plan is correct. Right? The
15 verification comes when they go out to -- you don't like
16 to use the "inspect" -- to verify the contents of the
17 plan. All right? So, again, I think it's -- when you
18 turn in your plan, you confirm just like a tank barge
19 does now, just like a tanker does today, that they have
20 X amount of capacity that they're operating, and then
21 their RPS is based on that number.

22 BRIAN ROGERS: We've been operating for a
23 period of time, and I made an error in forgetting that
24 in order that this be part of the record, we're
25 transcribing everything, and our transcriber needs a

1 break. She's been full at it for as long as we've been
2 talking. So we're going to take a ten-minute break.

3 (Short recess taken.)

4 BRIAN ROGERS: If people will take their seats,
5 let's go here.

6 We're on agenda item five of ten. Item 26 of
7 31. I had a number of requests that we not work all
8 night, including from the Legislative Information
9 Office. And so, what -- and we do want to try to finish
10 today. If we don't, we will have to take some time and
11 figure out when to have a follow-up meeting to this.
12 And since everyone was noticed that we could go into the
13 evening, what I'd like to do is set an absolute go home
14 time of 7:00; and at 6:45, if we're not through the
15 agenda, we'll switch to a discussion of logistics from
16 that point on, and not take a -- not have -- we will
17 have a couple, at least two breaks between now and then,
18 so as to not -- so as to be able to have a continued
19 transcript of the meeting. I appreciate what Kim is
20 doing here, and I know that when we get to the point of
21 the legislative and administrative regulatory process,
22 having a record of this meeting is going to be useful to
23 us.

24 We have a proposed definition of the maximum
25 operating capacity. Just a note. That would apply

1 to -- that would drive the numbers on the cleanup. It
2 would not drive the numbers on containment, drive
3 anything on containment and controls, since that is
4 already laid out in the statute. The statute says the
5 RPS is 15 percent of the maximum capacity for
6 containment and control. So this is only affecting the
7 storage -- the skimming and storage requirement, in
8 terms of being a cost driver. But it is a fairly
9 significant issue, as several have noted, on the
10 containment and control. Excuse me. On the cleanup.

11 Does anyone have an objection at this point to
12 adopting the maximum operating capacity language for the
13 purpose of determining the cleanup requirement? Gene?

14 GENE BURDEN: If this has been discussed a lot,
15 I'll refrain from any question. I don't know, has this
16 already been hashed?

17 MIKE O'HARA: Oh, yeah.

18 RICK HARRIS: Where do you want to start?

19 GENE BURDEN: Just, not the merits of this but
20 I'm just questioning of how does DEC approve this? Has
21 this already been discussed? I'll withdraw the
22 question. It's already been.

23 BRIAN ROGERS: Commissioner.

24 COMMISSIONER MICHELE BROWN: Just to sum it up
25 for Gene, and just to make sure it's clear. You know,