

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672
2836 SCOMM 123 TASK FORCE ON MOTORIZED OIL TRANSPORT, 2000

1 this is conceivable and doable, but it will have
2 implications on issues, the turnaround time, and
3 certainly going to have implications in the cost of
4 running a whole program. And at some point when we ask
5 ourselves how we pay for the program, is it worth a
6 whole lot more cost to save what may be not a whole lot
7 of money in the long run?

8 So, just so that's on record, that we may -- we
9 don't know that there's going to be a real financial
10 gain from this versus the cost it's going to take to go
11 down -- go down the steps it takes to figure out how DEC
12 will verify this.

13 BRIAN ROGERS: Are you ready to adopt this as
14 the recommendation number 26?

15 Okay. Number 27 is the issue of use of onboard
16 storage. Charlotte.

17 CHARLOTTE MacCAY: Having been, I think, the
18 one who raised it, I don't have a need to push it any
19 further. I can drop it. If anybody else wants to keep
20 it, that's another issue, but I think it's droppable,
21 myself.

22 BRIAN ROGERS: Anyone want to keep going on
23 onboard storage?

24 CAPTAIN ED PAGE: Charlotte for president.

25 BRIAN ROGERS: ICS training. This one was

1 suggested that we have a recommendation concerning
2 provision of ICS training to plan holders. Do we need
a -- does anyone want to craft a recommendation to that
4 effect? Does anyone want to propose that we -- Gene?

5 GENE BURDEN: I sort of made a recommendation
6 that the Department of Environmental Conservation and
7 the U.S. Coast Guard collaborate -- I don't know if the
8 Coast Guard should be involved in this since it's a
9 state program, but --

10 CAPTAIN ED PAGE: Use us.

11 GENE BURDEN: That DEC develop and offer at
12 least a couple of training programs on contingency plan
13 preparation and ICS. And the relationship of ICS to the
14 contingency plan.

15 BRIAN ROGERS: Okay. So, the recommendation,
16 DEC develop and offer training programs on contingency
17 planning and an incident command system? Discussion?

18 LARRY DIETRICK: Point of information. There's
19 a number of these that are already available and they're
20 already freebies that are ongoing. There's another
21 sister agency that gets grant money from the federal
22 government to do broad-based training in ICS, for
23 communities, municipalities, anything. So there's
24 already a calendar for these right now that we could tap
25 into.

1 BRIAN ROGERS: Charlotte?

2 CHARLOTTE MacCAY: Maybe you could list those
3 on the web page?

4 LARRY DIETRICK: On the Task Force web page?

5 CHARLOTTE MacCAY: Uh-huh.

6 LARRY DIETRICK: We'll research that and see --
7 I'll get their calendar and put it up, we can do that.

8 GENE BURDEN: So, Larry, you charge a thousand
9 dollars a head to help cover program expenses?

10 LARRY DIETRICK: It's for the verification
11 program.

12 BRIAN ROGERS: Is there objection to -- is
13 28 -- are we saying DEC should develop and offer, or are
14 we saying that DEC should develop and offer or indicate
15 where training programs are available?

16 GENE BURDEN: Just from my perspective -- and I
17 don't know how the rest of the group feels -- I think
18 DEC should actively participate in helping train folks
19 who have never participated in this activity, and what
20 ICS is, and what some of the basics are to contingency
21 planning. I think that would be a great service to help
22 get this off on the right foot.

23 LARRY DIETRICK: No problem.

24 BRIAN ROGERS: Eric?

25 ERIC BRITTEN: If we just changed a word or

1 two, we could just have DEC ensure that there are
2 training programs available. That way if they're
3 available through other alternate -- you know, through
4 other sources, we get Larry off the hook again.

5 BRIAN ROGERS: Is that acceptable to the --

6 GENE BURDEN: I don't know whether we want to
7 get Larry off the hook.

8 LARRY DIETRICK: Twenty-two of them will be in
9 Seattle.

10 BRIAN ROGERS: DEC's ensuring availability in
11 Alaska of training programs on C-planning and ICS for
12 nontank vessels. Is there objection? Is there an
13 objection? Hearing none, that's adopted. It won't be
14 number 28 later on, because we skipped the 27.

15 We're now to 29 and 31. And 29 and 31 are the
16 issue of, first, I think Larry stated that there is
17 consensus that an IMT is a -- is a PRAC. And then the
18 issue here is, is this -- does this require statutory
19 change, or not? And is that something that the Task
20 Force wishes to address, or that the Task Force is
21 willing to leave to the drafters of legislation?

22 And, Charlotte, this is your issue, I believe.

23 CHARLOTTE MacCAY: Uh-huh. Sorry, I can't pull
24 this one.

25 CAPTAIN ED PAGE: You're off the ballot.

1 CHARLOTTE MacCAY: Yeah. That's all right.

2 I guess we would like to recommend that the
3 statutory support, which would be actually both 29 and
4 31 --

5 BRIAN ROGERS: Thirty-one, yeah.

6 CHARLOTTE MacCAY: -- combined, I think are
7 both basically addressing the same issue through
8 different statutes, be provided. And I don't think -- I
9 mean, I think we already established that we are
10 addressing statute a bit because we had to address it
11 for DEC, so I don't see why we can't address it here.

12 BRIAN ROGERS: Larry, and then Gene.

13 LARRY DIETRICK: Somebody said earlier, I
14 thought it had some good language for this, is to make
15 it, IMT as a PRAC, that's the consensus of the Task
16 Force, and that the statutory language be looked at and
17 changed, if necessary, down the road, after examination.

18 I mean, I think we got a dueling attorney
19 situation here, and it may be necessary to change it, it
20 may not. I mean, if we're agreeing to the concept,
21 that's what I think we should do. But in the end, to,
22 just to lock in that this attorney has the right opinion
23 or not, I'm just not sure is something we can lock into
24 or not. I mean, maybe they all need to get in a room
25 and argue it out, and whatever comes out, that we'll fix

1 the problem, I think should be acceptable.

2 BRIAN ROGERS: Charlotte?

3 CHARLOTTE MacCAY: I think I can agree with
4 most of that language if down the line can be a little
5 better defined. But I think it's not too discredited by
6 dueling attorneys. You've got several attorneys that
7 agree on the vulnerable side, and you have attorneys
8 that agree on the administrative side. And it's, I
9 think, a matter of your risk where your perception comes
10 out.

11 If it was just two of our attorneys on the
12 outside, then I'd agree that you could almost just say
13 dueling attorneys. But it's the attorneys, several
14 attorneys, that represent the people who would be taking
15 on the onus of this job, and we aren't going to get the
16 people to take on the job if their attorneys aren't
17 pulled through. And if we have to pacify them with a
18 statute change, be it necessary or not, I think that's
19 an important thing to do in order to get that structure
20 in place, or else you're going to have pandemonium when
21 it comes to spot charters.

22 BRIAN ROGERS: Gene, and then Rick.

23 GENE BURDEN: Under existing state law,
24 46.04.035, a person may apply to the department for
25 registration as oil spill primary response action

1 contractor, and the department's obligated to come up
2 with the regulations for certifying it. And for the
3 life of me, it looks like primary response action
4 contractor is awfully broad in the statute. It means a
5 person who enters into response action contract with
6 respect to release or threatened release of oil and who
7 is carrying out the contract, including for cooperative
8 organization, or maintains supply response equipment
9 materials, that enters into a response action contract
10 relating to a threatened release -- related to release
11 or threatened release of oil.

12 That was very broad, and the intent was broad
13 when that was put into the statute. So, I just -- you
14 know, I personally don't think that statute needs to be
15 tweaked to make it even broader. But the department
16 certainly has discretion to reach a determination under
17 state law as to whether or not an entity qualifies.

18 Maybe an alternative is that this group direct
19 the department or make recommendations to the department
20 and to the legislature that these organizations be
21 considered response action contractors. And that, as
22 Larry suggested, that in the event that there needs to
23 be some additional legislative tweaks, that that be
24 examined. But...

25 BRIAN ROGERS: Charlotte.

1 CHARLOTTE MacCAY: And I in no way can go back
2 and forth on the legal merits, and don't think we need
3 to go there. I'm just saying if you have a group that's
4 about to take on the onus of a job that, if they don't
5 take it on, we have pandemonium, then why don't we give
6 them whatever we need to give them, even if it's
7 redundant? I mean, does redundancy hurt us if it brings
8 them around to taking on that responsibility? And the
9 only way it can hurt us is if it does bring other people
10 in to trying to (inaudible) statute. And, again, you
11 can be very careful in how you craft the title to try to
12 control that.

13 GENE BURDEN: But that's basically my concern.
14 I mean -- and Michele wasn't -- you were with the
15 Department of Law at the time, I think, when this was --
16 567, I think. This was -- you would not believe the
17 number of hours and the number of people involved in
18 this. And you open this up, and it's -- not only all
19 the oil shippers, all the environmental groups in the
20 state, it's -- I don't know how you open this and start
21 tweaking it without having a major, major issue. So, I
22 can say I don't think -- it might not be an issue we can
23 reach consensus on, as far as making a recommendation
24 that there be a change in the statute.

25 BRIAN ROGERS: Charlotte, and then Rick, and

1 then Captain O'Hara.

2 CHARLOTTE MacCAY: And there are kind of two
3 parts to both of these. And one is a recommendation to
4 the statutory language. And the other is, is the
5 regulation itself, and defining it more clearly and more
6 explicitly and redundantly, if necessary, in the
7 regulation would help. They also want this statutory
8 language. But at a minimum I think if we can get
9 redundancy, if necessary, in the regulation, that's an
10 important aspect.

11 BRIAN ROGERS: Rick.

12 RICK HARRIS: We're right back to where we
13 started several meetings ago. We came in and said,
14 look, we want our ship's agent to have the capability to
15 perform a variety of functions relating to these
16 response actions. They told us that their lawyers
17 looked at it and said, we're concerned, we have a set of
18 liabilities that are a problem. So we said we're not
19 going to mess with this part of the statute. We're
20 going to create a totally new and separate function over
21 here, and we called it the -- what was it, something
22 facilitator.

23 CHARLOTTE MacCAY: Response planning
24 facilitator.

25 RICK HARRIS: Response planning facilitator.

1 So we weren't going to mess with any part of the
2 statute. Larry assured us that these guys are already
3 covered under this other thing, and so we dropped that
4 concept. But still, their lawyers -- and I sat and
5 listened to a teleconference and they had some very
6 compelling arguments, I'm not going to try to repeat
7 them -- said you're still potentially at risk. And I'm
8 not going to go into all the reasons why. But they said
9 you're still at risk.

10 So, we are now saying we need a statutory --
11 potentially, a statutory change. I accept Larry's
12 recommendation, is that we'll leave it open and let us
13 work through it, but maybe we should back back up and
14 create, again, the response planning facilitator and
15 give them the indemnity that we originally asked for.

16 So, our original proposal, I mean after I
17 listened to Gene, what he's telling me is our original
18 proposal was the right one and we should go back to it.
19 Which is to create a whole new category and give them
20 the indemnity that we want them to have. We all agree
21 that they're a very vital function. I don't -- nobody
22 disagrees with that. It's how do we get them inside the
23 tent, and that's all we're looking for. If it is indeed
24 that big of a problem to open up that section, then
25 let's go ahead and let's go back to where we originally

1 were, to create that facilitator position and give them
2 the indemnity.

3 So, I don't care how we go, but I'm getting a
4 little frustrated in that we're trying to tell you there
5 is a problem. We're listening to their lawyers and
6 they're saying it's a problem. We're prepared to accept
7 Larry's recommendation, which is, in this group, to say
8 we understand that there's a complexity there and we
9 need to make sure that we work that indemnity out. It
10 requires some more legal work. I'm not going to allow
11 it to go to the attorney general's office to draft it,
12 and then -- or the legislative drafting people, to draft
13 it, because I'm afraid of what the response or the, you
14 know, the outcome would be. I think that there's still
15 some working together that has to come.

16 Now, the only reason I'm saying that I'm afraid
17 of putting it in there, because they haven't been part
18 of this discussion. They're going to draft something
19 and all of a sudden, as Charlotte said, we're going to
20 leave, think we've got the ship's agents involved in
21 this and they're in the tent, and all of a sudden we're
22 going to find out they're not. And that's going to be
23 way too late then. We're going to be back chewing this
24 again.

25 So, I'm kind of passionate about this piece,

1 because we've tried to work around it, we didn't want to
2 mess with the existing stuff, we created a new set,
3 everybody said, you don't need to do that, you're all
4 covered under this. But we can't convince their lawyers
5 that they indeed are adequately covered. So either we
6 need to change this one, we need to go back to the old
7 proposal, or give ourselves some more time for the legal
8 people to work together and see if they can't come up
9 with a solution that satisfies everybody.

10 BRIAN ROGERS: I just note that this morning
11 you did adopt recommendation 12, which is the response
12 plan facilitator.

13 RICK HARRIS: Right, which is part of it. But
14 we didn't adopt the indemnity language or the immunity
15 language that we needed. That was still left open.

16 BRIAN ROGERS: Okay. Just a second. I've got
17 Captain O'Hara and then Gene and then Charlotte.

18 MIKE O'HARA: I'll defer to Gene.

19 GENE BURDEN: I just suggest that the group
20 could perhaps reach consensus on a recommendation, or a
21 conclusion of the group that IMTs are response action
22 contractors under 46.04.035, and recommend that the
23 department clarify that, specifically in regulations. I
24 mean -- and I don't know what the department's reaction
25 is to that, but that -- if that was done and you had it

1 clarified in regulations, I don't know why you'd have a
2 problem with it.

3 CHARLOTTE MacCAY: Well, would be part of it --

4 BRIAN ROGERS: Charlotte.

5 CHARLOTTE MacCAY: -- but they explicitly feel
6 they have a problem if it's not further backed up by
7 statute.

8 And kind of to maybe paraphrase kind of where
9 Rick is coming from. The group looks at it as this
10 whole task force, when dealing with ships with a certain
11 commonalty, except as spot charters who have this
12 complex, problematic, kind of pesky issues going on --
13 and what we really tried to do hard is we have spent a
14 lot of organization, pulling the lawyers in from the
15 beginning so that we don't have someone, you know,
16 coming back later saying, nice idea but we're never
17 going to go along with it. And trying to bring you a
18 solution to get through this problematic subgroup that
19 you have to deal with. And we feel we've brought a
20 solution forth of what we need to ask in order it get
21 buy-in on the other side, is not only the regulatory
22 clarity but also the statutory clarity. To give them
23 the ease to do that.

24 And like I said, you know, we can go back and
25 forth all day. Is it absolutely necessary to spell it

1 out with that much specificity in statute? The parties
2 that are or are not going to step up to the plate feel
3 it is. And you can all dismiss that, but all that means
4 is they don't step up to the plate.

5 BRIAN ROGERS: If I can state where I think the
6 group is right now, is that there is -- that is a
7 consensus that an IMT is a PRAC. That everyone is
8 willing to accept at least putting that in regulation,
9 and two or three members want it placed in statute, and
10 two or three members are saying if it goes into statute,
11 that creates so many problems, we're against it. So we
12 have two or three members not accepting whether it's in
13 statute or out of statute. So, that's going to force a
14 vote, and one item that won't be a consensus item on
15 this. Whichever way you go on that, we will not achieve
16 consensus on that issue.

17 One of the things that we've looked at in terms
18 of preparing the report, to allow for the possibility
19 that this might happen, is that a discussion that Larry
20 and I had off line between the last meeting and this
21 meeting, and I'll mention it now, although I was
22 actually going to cover it on the report, would be to
23 allow members of the Task Force to submit up to two
24 pages of concurring or dissenting opinion to the Task
25 Force report, if there are issues that people feel need

1 further elaboration, in order that the report have a
2 record of what those issues may be. I just note that
3 now, because clearly on this issue, because a "yes"
4 loses some and a "no" loses some, we're not going to
5 have consensus on this.

6 CAPTAIN ED PAGE: Can I just clarify one thing?

7 BRIAN ROGERS: Yes. Captain Page.

8 CAPTAIN ED PAGE: My read on this -- this is
9 more complex than my mind can digest -- but is that the
10 definition of PRACs that applies to the oil tankers and
11 the IMTs is a little different for -- this would maybe
12 justify further definements, because an oil tanker
13 situation, the IMT is provided by the responsible party.
14 Essentially what the case is. But now we're talking
15 about nontank vessels and we're seeing an IMT might be
16 provided by someone else other than the responsible
17 party. So maybe it does warrant some definition,
18 because it's not exactly a rubber stamp of what applies
19 to the oil industry. It's a little different scenario
20 here that maybe needs clarification. I just add that.

21 BRIAN ROGERS: Senator Pearce and then Larry.

22 DRUE PEARCE: Since the -- I do vaguely
23 remember all the difficulty on this language as it
24 related to the spilling and cleaning up oil in the
25 water, perhaps we could recommend a separate section

1 that's not part of the definition that says, for
2 purposes of this chapter, for nontank vessels, an IMT
3 shall be considered a PRAC, or something. So that you
4 define -- you put it in that it will be, when you're
5 talking about nontank vessels, and not get into the
6 definition that to tank vessels and pipelines and -- I
7 mean, there's a whole bunch of stuff, pipelines and
8 other entities, that, frankly, none of us know or want
9 to remember most of those discussions. But make it a
10 separate section, line. Not part of the definition.
11 But for purposes of this -- for however it gets said.

12 By the way, somewhere along the way the
13 drafters do have to put their fingers on it because
14 there's drafting standards, whether we all like it or
15 not. So we're going to have to put up with that. But I
16 know that there's ways that you can write the language
17 to say under this section for nontank vessels, an IMT
18 will be considered a PRAC. Whatever. Does that sound
19 like a legalese?

20 CHARLOTTE MacCAY: That sounds fine.

21 BRIAN ROGERS: And a response facilitator is a
22 PRAC.

23 SENATOR DRUE PEARCE: Yeah.

24 CAPTAIN ED PAGE: If the RP is part of the IMT
25 in this case, does that still fit all right? Is that

1 all right? Essentially what you're doing is treat it
2 like a PRAC in that they're not held liable for things
3 that go wrong, is I think really the driving motivation.
4 So not take on some liability that someone else should
5 have. But like Sea-Land will probably be the IMT. In
6 the event you have a spill, that you would be the IMT,
7 but use a PRAC to do the spill response. So it's still
8 kind of a squishy thing. It's not absolute. Sometimes
9 they will be an IMT, and sometimes the PRAC will be IMT.
10 I think what you need to see is to treat the same. An
11 IMT, if it's not the responsible party, should be
12 protected from getting themselves in -- legally, a jam
13 here, be vulnerable to lawsuits. That's the intent.

14 BRIAN ROGERS: So, an IMT --

15 CAPTAIN ED PAGE: A different formula for these
16 types of vessels than there is for tankers in most
17 cases.

18 BRIAN ROGERS: This is an IMT who is not an RP,
19 an RPF who is not an RP.

20 DRUE PEARCE: Back to the -- when you're
21 talking about tankers or pipelines, the liability
22 follows the owner of the oil. When you're talking about
23 cruise ships, the liability actually follows the owner
24 of the vessel. So you really did have different things
25 that we were dealing with when we were doing those

1 definitions.

2 BRIAN ROGERS: Larry?

3 LARRY DIETRICK: Yeah. I'm just, I'm trying to
4 get the evolution. I mean, I don't know if the
5 attorneys have hit the wall on this, or not. I guess
6 that's why this kind of surprises me. I mean, the fact
7 of the matter is, what Rick was saying, we've just got
8 done off about two weeks or two and a half weeks of some
9 fairly intense interaction here on the oil response
10 planning coordinator. We were pretty far apart at the
11 beginning, and we've, I thought, gained a lot of ground
12 here. We ended up agreeing conceptually that the IMT
13 should be a PRAC, no doubt about it. And there were
14 some arguments for and against response planning
15 facilitators and whether or not creating them as a
16 separate class or just creating a whole new liability
17 scheme and people go point their finger.

18 So, there's a bunch of thought that went into
19 this with the attorneys, including meetings between the
20 attorneys. And so, this was getting narrowed down, not
21 getting more opposed. And so, I was a little surprised
22 here by an all-or-none position now, because I think
23 they're fairly close, now that we agree in concept as to
24 what needs to be done, they were actually -- my last
25 interaction with Breck on this -- and he's not here

1 now -- but they were looking at ways to fix this now.
2 And the regulatory way was one. And I didn't get
3 anything from him that he had hit the wall with the two
4 people that he was dealing with yet on this issue. I
5 mean, he has since come out with his argument, and I
6 haven't heard any counterarguments on the legal reasons
7 or the flaws in his arguments come back yet, then, that
8 would cause this yet. So, perhaps they're just not done
9 with their discussions here to agree on it, because I
10 thought they were getting closer and closer, not farther
11 and farther away.

12 BRIAN ROGERS: Charlotte.

13 CHARLOTTE MacCAY: Well, as of, you know, a few
14 days ago, I mean, basically, what the notes that the
15 lawyers have say is that while possibly there's no
16 substantive problem with these proposed statutory
17 changes, he stated he had to confer with his client,
18 DEC, to see if the agency would agree to these
19 amendments. So, basically, they were waiting on him to
20 come back and say whether or not you would support that.
21 But I think last week --

22 LARRY DIETRICK: Well, I haven't seen their
23 amendments, if they have them.

24 CHARLOTTE MacCAY: Which are the ones I've
25 proposed.

1 So, what I think, as the lawyer for the
2 shipping agents got more and more involved, they got
3 more and more adamant that they needed this. I think
4 with us nonlawyers, we're working with you, we weren't
5 as adamant. But the lawyers --

6 BRIAN ROGERS: Rick.

7 RICK HARRIS: I agree, you know, I mean, pretty
8 much with everything Larry said, and I think we're
9 probably not as far away and it's just one of these
10 things of getting all the people together in the room.
11 And I think the senator, you know, threw out a
12 suggestion, and I don't know that we need to belabor it
13 anymore, other than that we're saying here, you know,
14 the statements she made are adequate to satisfy my
15 concerns at this point. Which is it's a placeholder,
16 we're going to look at it and it's a placeholder, and we
17 can look at it, we don't mess with the sacrosanct
18 language -- and I have sacrosanct language in statute,
19 too, that I will defend to the death. I can take you to
20 a few places and show you where they are. So I
21 appreciate your being emphatic about it. And we need to
22 understand where those places are and not tread into
23 those waters. And I think the senator just kind of
24 offered a suggestion that says for this purpose over
25 here. And maybe we'll go back and look at that and say,

1 you know, that this one, and let us test the water.

2 So, I think we've got it done. In your report,
3 allow us -- you know, I mean, it's a little bit of an
4 unfinished business, which is to figure out how to best
5 resolve the issue, either regulatorily or statutorily.

6 BRIAN ROGERS: So if we say this is the intent
7 of the group, that an IMT who is not an RP is a primary
8 response action contractor, subject to the limitations
9 on liability, same with a response planning facilitator.
10 And that since we're looking at final adoption on
11 December 1, if you guys can work it out in the next 24
12 days, then it's done and it goes forward at that point.
13 Are we okay with that? Is there objection to adoption
14 of recommendation number 29 and 31? Does this deal with
15 the 31 issue as well?

16 CHARLOTTE MacCAY: Yes.

17 BRIAN ROGERS: Okay. That brings us to number
18 30, then. Number 30 was the issue of "cause or permit
19 the operation of."

20 CHARLOTTE MacCAY: And this was kind of trying
21 to define the method enforcement goes after if they do.
22 And if I'm not mistaken, they're just trying to mirror
23 the verbiage that's been used in the past with the
24 tankers, where it had said "may not operate" versus "may
25 not cause or permit the operation of." And they are

1 uncomfortable with the vagueness of "may not cause or
2 permit the operation of," and who that may be netting in
3 that they don't understand.

4 And I think they came up with, with Breck, kind
5 of on some compromise language that says a person may
6 not operate a nontank vessel within the waters of the
7 state, or cause or permit the transfer of oil to or from
8 a nontank vessel. And I think that culls out the people
9 who may have committed the operation of the ship but had
10 nothing to do with the fuel portion, or something. I'm
11 not quite sure, but the main issue there is to define
12 the net, and to say "may not cause or permit the
13 operation of" seemed awfully broad. And unusual in that
14 it's not the same language that's been used for other
15 types of vessels.

16 BRIAN ROGERS: Gene.

17 GENE BURDEN: I think that would fit real well.
18 Because under oil and oil products, shippers are jointly
19 and severally liable with the owners of the oil. That's
20 not the case in this situation. The oil is used as
21 fuel. So, if you're shipping lumber, you shouldn't have
22 to worry about the fact that that ship's gone out and
23 has a problem and it comes back to you. So I think that
24 makes a lot of sense.

25 BRIAN ROGERS: So this would be an amendment to

1 Senate Bill 273?

2 CHARLOTTE MacCAY: This is to amend Alaska
3 Statute 46.04.055.

4 BRIAN ROGERS: Which is?

5 CHARLOTTE MacCAY: I don't know.

6 BRIAN ROGERS: That's the very first section
7 one of Senate Bill 273, nontank vessels and railroad
8 cars. A, a person may not cause or permit the operation
9 of a nontank vessel within the waters of the state, or
10 cause or permit the transfer of oil to or from a nontank
11 vessel.

12 And so what you're basically dealing with is
13 change "cause or permit to operate" in the first part of
14 that.

15 CHARLOTTE MacCAY: "May not cause or permit the
16 operation of" to --

17 BRIAN ROGERS: "Operate."

18 CHARLOTTE MacCAY: You want the words?

19 BRIAN ROGERS: Yeah.

20 CHARLOTTE MacCAY: They're really hard to
21 reach.

22 BRIAN ROGERS: May not operate a tank vessel
23 within the waters of the state, or cause or permit the
24 transfer of oil to or from -- and so the difference is
25 in the -- is change of the word "cause or permit the

1 operation of" to the word "operate" right here.

2 BRIAN ROGERS: Go ahead.

3 GENE BURDEN: I have a question about -- you
4 know, that's just a tweak on 46.04.030, which was used
5 for oil matters. But if you say "or cause or permit the
6 transfer of oil to or from," are you saying, then, that
7 if the ship pulls up at Tesoro and wants to load up with
8 fuel, we have an obligation to check their C-plan to see
9 whether or not they're intact before we load them?

10 COMMISSIONER MICHELE BROWN: You betcha.

11 GENE BURDEN: You like that.

12 BRIAN ROGERS: That's what the law says today.
13 Right now, what you have now says, a person may not
14 cause or permit the operation of a nontank vessel within
15 the waters of the state, or cause or permit the transfer
16 of oil to or from a nontank vessel unless the person has
17 furnished to the department, and the department has
18 approved, proof of financial ability to respond to
19 damages meeting the requirements.

20 GENE BURDEN: I missed that.

21 RICK HARRIS: We'd love to fuel up there,
22 but --

23 BRIAN ROGERS: No; actually, he can't do it
24 unless he's got a (inaudible).

25 GENE BURDEN: Anybody in favor of striking that

1 last part?

2 BRIAN ROGERS: Is there a recommendation --

3 GENE BURDEN: I would recommend that the
4 transfer of oil to and from --

5 BRIAN ROGERS: Is the group comfortable --
6 well, that's a separate amount. Let's deal with the
7 first one first. Is there an objection to changing that
8 first one from "cause or permit" to "operate"? Larry.

9 LARRY DIETRICK: This wasn't a question that
10 was posed to Breck, was it, on his legal? I don't know
11 if anybody has screened this to see which defined terms
12 we're messing around with here. And these are all
13 terms -- operate. A person is defined in statute. I
14 know "operate," I think, is defined in statute. But I
15 don't know, has anybody done the look-see at that to
16 see -- done the check-off on that to see what may be
17 fundamentally changed in here, or is this just a
18 wordsmithing?

19 CHARLOTTE MacCAY: Again, Breck was consulted
20 and didn't have a substantive problem with it. Just
21 needed to go back to you guys. Take my word for that.

22 LARRY DIETRICK: Because I haven't discussed
23 this -- I haven't had a chance to talk to --

24 RICK HARRIS: You need to discuss it with him,
25 but, I mean, it's our understanding that he didn't have

1 a problem with it, but you're his client so he needed to
2 go back and make sure it was okay.

3 LARRY DIETRICK: What's the substantive reason
4 for this change? Is this just a clarifying, or is there
5 something substantive here that your attorneys are
6 concerned about?

7 CHARLOTTE MacCAY: Well, you had expanded this
8 verbiage from what you've used for tankers, and no one
9 understood why you were expanding it to this bigger,
10 broader net of potential people than you have in the
11 past, and they were not comfortable with that. And you
12 don't have "cause or permit the operation of" in the
13 others.

14 GENE BURDEN: It is expanded from oil and oil
15 products ships. I mean, there is no requirement for a
16 fuel seller to have any obligation to check C-plans of a
17 ship that it sells fuel to.

18 LARRY DIETRICK: Right.

19 GENE BURDEN: This could be interpreted in that
20 fashion the way it's presently written.

21 LARRY DIETRICK: Yeah, the shoreside facility
22 can refuse to do the transfer.

23 GENE BURDEN: Yeah, but the shoreside facility
24 personnel are not going to be trained or able to
25 determine whether financial responsibility or a C-plan

1 is in place.

2 LARRY DIETRICK: And we don't want that for the
3 nontanks.

4 GENE BURDEN: I'd suggest we change -- take the
5 last sentence --

6 CHARLOTTE MacCAY: That's fine, too. We were
7 just kind of messing with more than we had to propose to
8 mess with. I don't think I have a problem with taking
9 that out. But like I said, there was no justification
10 for why you included that extra verbiage either.

11 GENE BURDEN: It was just identical to what you
12 have for oil and oil products, but with the addition of
13 the issue of transfer.

14 LARRY DIETRICK: That's simply the way it is up
15 in 030, that transfer is in there.

16 GENE BURDEN: Actually, transfer --

17 LARRY DIETRICK: Or cause or permit transfer of
18 oil to or from a tank vessel or oil barge.

19 BRIAN ROGERS: What is it under?

20 GENE BURDEN: No. It says, "person may not
21 cause or permit the operation unless the oil terminal
22 facility" --

23 LARRY DIETRICK: Under C.

24 GENE BURDEN: C. Yeah.

25 LARRY DIETRICK: "May not operate, or cause or

1 permit."

2 GENE BURDEN: Just identical language. It's
3 never been interpreted to require shoreside facilities
4 to inspect C-plans.

5 BRIAN ROGERS: And actually, it doesn't say
6 that in here. It just says the shoreside facility needs
7 financial responsibility, which it already has under the
8 tank program.

9 LARRY DIETRICK: So subtle, I don't know if
10 they're missing something or not.

11 BRIAN ROGERS: So, is there provisional
12 approval of a deletion -- of a change from "cause or
13 permit the operation of," to "operate," and a deletion
14 of "cause or permit," subject to the same 24-day final
15 determination that could change on December 1? I mean,
16 give the lawyers a little more time to work on this?

17 MIKE O'HARA: I have a question. This is
18 statutory change, right?

19 BRIAN ROGERS: Yes.

20 MIKE O'HARA: I'd be uncomfortable with
21 recommending a statutory change based on the lawyers of
22 one of the -- these are her lawyers.

23 CHARLOTTE MacCAY: Actually, they're not.

24 MIKE O'HARA: Well, whatever. I mean, they're
25 not my lawyers or Jeff's lawyers. You know, if I

1 brought a lawyer in, he could say do something else with
2 it.

3 RICK HARRIS: We've been working with Breck.
4 I'm sorry. I mean, this is language that we've gone to
5 him, and the comment that came back was he didn't have a
6 problem with the change, but he needed to check with his
7 client, DEC.

8 CHARLOTTE MacCAY: This is a change from the
9 proposed statute, not a change of an existing statute.

10 BRIAN ROGERS: No. The 273, this would be a
11 change to existing statute adopted in 273.

12 CHARLOTTE MacCAY: Never mind. I thought it
13 was a proposed.

14 BRIAN ROGERS: Further discussion?

15 LARRY DIETRICK: Well, we'll consult with
16 Breck, be glad to do that. I mean, I don't think we're
17 conceptually opposed if there's no significant
18 difference here.

19 BRIAN ROGERS: So in terms of this, what we
20 would do is write this up as a recommendation, and note
21 in the December 1st report that it has not had final
22 approval, and then we have a vote on December 1st on
23 that and either strike it from the report or leave it in
24 the report based at that time. Are you comfortable with
25 that as an approach from here? To give time -- and

1 clearly none of the lawyers are in the room, and that's
2 part of our problem here? That's one of the reasons
3 we're making as much progress as we are today.

4 MIKE O'HARA: It's already been to the AG.
5 It's already been to the AG. This wording has already
6 been to the AG, and somehow this slipped by them? This
7 is O'Hara, by the way. Slipped by them, and we're going
8 to fix them up? I don't know.

9 CHARLOTTE MacCAY: It's already been in
10 discussion with the AG for some time and they seem to be
11 in concurrence with it.

12 LARRY DIETRICK: But this isn't one of Breck's
13 questions. It wasn't added to his question and answer
14 list.

15 CHARLOTTE MacCAY: Well, no, but it also was in
16 our very first letter to the Task Force at the beginning
17 of this whole process.

18 RICK HARRIS: This isn't a new issue.

19 CHARLOTTE MacCAY: So it perhaps should have
20 been, and it's been brought back up.

21 BRIAN ROGERS: Further discussion?

22 Are we acceptable that there be a placeholder
23 in there for final decision made on December 1 on this
24 issue? Okay. That completes this section of the
25 agenda.

1 That brings us to item 6. I'm going to go real
2 quickly through this in terms of final report outlined
3 in element. You were provided today with the first
4 draft of the executive summary. I'd like to get
5 comments on that. You have, then, the bulk of the
6 report before you. That's the recommendations 1 through
7 25, and now through 31. And any others that you are yet
8 to adopt today would be in that report.

9 We also have a list of appendices that will be
10 supporting data for the report. And then finally, as
11 noted, up to two pages for any member of the Task Force
12 to submit a concurring or a dissenting opinion on the
13 issue to help lay out any issues. And, frankly, that's
14 done in the hopes that we may be able to keep consensus
15 of the group by some people pointing out some issues
16 that become part of the record.

17 The proposed timetable is that -- today's
18 Monday, the 6th -- that on Monday, the 13th, we would
19 prepare a revised draft report and get it out to all of
20 you by Monday, the 13th. That your comments and any
21 editorial suggestions and that would be due back to us
22 by the 20th, and we'd turn those around the next day.
23 We'd also have the appendices in that report.

24 To the extent that there's draft legislation,
25 we would try to have that ready by the 20th, along with

1 a memo basically describing the regulations. Comments
2 on the legislation and regulation due back the 27th. We
3 put all that together on the 29th, and have a telephone
4 conference adoption, final meeting, on the 1st of
5 December.

6 That is a fairly aggressive schedule in order
7 to meet our needs. Breck has indicated that to the
8 extent legislation is required, he can meet that. I
9 think we still need some discussion of exactly what
10 we're doing on the legislative front on today's agenda.
11 And the issue there is how are we dealing with this? Is
12 this going to be -- and I think this really requires the
13 steering committee to make some decisions between now
14 and the 20th, on legislative introduction versus
15 administrative, et cetera.

16 So there's some open issues there that really
17 require some steering committee decisions that couldn't
18 be made prior to today. But that's the draft schedule,
19 with the goal, then, on December 1, we adopt the final
20 report. Obviously, there are -- we've got one item so
21 far that could be a yes-no decision on the 1st of
22 December.

23 So with that, let me ask if there are questions
24 about the report. Charlotte.

25 CHARLOTTE MacCAY: The teleconference

1 adoption --

2 BRIAN ROGERS: Yes.

3 CHARLOTTE MacCAY: -- on December 1st. Are you
4 calling people individually at their offices?

5 BRIAN ROGERS: The plan would be to have a
6 teleconference where people come to the Legislative
7 Information Offices or they can call in.

8 CHARLOTTE MacCAY: Okay.

9 BRIAN ROGERS: It's their choice. But a
10 meeting of the group by teleconference, not necessarily
11 everybody gathering here in Anchorage.

12 Again, part of that will depend on the
13 complexity of where we end the day today and the
14 complexity of decisions that need to be made. If it's
15 fairly straightforward, there are a couple of yes-no
16 issues, that's amenable to a teleconference. If there
17 are major issues still requiring discussion, a
18 teleconference doesn't work very well with everybody at
19 multiple locations, and would have to come back here to
20 Anchorage on the 1st of December.

21 CHARLOTTE MacCAY: Okay.

22 BRIAN ROGERS: Certainly my preference, and I
23 think that is the case for several members, is that we
24 not require everyone to travel here once again on the
25 1st of December.

1 Stephanie.

2 STEPHANIE MADSEN: I know that we're under a --
3 Stephanie Madsen. I know we're under a tight time
4 frame, but, you know, certainly you recognize that,
5 although you give us seven days from the time that the
6 revised report will be coming out on the 20th, to where
7 we have to make comment by the 27th, that that's
8 Thanksgiving weekend and you're talking about three
9 workdays by the time you receive it on Monday, you have
10 Tuesday, Wednesday, and then you have the Thanksgiving
11 weekend. And for those who have constituents that are
12 not as easy to get ahold of -- and are thankful -- it's
13 going to be somewhat problematic, I think, to get good
14 comments back to you by the 27th. And I know that if
15 that date slips, then the rest of your dates are out of
16 whack. But you don't really have a seven-day review
17 period; you really have a three.

18 BRIAN ROGERS: For the draft report, actually
19 it's longer because you've already had the first draft.
20 The second draft goes out the 13th. But on the
21 legislation regulation memorandum, that's a good point.

22 GENE BURDEN: You know, the area that is
23 probably most likely to still have some tweaks or some
24 issues are the recommendations themselves. And I'm just
25 wondering if it would be possible to circulate the

1 consensus items that we've had today in pretty much
2 their final format even earlier. And if everybody has a
3 chance on that, the description of how the process went
4 and attachments and background and so forth is going to
5 be kind of secondary to --

6 BRIAN ROGERS: We've got that going out next
7 Monday, the 13th. Revised draft report on the 13th.

8 GENE BURDEN: Sorry.

9 BRIAN ROGERS: The difference on the report
10 between the 13th and the 20th is the appendices.

11 GENE BURDEN: Okay.

12 BRIAN ROGERS: The other issue is -- and I
13 guess we'll have to work with the steering committee,
14 the Department of Law, and legal, on whether we can
15 advance the draft legislation and regulations memorandum
16 to try to get that out a little bit earlier than the
17 20th. We were trying to sequence work in a way, and I
18 think Stephanie's raised a good point on that. Larry?

19 LARRY DIETRICK: Well, I'm the first one that
20 does not want to violate the December 1st, but if the
21 review loops are important, maybe -- and it's being
22 pushed by December 1st in teleconference adoption, would
23 it make any sense to have the contingency date for the
24 teleconference adoption be at the end of that first week
25 in December, so that if the Thanksgiving and whatnot is

1 problematic -- I mean, I do appreciate, I think, what a
2 lot of folks will do at the table here, in terms of
3 having to get back to their constituents and turn this
4 stuff around. It's quite a group. But I would -- I
5 mean, if the last call is going to be optional anyhow,
6 we're going to try and avoid it anyhow. But that would
7 be a potential relief valve, then, if it came to that,
8 it would allow a little bit more time in between. Just
9 throw that out for consideration.

10 BRIAN ROGERS: We'd look at Friday, the 8th of
11 December?

12 LARRY DIETRICK: Yeah, that's a Friday. See,
13 the 1st is on a Friday, that's why that makes it
14 incredibly tough on everybody. I mean, if you just push
15 it into the next week, folks would have the benefit of
16 that weekend. The 1st is a Friday, the 4th is on a
17 Monday. Pick any day that following week, perhaps, as
18 the contingency date for a teleconference. But only if
19 it's necessary, as you've said, Brian. I don't know if
20 that would -- I'm just trying to address Stephanie's
21 concern here on tight time.

22 STEPHANIE MADSEN: Addressing Stephanie's
23 concerns only complicates it because the week of
24 December 5th is a North Pacific Management Council
25 meeting, and we've got some pretty heavy-duty issues.

1 Now, closer to the end of the week would work better,
2 but the beginning of the week will be labor intensive.

3 LARRY DIETRICK: Your time frames in here, too,
4 Brian, are pretty tight.

5 BRIAN ROGERS: I'm aware of that. I'm also
6 aware that I lose half of my facilitation team on the
7 6th, on vacation, and so -- unfortunately, not my half.
8 So I can make it work out. But we will make it work.
9 I'll figure out a way to make it work within the
10 schedule that the Task Force chooses. I think -- I do
11 think that a little more time for final review is likely
12 to yield a better result and something people are more
13 comfortable with. I'll just need to make alternate
14 arrangements for the meeting.

15 So, how long is NPMC? All week?

16 STEPHANIE MADSEN: All week, but I think
17 that --

18 BRIAN ROGERS: Friday, the 8th?

19 STEPHANIE MADSEN: -- Friday, the 8th, would
20 be --

21 BRIAN ROGERS: So we will try to reserve this
22 room for both Friday the 1st, and Friday the 8th, and
23 then see what the level of issues are and determine
24 which of those two dates. We should know by -- before
25 Thanksgiving, and we will try to, by the 20th, let you

1 know whether it will be the 1st or the 8th, if people --
2 are people comfortable leaving both of those dates as
3 possibilities, with again the goal, if we're in good
4 shape and can meet the 1st, we'll do the 1st; and if
5 there are problems that would require more extensive, we
6 would go with the 8th?

7 Okay. Contractor report, 15 minutes. We're
8 ready to move to the next item on the agenda. Railroad,
9 we've done. Report on legal issues, we've done. Which
10 brings us to discussion and action on unresolved issues.
11 We have basically the following issues. We have, under
12 the C-plan, unresolved issues. Good news. We've
13 adopted, we've dealt with IX-A-1, response planning
14 facilitator as response action contractor. We've dealt
15 with IX-A-2, a definition of a QI, because we've adopted
16 the Coast Guard -- or the CFR definition.

17 So, we have the prevention issues of adoption
18 of the mandatory requirements of state law. We have the
19 prevention credit program, voluntary measures. And then
20 the adoption of it and an implementation of it. We have
21 the Blue Star vessel award, and then we have the issue
22 of funding for the nontank vessel program.

23 I think, given that group of issues, I think it
24 would be good to take about a five- or ten-minute break
25 now and then figure we'll come in, finish all of those

1 issues in an hour, and be out of here by 6:15.

2 (Short recess taken.)

3 BRIAN ROGERS: We're back on the issue of
4 prevention and we've got a couple of issues. Everyone
5 should have received a copy of their report of the
6 Prevention Work Group, with the recommendations on the
7 nontank vessel prevention credit program. It's a
8 six-page report, titled Prevention Work Group at the
9 top. It's got a table for the Prevention Measures,
10 Weight and Applicability; Alternative Point Systems; and
11 Tax Credit and Penalty Reductions. So if you want to
12 find that, we're ready for that one.

13 The first issue was the question of adopting
14 the federal and international mandatory requirements of
15 state law. Have we addressed that issue today? Okay.
16 Stephanie.

17 STEPHANIE MADSEN: Because this is one I keep
18 coming back to, and I would be -- I would move that we
19 just require a vessel -- or the Task Force recommends
20 that the State require that a vessel -- vessel owner
21 simply certify that they meet federal requirements.
22 That would be the motion.

23 And the hope -- or my desire is, under this
24 proposal, if the State finds a vessel that's in
25 violation of a federal requirement, that because of the

1 Memorandum of Agreement, they would forward that to the
2 Coast Guard and the Coast Guard would do the
3 prosecution.

4 I am opposed to just blanket adoption of
5 federal and international law as state law. And I guess
6 I would refer to the Contingency Plan Work Group minutes
7 of the 16th and 17th where we discussed it. I recognize
8 that the Prevention Work Group didn't reach consensus on
9 this issue, but we were told that the main Task Force
10 would be dealing with it, and that's my recommendation.

11 BRIAN ROGERS: Discussion?

12 COMMISSIONER MICHELE BROWN: I have a question.

13 BRIAN ROGERS: Commissioner?

14 COMMISSIONER MICHELE BROWN: Is your concern,
15 Stephanie, with the enforcement aspect of that, or the
16 adoption of the standards? And the reason I ask is
17 because -- I mean, I think we made a decision early on,
18 if I remember correctly, not to exceed what's currently
19 in the law. But in lieu of passing our own, we would
20 just go with what's in the law now. But I think, you
21 know, should that law change, the federal law change, or
22 whatever, we may want to consider do we want some
23 prevention requirements of our own.

24 And so, I think the issue of merely certifying
25 that at one point in time kind of precludes the State

1 from ever again saying we want some different prevention
2 standards. As opposed to we're adopting these, now
3 they're our own, and they become the level at which we
4 expect everyone to play. So there's an issue of
5 adopting that in lieu of state standards, because we
6 should have some. And then there's the issue of dual
7 enforcement, which you spoke about earlier. So, is it
8 both of those?

9 STEPHANIE MADSEN: You know, I think that the
10 prevention aspect of this is going to be hard to grasp,
11 and I'm not sure -- I'm not familiar enough with the
12 federal prevention program to know if that's a good
13 thing or bad thing. So I'm not even speaking to this,
14 from my perspective, from the prevention side at all.
15 I'm talking about the dual enforcement. And my
16 understanding, to get out of that box, then by the State
17 requiring simple certification of the compliance with
18 federal and international law, and that -- you know,
19 what I just read, that if you went on board a vessel and
20 saw a violation of a federal law, you would refer that
21 to the Coast Guard. That's where I'm going on it.

22 Now, the prevention, I guess, is -- you know, I
23 can understand where you're going, that, you know, if
24 this federal law changes, that we would have to go back.
25 And from my perspective, I think that's a good thing. I

1 don't think we should automatically adopt the federal
2 law to be state law without some kind of a public
3 process and discussion.

4 So I guess if that's what you're asking me,
5 yes, I guess it's okay to, you know, look at the state
6 law and, when necessary, revise the state law for those
7 purposes.

8 BRIAN ROGERS: Just a note. Stephanie's
9 recommendation has already been adopted by the Task
10 Force in recommendation 6, which says that part of the
11 C-plan is a prevention plan stating the applicant vessel
12 complies with applicable federal and IMO requirements.
13 And recommendation 20, which says affected nontank
14 vessels must comply with applicable federal and
15 international requirements.

16 So, that level has already been adopted. The
17 only question is really -- and what Stephanie is
18 saying -- that we not go further to make them state law.

19 STEPHANIE MADSEN: Right.

20 BRIAN ROGERS: Is there a motion to make them
21 state law? If there isn't, then we're ready to go to
22 the next item on the agenda.

23 Captain O'Hara.

24 MIKE O'HARA: Eric, we put that in for a
25 reason. Do you remember what that reason was? It was

1 basically a base.

2 ERIC BRITTEN: I think basically that's what we
3 were saying, was, in the first meeting, we didn't want
4 to make state laws any more onerous than international
5 or federal laws, but we wanted to be sure that those
6 laws were lived up to.

7 MIKE O'HARA: Right.

8 COMMISSIONER MICHELE BROWN: That they meet the
9 requirements but that they not be more onerous. And I
10 think what this would -- there really aren't any state
11 requirements.

12 BRIAN ROGERS: So is there action required?

13 MIKE O'HARA: I'm certainly not going to fall
14 on my sword over it because they're required anyway.

15 BRIAN ROGERS: And a certification that they're
16 being met is already a requirement under the Task Force
17 recommendation. Larry.

18 LARRY DIETRICK: Yeah, I mean, part of the
19 discussion here, I think, was, yeah, if you make them
20 subject to state law, is a guy going to get thumped
21 twice over the head? And the answer was yes, that's the
22 whole purpose in doing it. If you don't want him
23 thumped twice, then you don't. But, I mean, what is the
24 other -- there's no other reason for doing it. Because
25 it is nothing -- it's not any new requirement. I mean,

1 the prevention measure itself we're adopting here is the
2 federal or the international requirement. So there's no
3 new requirements here. Everything else we're looking at
4 here is on the recommended side, so they're
5 nonmandatory.

6 So, the only reason you would do this would be
7 to -- and, I mean, it's the State of Alaska saying,
8 yeah, if you can't even comply with state or federal
9 law, we're really going to get mad and, yeah, we're
10 going to thump you, too. And Breck's got a legal
11 question that deals with how that would be handled.

12 BRIAN ROGERS: Heather.

13 HEATHER McCARTY: This is Heather McCarty. On
14 the Prevention Work Group, we talked about whether a
15 person could get thumped twice for the same infraction
16 or the same whatever, and we'd speculated that they
17 couldn't. And so we didn't think that was going to be a
18 problem. We decided to ask. And if the answer is yes,
19 you can, then I think that answers the question and we
20 take out the state law part of this recommendation.

21 LARRY DIETRICK: It's question number 1, if
22 you're looking for it, on Breck's legal.

23 HEATHER McCARTY: Yeah.

24 LARRY DIETRICK: And it is yes.

25 HEATHER McCARTY: Yes, I know.

1 RICK HARRIS: He said generally, though.

2 LARRY DIETRICK: Most of the time.

3 BRIAN ROGERS: There's no action pending before
4 the group, so we're ready to move on to prevention
5 credit. Let me turn to Deborah Vogt, who is on the
6 line. Deborah has written up the recommendations laid
7 out here as nine issues.

8 Deborah, if you can quickly run through these
9 and then we'll see what, if anything, the Task Force
10 wants to do on this.

11 DEBORAH VOGT: Thanks, Brian. This is Deborah
12 Vogt in Juneau. Is that volume okay?

13 BRIAN ROGERS: Yes.

14 DEBORAH VOGT: The nine recommendations on the
15 first page of this report are recommendations that came
16 from the Prevention Work Group to the Task Force, and
17 essentially they ask the Task Force to consider a
18 variety of different prevention incentive programs. The
19 work group then asked staff to develop, to flesh out how
20 a prevention incentive program might work. And Pages 2
21 through the end of this report are describing that
22 system.

23 The work group specifically asked staff to
24 review a tiered system, a three-tiered system; a
25 single-trigger system, which would entitle a person to

1 prevention incentive credits for -- if just a single
2 level of prevention measures were adopted; and a
3 specified five-measure system.

4 So staff got together -- and by staff I mean
5 myself and people from DEC, and Pat Carter from Drue
6 Pearce's set, and Paul Fuhs. And the first thing we did
7 was go through the list of prevention measures that the
8 Prevention Work Group had identified. And that list is
9 on Page 3. The staff assigned a relative weight to each
10 one of those measures. That is, we decided which ones
11 were more important than others. And you can see there
12 are two in the first -- the second column there. There
13 are two at level 3, a number at level 2, and the rest at
14 level 1.

15 Then, across that table, on Page 3, you can see
16 which of those measures the work group previously
17 decided were feasible for different categories of
18 vessels. At the top, fishing vessels, processors and
19 tenders, general cargo and cruise ships and container
20 ships are -- go across. And underneath the yes and no
21 indicates whether the work group had determined that
22 that measure could feasibly be adopted by that category
23 of ship.

24 So, down at the bottom you can see that if a
25 ship could adopt every one of these 20 measures, it

1 would be able to attain a score of 33 points. Then
2 fishing vessels could only attain a top score of 20, and
3 so on, across the bottom there.

4 And that, this matrix essentially is the basis
5 for a framework that a number of different prevention
6 incentive programs -- upon which a number of different
7 incentive programs could be based.

8 The next thing that we did was determine, of
9 those 20 measures, which might be considered the top
10 five. And in doing that, we set to one side those
11 measures that could only be incorporated in a new ship,
12 and those were measures 4 and 5. And then we also set
13 aside any measure that was not feasible for one category
14 or another. And, fortunately for us, we were left with
15 five at number 2, and those became the top five
16 measures. On the list there, they are 1, 2, 3, 11 and
17 18, and they appear in italics. And so those would be
18 in a top five measures program, the measures that any
19 ship in any category would have to attain in order to
20 receive prevention credits.

21 If you turn, then, to Page 4, the staff then
22 considered how to use that ranking system among the
23 proposals that the work group had asked us to review --
24 the three-tier, single-trigger, and top five measure
25 system -- and that suggested that in order to qualify

1 for Tier I, a vessel that could qualify for all of these
2 measures, that could attain all of these measures, that
3 Tier I would be 20 percent, Tier II would be 40 percent,
4 and Tier III would be 60 percent of the maximum score,
5 if you will, that that vessel could attain. So you can
6 see across there what score each category of vessel
7 would have to attain to reach each tier, in a
8 three-tiered system.

9 Similarly, in a single-trigger system, staff
10 suggested that 50 percent of all of the measures would
11 be the trigger for incentive credits under that system,
12 and so that would be 17 points in a vessel that could
13 attain the maximum points, and so on across.

14 The top five measures system, each category of
15 vessel would have to attain all five of those listed
16 measures in order to qualify for incentive credit.

17 So, this is essentially a framework that can be
18 used for tax credits, for penalty reductions, for a
19 reduction in the frequency of spill plans -- I mean,
20 spill drills, of C-plan review, and in fact could be
21 used for the award program that's listed out later.

22 The procedural provisions of a program are then
23 at the bottom of Page 4, and essentially are that a
24 vessel owner would simply submit an affidavit to DEC,
25 and the first one could be at any time after the first

1 certificate were issued, then the certificates would be
2 reviewed at C-plan review. And so, it would not be an
3 additional step for either the vessel owner or for DEC.
4 It would simply be part of the C-plan review.

5 The affidavit would simply contain a statement
6 of what prevention measures that ship -- that vessel
7 employed, and DEC would then issue a certificate. And
8 the analogy that occurs is just like a business license.
9 That you simply submit the paper work and you get the
10 certificate.

11 By applying for prevention credits, the vessel
12 owner would consent to inspection of the vessel for the
13 existence of those provisions. And some of them are
14 just paper provisions and so I don't think that would
15 necessarily involve boarding. But if you just -- the
16 staff also recommends that the vessel owners be required
17 to retain the records of any record credits for at least
18 three years, particularly if the tax refund is claimed.

19 The issue you were just discussing, the issue
20 of compliance with applicable federal and international
21 law, was something that staff discussed, and you can see
22 that it is an option for the Task Force to require that
23 a vessel owner makes a statement that they comply with
24 federal and international law in order to get the
25 credits, and then a consequence of not complying would

1 be the revocation of whatever benefit the prevention
2 program entitled the vessel owner to. I don't know if
3 that was clear.

4 On Page 5, then, was our analysis of how you
5 might apply this framework to tax credits, tax refunds,
6 and the reduction in spill penalties. So then, the
7 three tiers are set out, and each tier would entitle the
8 vessel owner to -- Tier I would be 10 percent off the
9 penalty, or a half a cent off a gallon refund on a motor
10 fuel tax, or 10 percent of the fishery's business or
11 fishery landing tax liability. Tier II would be 30
12 percent off a penalty, 1.5 cents a gallon refund, and 30
13 percent of the fishery's business tax. Whether those
14 are "and" or "or" is something for the Task Force to
15 consider. Staff didn't recommend one way or another
16 whether a vessel be entitled to one or two or all three
17 of those incentives.

18 The single-trigger system, staff suggested that
19 meeting that bar would entitle one to 30 percent off the
20 spill penalties, a penny and a half a gallon from motor
21 fuel tax, and 30 percent of the tax liability. And the
22 same would be the result for attaining all five -- the
23 top five measures.

24 These requirements for spill penalty reductions
25 and tax credits, there would be the need for statutory

1 changes. Those couldn't be done by regulation. And
2 section 6 and 7, then, on Page 5 sketch out what those
3 provisions would look like.

4 The motor fuel tax, currently there are a lot
5 of end users who can claim refunds of the motor fuel
6 tax, whether it's fuel that was purchased as highway
7 fuel and ended up being used off highway, and Department
8 of Revenue is kind of used to doing all that and has a
9 form that one can fill out. And so, if one had a
10 certificate that entitled one to a motor fuel tax
11 refund, it would be a pretty simple procedure to claim
12 those. Department of Revenue's provisions are that
13 those can be claimed anytime within a year of the
14 purchase of the fuel, and so presumably a vessel owner
15 would simply save up the receipts and turn them in and
16 get a credit.

17 The fisheries tax is an annual tax paid on a
18 calendar year basis, and the taxpayer would simply claim
19 a credit there on that return.

20 That really is the outline of a plan. It could
21 be used -- it says in number 8 that you can use the same
22 structure for reduction in the frequency of contingency
23 plan review, you could use the same structure for a
24 simple award program. And that really is the summary of
25 the structure that we developed.

1 BRIAN ROGERS: Just a note. Just discovered an
2 error on the part of the facilitation team on this.
3 Under item 8, that note was raised originally by DEC and
4 then withdrawn by DEC. So that should have been
5 stricken. We were having some problems with formatting
6 of this report, and unfortunately it looks like the one
7 that got sent out had that note in it. That is not --
8 because actually DEC has suggested, since we completed
9 this, that the -- and it may be the --

10 JUDY ERICKSON: It's the summary I made copies
11 of today has it. The one you got doesn't have it. It
12 was corrected on the version that went out, but not on
13 my version --

14 BRIAN ROGERS: And DEC has actually suggested,
15 in lieu of the reduction of spill penalty, the frequency
16 of C-plan review would be a better, in their comments
17 subsequent to this.

18 So there are the options. It's a quarter to
19 6:00. We have about an hour, maximum. What is the
20 pleasure of the group in going forward on this?
21 Actually, Paul, as part of the team on this, did you
22 have something you wanted to add?

23 PAUL FUHS: I just wanted to add one thing and
24 it has to do with the spot charters. For one thing, we
25 did not include a category for them because -- and this

1 is partly at their request -- because all of these
2 presume that you can have some control over the vessel
3 before it gets here; and if you've just ordered it the
4 week before, then you really can't get it.

5 So, rather than set up the expectation that
6 they might make it and then not have them make it, and
7 have them look like one of the bad actors, that was one
8 of the reasons why we pulled that out. Also, there was
9 a generic category of "other measures as proposed by
10 operators." If you come up with a prevention measure
11 that isn't on here, you could propose that to the
12 department. And I wanted to just add those.

13 BRIAN ROGERS: Charlotte, and then Gene.

14 CHARLOTTE MacCAY: I'll see if I can say my
15 piece once and not too often, which the committee knows
16 well, but for the group.

17 What Paul says is true, and those are changes
18 that help a problem that we find persists regardless of
19 how you -- if you adopt this at all. To help ease the
20 impact on us, and we appreciate that, in general in
21 looking at this, having a pollution prevention program
22 makes a statement, and I think it succeeds in making a
23 statement, that people support pollution prevention, as
24 do we. The motivational rewards we do not see as
25 substantive, and in our case, many cases, just plain

1 inapplicable. There is not -- those things do not aid
2 us. We don't feel in the state -- we can't get tax
3 credits if we don't (inaudible) insurance in the state.
4 A lot of these things are not providing us with any
5 great motivation. Nor do we see them as -- nor do I see
6 them as being substantive for anybody in the industry.

7 So, as such, I view the prevention credit
8 program as a statement. I do not view it as an
9 effective agent of change. I do not see it strong
10 enough to create change, and I still see it as opening
11 the door to the potential for the outside to be looking
12 at us and saying, "Why aren't you?" And comparing us
13 amongst each other, and who is clean and who is dirty.
14 And with the spot charters, particularly for the people
15 who have low-profit commodities who get kind of the
16 leftovers of the fleet, they have very little, if any,
17 control over the ships that they get.

18 So, in general I'm saying I am not supportive
19 of the prevention credit program. If it does go
20 through, leaving us out helps, but I don't think it
21 totally fixes the situation.

22 BRIAN ROGERS: Gene.

23 GENE BURDEN: Well, first of all, I'd just like
24 to thank the prevention group, I think you did a
25 fantastic job. And I've been involved in this same

1 discussion in a number of states, and know how difficult
2 it has been to put some meat on the bones of having some
3 prevention credits that impact bottom line. And the
4 fact that you take the charter -- I mean the spot
5 vessels out, I hope deals with the problems that
6 Charlotte just mentioned.

7 I think there are some very substantive
8 benefits that you've identified here that do affect the
9 bottom line, that could be served as incentives, not
10 necessarily singling out any operator versus other
11 operators, depending on the award program. But I'd love
12 to know that, you know, I could reduce my exposure to
13 civil penalties. I know how expensive it is for
14 contingency plans to be drilled on a full deployment
15 basis. I'd love to know I had an extra year or two.
16 That could save me a lot of dollars. And this is the
17 first time I've ever seen, in Alaska or the West Coast,
18 real substantive bottom line impacts as part of a
19 prevention program.

20 So I think it's great, and I hope the rest of
21 the group will coalesce around it and come up with this
22 as a recommendation. I think it will set an example for
23 some other states on the coast, West Coast and Gulf.

24 BRIAN ROGERS: Commissioner.

25 COMMISSIONER MICHELE BROWN: Yeah, I agree with

1 Gene's sense of pollution prevention is way we want to
2 go and incentives is the way we want to go, and I think
3 the group did an incredible job in a short time of
4 trying to quantify that. I guess where my concern comes
5 in, though, is this is an exceedingly controversial
6 area. We've been trying to do an environmental
7 leadership analysis on a lot of our programs, that's
8 taken two years and we're still not ready to do
9 legislation because it's so controversial. And maybe
10 it's the lateness of the hour now, but while I think we
11 ought to maybe have a recommendation of pursuing looking
12 at prevention, prevention and incentives programs, I
13 think we'd be here all night if we're going to try to
14 come up with specific ones, especially if we're talking
15 about ones that require legislation. Because, you know,
16 we're already having enough trouble, I think, focusing
17 on recommendations 1 through 30 to make sure we get that
18 in a piece of consensus legislation if we can. And if
19 we start opening up things like changing the length of
20 C-plan approvals or getting rid of civil penalties for
21 nontank vessels only in legislation, we're going see the
22 doors just fly with the "me, toos" running in there with
23 a battering ram.

24 So, while I think this is a great first start,
25 and I think we should continue working it, particularly

1 like the Blue Star program, which is something we've
2 been actively working with the cruise industry, of
3 looking at things administratively that we can do
4 without legislation. I think if we want to discuss the
5 full part of this and start looking at what needs
6 statutes and what we want to actually endorse step by
7 step, 7:00 is a dream on your part.

8 BRIAN ROGERS: Of the five measures, the
9 reduction in spill penalty, the tax refund, the tax
10 credit, the C-plan review, and the Blue Star, the first
11 three are statutory, the fourth is regulatory, and the
12 fifth is administrative. And so, basically, if you're
13 not going to deal with it with a change in the statutes,
14 you're limited to the frequency of C-plan review, which
15 is part of the regulations that would come out of this
16 group, or the Blue Star program which the commissioner
17 could implement tomorrow without -- Gene?

18 GENE BURDEN: Just, I mean, maybe the group is
19 not ready to support this, but over the years so many
20 times people always talk about prevention credits, and
21 when it gets down to taking an active role and actually
22 trying to initiate them, it's always let's commit to
23 studying them more, or let's put them out for further
24 evaluation. And, you know, frankly, any recommendations
25 we make here as a group may or may not be enacted into

1 statute. I mean, we're making recommendations. It's
2 still up to the legislature to go with it. And if the
3 group is supportive of these three that would require
4 statutory, why not recommend them? The work that
5 Deborah and the rest of the staff did, I think is great
6 and certainly explains the framework for actually
7 implementing some of them.

8 BRIAN ROGERS: In terms of the decision-making
9 process on this, what I'd like to try is to first do a
10 little straw poll on whether people want to try to do a
11 prevention credit program or not. If the answer is no,
12 we've addressed this issue. If the answer is yes, then
13 we'd look at which of the three systems, the
14 three-tiered, the single trigger or the five measures.
15 And then after that, look at which among the five
16 different possible credits, one, two, three, four, five,
17 would come forward.

18 Would people be comfortable with that as a
19 decision process that works us through this? Heather.

20 HEATHER McCARTY: One of the things that
21 strikes me -- this is Heather McCarty. One of the
22 things that strikes me about that order is that I think
23 people might feel differently about the prevention
24 credit program depending on the rewards. And it might
25 make more sense to say, would you favor a prevention

1 credit program if it gave you tax credit and reduction
2 in spill drill and reduction in civil penalties. The
3 other question being, would you favor it if it only gave
4 you a Blue Star program? I think that's a question in
5 my mind. I don't know about any anybody else. But the
6 reward would be part of the package. Not just whether
7 you want to do it or not, but what comes after you do
8 it, as part of your decision-making process. Maybe I'm
9 just too cynical.

10 COMMISSIONER MICHELE BROWN: Actually, that's
11 one of the reasons why we've had trouble on the
12 environmental leadership, is what's an incentive is in
13 the eyes of the beholder.

14 HEATHER McCARTY: Right, exactly.

15 COMMISSIONER MICHELE BROWN: And that's why it
16 can take us from now till kingdom come to decide what is
17 something that everyone in this group feels that they'll
18 get a benefit from that's worth endorsing.

19 GENE BURDEN: That, to me, is the beauty of
20 what this group has done. I mean, other than spot
21 charters, it's hard to understand how any of these
22 couldn't be viewed as significant incentives. I mean,
23 they can save you money.

24 ERIC BRITTEN: One of the things that we did
25 also recognize here is that it didn't have to be the

1 same reward for every class of vessel. In other words,
2 just taking our group, for instance, as has been pointed
3 out several times, we don't fuel up here, so fuel tax
4 credit doesn't do a whole lot for us. However,
5 reduction in spill penalties would do a lot for us.

6 So, you know, just as one of the co-chairs of
7 this particular group, while I understand the
8 difficulties that Commissioner Brown is outlining,
9 personally, I'd be really disappointed if the Task Force
10 didn't adopt a position on this. I mean, rather than
11 saying let's study it some more, or whatever. Sure, it
12 has to go through the legislative process, but when you
13 take a look at the amount of work that the group did,
14 not to mention staff and DEC, I mean, there's a
15 tremendous amount of work here and I think we've
16 achieved something that no other state or province on
17 the west coast has achieved. And I really think if we
18 don't give it the impetus now and get the momentum up,
19 how are we going to re-get it up, in light of a lot of
20 the roadblocks that are going to be there?

21 BRIAN ROGERS: Let me just try a straw poll on
22 each of the five, then, and see how many would favor a
23 prevention credit program that included them and how
24 many would oppose one or more of them. The first issue
25 is, following Heather's suggestion, a reduction in spill

1 penalties as part of a prevention program of the Task
2 Force members -- how many would favor that as an
3 approach? One, two, three, four, five, six, seven,
4 eight, nine, ten, 11, 12, 13. And how many would oppose
5 such a provision? One, two, three -- Joe, you're not a
6 member. Okay.

7 Motor fuel tax refund. How many would favor a
8 credit program that included that? One, two, three,
9 four, five, six, seven, eight, nine, ten, 11. And how
10 many would oppose one that had motor fuel tax?

11 COMMISSIONER MICHELE BROWN: Well, until I talk
12 to Department of Revenue about what it means, I don't
13 really know.

14 JOHN HANSEN: I think I'd have to say that
15 those of us who don't fuel would probably not have any
16 opposition to it but probably not support it either,
17 since there's no particular benefit.

18 BRIAN ROGERS: Fish tax. Charlotte, did I --

19 CHARLOTTE MacCAY: I don't know how to go
20 through this, because you're breaking it down, and in
21 general I just don't support --

22 BRIAN ROGERS: Well, then raise your hand every
23 time.

24 On fish tax, one, two, three, four, five, six,
25 seven, eight, nine, 10, 11. And opposed? One, two --

1 okay.

2 DRUE PEARCE: Can I make a comment? I'm not
3 opposed to fish tax and I think at one point in time
4 when we were talking about how you could do it or would
5 do it, or something, but while I understand the motor
6 fuel tax is something that only those that fuel in
7 Alaska have an opportunity to get, those ships also have
8 an opportunity to fuel in Alaska if they so desire.
9 Whereas --

10 CHARLOTTE MacCAY: No, they don't.

11 DRUE PEARCE: Well, not the -- perhaps not the
12 spot charters. But other vessels.

13 The fish tax, unless you're a fishing vessel,
14 you have no right to ever get some credit there. So I
15 think when you're setting up any special category -- and
16 I don't know that the industry needs its own special
17 category of revenue -- I think you're trying to reach
18 perhaps the largest denominator, as opposed to coming up
19 with special things for a particular industry.

20 BRIAN ROGERS: How many --

21 DRUE PEARCE: It's also problematic once you
22 get -- if you put that in, even though you've got in the
23 original language that it doesn't apply, that the money
24 goes to municipalities, I suspect every mayor and every
25 assemblymember and all those folks are just going to be

1 reactive.

2 GENE BURDEN: Might want to revote on that.

3 BRIAN ROGERS: Does anyone wish to change his
4 or her vote?

5 GENE BURDEN: I'll change mine.

6 BRIAN ROGERS: C-plan review. How many people
7 would favor a credit program that affected the frequency
8 of contingency plan review? One, two, three, four,
9 five, six, seven, eight, nine, ten, 11, 12, 13. And how
10 many would oppose one that affected C-plan review?

11 And a Blue Star program, an award program. How
12 many would favor a credit program that had an award
13 program? One, two, three, four, five, six, seven,
14 eight, nine, ten, 11, 12, 13, 14. And how many would
15 oppose? One. Okay.

16 Heather.

17 HEATHER McCARTY: I'd like to speak to the Blue
18 Star program, because I've been real leery of it the
19 whole time, and I'm on the prevention subgroup. And I
20 think now that the division has been made amongst the
21 different categories of vessels, it's a real bearable
22 thing, it's a real doable thing, and I thank and laud
23 the staff for their work on that. That was a really
24 good move.

25 BRIAN ROGERS: Based on this, if -- let's

1 proceed to the issue of trigger, and then come back to
2 this. If there's going to be a program, the highest
3 support is for Blue Star, followed by spill penalty and
4 C-plan review. Let's go to the trigger and then come
5 back and look at the package and see if someone wants to
6 make a motion.

7 The trigger -- we have the three proposals of a
8 three-tiered system, a single-tiered system, and a
9 five-measure system. Among the three, how many people's
10 top choice is the three-tiered system? How many
11 people's top choice is the single-trigger system? One,
12 two, three. And how many people's top choice is the top
13 five measures system?

14 GENE BURDEN: I want to vote for the first one.
15 I'm sorry.

16 BRIAN ROGERS: Okay, I'm sorry. Maybe I tried
17 to push this to a straw poll too quickly.

18 The issue, then, is if there's going to be a
19 credit program that might be Blue Star or C-plan or
20 spill prevention, should that be in the form of a
21 three-tiered system where, depending on the number of
22 measures, you can get one of three different results; or
23 on a single-trigger system that you do -- you know, you
24 get half the points, you get the credit; or should it be
25 on the top five measures that are applicable to all the

1 vessels other than spot charters in this group, as the
2 method for achieving it? Heather?

3 HEATHER McCARTY: I don't know. And so I'd
4 like to hear some discussion on it, because I don't
5 know. The only thing I can think of that differentiates
6 them is the three-tiered system offers something for
7 almost everybody. And that's an advantage. Other than
8 that, I'd like to hear what other people's feelings are.

9 BRIAN ROGERS: Eric?

10 ERIC BRITTEN: Well, I think Heather came up
11 with exactly what my thought was. Is this gives
12 somebody an opportunity to qualify who doesn't
13 necessarily have to do all of the things or as many of
14 the things as somebody else does, but they still get
15 rewarded for some, you know, some form of prevention,
16 and to me that's really important.

17 BRIAN ROGERS: Other discussion among the three
18 alternatives? Captain O'Hara.

19 MIKE O'HARA: Well, basically, the top five
20 system basically took the most critical, and the easiest
21 to do. The single trigger system is pretty easy to
22 figure out, and it's -- you know, you don't have to
23 carry a pump and all that stuff. I was divided between
24 single trigger and top five, to me, the ones acceptable.

25 STEPHANIE MADSEN: I would just say that I lean

1 more towards the single trigger. Just because I think
2 this three-tiered system is, you know, a good approach,
3 but very burdensome as far as paying attention to it and
4 the paperwork. And I can just see, you know, costs
5 associated with this system versus, you know, one of the
6 other two. So those are my arguments.

7 BRIAN ROGERS: Gene?

8 GENE BURDEN: The only problem I see with the
9 single tier is that this isn't meant to be the
10 definitive list of all prevention measures. So what's
11 50 percent of what, you know, as you go? I mean, if you
12 add four new ones and you do six off this list and --
13 so, I think, you know, from the management standpoint,
14 it's either the top five or the three-tier system is
15 really the choice.

16 BRIAN ROGERS: Well, we do have, under item 20
17 on the prevention measures, is "other items proposed by
18 operators." And I would assume as part of that, DEC
19 could approve five of those and that would -- you know,
20 or ten of them, as other acceptable measures, so someone
21 could actually have ten others and get ten points and
22 make that single trigger.

23 GENE BURDEN: Or that qualifies 50 percent, if
24 you've got 30 --

25 BRIAN ROGERS: Oh, I see. Yeah, the universe

1 gets bigger. Well, actually, so maybe we take the 50
2 percent out and it's actually the number of points?

3 PAUL FUHS: Brian, just from a staff point, the
4 reason why we put the 50 percent. If you do add more
5 points and more measures, then it's still 50 percent of
6 those total points. Even if the totals change, the
7 percentage doesn't. So that allows flexibility in the
8 system.

9 BRIAN ROGERS: Okay. Are you ready for a
10 second straw poll on which of the three methods, if
11 there's going to be one? How many would favor the
12 three-tiered system? One, two, three, four, five, six,
13 seven, eight. How many would favor the single trigger
14 system? One, two, three, four, five. And how many the
15 top five measure system? Okay, we've stricken top five
16 measures, and a plurality favors the three-tier system.

17 GENE BURDEN: Either or.

18 HEATHER McCARTY: Either or.

19 BRIAN ROGERS: That makes it a four-tier
20 system.

21 HEATHER McCARTY: Oh, yeah.

22 GENE BURDEN: Nothing wrong with that.

23 BRIAN ROGERS: Senator Pearce?

24 DRUE PEARCE: You're making a paperwork
25 nightmare.

1 GENE BURDEN: Why don't you just change Tier II
2 to 50 percent, and just have a 20, 50 and 60, or 50 --
3 20, 50 and 70, and just have a three-tier with that.

4 BRIAN ROGERS: Now, in looking at the voting
5 pattern on your choices here, basically the highest
6 positive minus negative is your Blue Star program, your
7 second is your C-plan review, then you start getting
8 into spill penalty and motor fuel. You know, just in
9 looking at where you are in trying to reach consensus,
10 it's probably these two you're dealing with, with
11 substantial approval, given the level of opposition to
12 those two and less support out of the group.

13 So, I guess just in terms of looking at your
14 process, if you're going to apply two measures times
15 three or four credits, times one of them being a
16 three-tiered system, you're getting into a level of
17 complexity for administration that I think you need to
18 be aware of. And particularly on these two, that means
19 involving another state agency in determining -- in
20 making some determinations.

21 I guess, having completed the straw poll, maybe
22 that helps inform the discussion a little bit, and if
23 someone wants to try a proposal or a suggestion for
24 where we go from here. Commissioner?

25 COMMISSIONER MICHELE BROWN: I just want to

1 point out, when you're talking about the two that
2 require other agencies, the whole spill penalty
3 structure is built around -- it's not a penalty in the
4 sense of a fine. It's liquidated damages. And when you
5 talk about taking away damages to the State from a
6 spill, I mean you're sort of upsetting the entire
7 structure that has been created of how damages are
8 collected. So, my guess is if you're going to go with
9 something like this, you're going to be looking at
10 counterproposals to figure out ways to assess damages.
11 This was done in lieu of damages, in lieu of
12 demonstrable damages. So it's not just a fine. I mean,
13 it's a very, very complicated area.

14 BRIAN ROGERS: Senator Pearce?

15 DRUE PEARCE: You just lost me. There's a fine
16 depending on how many -- how much volume in the water.

17 COMMISSIONER MICHELE BROWN: What it says in
18 the statute is it's not like a penalty in the sense of
19 you're being punished for doing a bad act. It's
20 liquidated damages for damages the State can't really
21 quantify. Because we know spills cause damage, but you
22 can't go out there and count fish, or you can't count
23 those things. So it's not meant as a punitive measure.
24 It's meant to be liquidated damages. Where you get the
25 punitive measure is if you've done something bad that

1 caused the spill, you get five times the penalty.
2 That's the punitive aspect of it. But the basic penalty
3 provisions, it's liquidated damages. And so, I mean,
4 you're talking about -- and that was bitterly fought at
5 the time, as well, so you really are changing the whole
6 flavor of that one. So that one is a very complicated
7 one, as well as the tax relief.

8 BRIAN ROGERS: Jeff.

9 JEFF THOMPSON: I just want to make the general
10 observation that, along with the concerns of the
11 commissioner, there are many aspects to this that are
12 fraught with difficulties and unintended circumstances
13 or reactions. But I'm with Eric and I'm with Gene on
14 this. I've sat through these prevention meetings, and
15 we've got to keep this thing alive. We may be the only
16 state that can actually do this, and I think we've come
17 too far and have too much invested in our time and
18 effort to just abandon it at this point. So I just
19 wanted to get that out there on the record.

20 BRIAN ROGERS: Captain O'Hara.

21 MIKE O'HARA: My feeling is that we ought to
22 just send this out, let somebody else tear it down.

23 BRIAN ROGERS: Eric.

24 ERIC BRITTEN: Just following up on what Mike
25 said. The Task Force is being asked for

1 recommendations. It's not our job to do the
2 legislating, and, particularly as Commissioner Brown has
3 pointed out, this is going to open, you know, Pandora's
4 box. So why shouldn't we expose as much of our work as
5 possible and let the legislature pick and choose from
6 it? A, because that way they will know the different
7 types of thinking that were going on in here. And B, it
8 won't be do this or nothing. It's like here's several
9 opportunities, what do you think.

10 BRIAN ROGERS: Senator?

11 DRUE PEARCE: Well, unfortunately, the honest
12 answer to that question is, because we'd like to have
13 something we could put on the table that does have some
14 sort of consistency so we don't have to go back through
15 what we went through last session is people saying,
16 well, we're not sure because we don't know all the
17 details, but we don't like it. We get back into that
18 cycle again. So we're trying to bring specific
19 recommendations forward.

20 Perhaps the way to go about this is to choose,
21 as Brian has just done, narrow down to what the group is
22 most comfortable with, let Debbie and others go back and
23 come back to us with something more specific based on
24 the -- we go for C-plan review and spill penalty, and
25 it's single -- whatever. So that you're looking at one

1 suggestion rather than this menu that we've got today.
2 And see what people think. So, at least you're closer.
3 And in the meantime, we can all go back and look at the
4 statutes and -- or I don't know, maybe I don't want to
5 do that, but go back and have those discussions about
6 whether it's a fine or whether it's -- what did you call
7 it?

8 COMMISSIONER MICHELE BROWN: Liquidated
9 damages.

10 DRUE PEARCE: Liquidated damages, and try to
11 work through that.

12 BRIAN ROGERS: Commissioner?

13 COMMISSIONER MICHELE BROWN: Yeah, I guess I
14 was just going to respond to what Mike said and Eric
15 said, and that's that, I mean, we spent the better part
16 of today trying to figure out how we can come up with a
17 consensus piece of legislation to look like forest
18 practices, where hopefully everybody says this is the
19 way it's going to be, don't start growing tails and
20 horns on it. And then to tack another portion on that's
21 the opposite of that strikes me as somewhat
22 inconsistent. They don't have to necessarily be the
23 same piece of legislation. But, you know, I was
24 thinking along the same lines as Drue, is pick one that
25 there really is much more of a comfort level on, like

1 extending a period of C-plan, or a Blue Star program,
2 and focus on developing that. Because I don't think
3 you'll have quite as much controversy on those, and you
4 also won't have the "me, toos" as strong on that. But I
5 can guarantee you, if you start talking spill penalty
6 reductions and then you see the crude industry out there
7 even looking at the statute, you're going to have people
8 coming unglued.

9 BRIAN ROGERS: Charlotte, and then Gene, and
10 then Larry.

11 CHARLOTTE MacCAY: In recognition that it's
12 controversial and it may get torn down, you may have a
13 better chance if it does go out as a proposal for
14 further review and work, you know, so it's an ongoing
15 process. Because if this is what we want and it gets
16 struck down, it can just be thrown out completely. If
17 this is what we recommend be pursued and further work go
18 into, then it has a potential for a continued life and
19 it has a potential to become something more of us can
20 embrace.

21 BRIAN ROGERS: Gene.

22 GENE BURDEN: Let's see here. A couple
23 thoughts. One, every proposal this group is making is
24 subject to the same considerations and concerns that
25 have been expressed about this provision, and we haven't

1 established any boundaries that prohibited any
2 recommendations. This was set out, day one, as a sector
3 that we were going to look at, prevention standpoint.
4 So I would argue that it's clearly within the purview of
5 this group to make recommendations on prevention and
6 prevention credits. And the legislature may or may not
7 go with it, just as they may or may not go with the
8 other recommendations we've made. I think we can
9 identify a proposal, although it wouldn't affect a lot
10 of folks, as motor fuel, maybe C-plan review, and Blue
11 Star, as the prevention benefits that we would recommend
12 using the system, and if you take the five -- or 50
13 percent rule, to keep it simple, and we can articulate
14 that as a proposal and see where it goes.

15 And from the legislature's standpoint, there
16 may be some legal issues that we're not giving enough
17 consideration to, but you're not going to have members
18 of the nontank transport group, the pilots or the
19 container shippers in complaining about this. I mean,
20 this would be almost a virtual consensus of the group
21 here, other than maybe the spot charters. So, it would
22 be analogous to the other recommendations.

23 BRIAN ROGERS: You have three of the measures
24 that have received affirmative votes from a majority of
25 the Task Force, 24 members here. So, three have

1 received a majority, two did not receive majority
2 support. I just note that as to where you are.

3 GENE BURDEN: I think the comments that the
4 commissioner's made on spill penalties really, I mean
5 that's one we ought to pay attention to.

6 HEATHER McCARTY: Yeah.

7 GENE BURDEN: But on motor fuel, 11 voted for
8 it and only one didn't. And I think a lot of the
9 interest against motor fuel was a lot of folks aren't
10 going to be impacted by that. But those who are, there
11 are some of the smaller operators that buy their fuel in
12 the state, and if they come up with these prevention
13 measures, that's a way for them. If you knock out the
14 fish tax, that's a way that the smaller operators and
15 the fishermen would have some benefit from this. So I'd
16 suggest motor fuel, C-plan and Blue Star, the 50 percent
17 range, keep it simple, and go with it.

18 BRIAN ROGERS: Gene, and then Heather. I mean,
19 Larry, and then Heather. Sorry.

20 LARRY DIETRICK: Well, yeah, I was just going
21 to speak to the penalty provision. We talked about it a
22 little bit before in the work group, but that is -- I
23 mean, when the legislature built that, and when you go
24 back -- and there's been a couple papers done on the law
25 and how it was arrived -- I mean, it is the compensation

1 to the state for the damages to its natural resources.
2 That's what's envisioned here on this statute. That's
3 what they're -- and they use a dollar per gallon, and
4 it's a rough gauge based on the nastiness of your oil
5 and the sensitivity of the receiving environment, and it
6 was the legislature's way of quantifying what the value
7 of the damages to the state's resources were that occur
8 from a spill. And that's how they valued it and that's
9 why it's in there and that's why they did it.

10 And it's also got another peculiar thing. I
11 mean, I can't even tell, even though we've done a lot of
12 work on this, which statute it applies to. The other
13 curious thing they did, there's a break here at 18,000
14 gallons for -- I'm not sure of all the history of why
15 they picked 18,000, but for big ones they prescribed
16 that the value of the -- what a gallon of oil would be
17 with regard to a spill and the damages to the
18 environment. And if it's under 18,000, it's assessed by
19 the court. I'm not even sure if legally we can do a 30
20 percent thing on the judicial system here.

21 So there's a number of complexities here with
22 regard to whether it applies to 758 or 760, or both,
23 that we haven't got to that still need to be sorted out.
24 And if the prevention measure -- I mean, it's kind of an
25 oxymoron that, if you've had the spill, I mean, my

1 assumption is the prevention measure failed. And so,
2 to --

3 SANDRA JACKSON: Why get rewarded?

4 LARRY DIETRICK: I mean, if you give it back,
5 what you're giving up is the money that the State said
6 we wanted for the damages to our natural resources. And
7 that was to cover salmon and fisheries and all the
8 critters that support -- are supported out there. So, I
9 don't know, that's --

10 BRIAN ROGERS: So, where I sense the group is
11 right now is not wanting to further consider fish tax
12 and spill penalty. That using a three-trigger system.
13 So we have three triggers times five vessels times three
14 possibilities, for a total of 45 possible prevention
15 credits. Some are statutory, some are regulatory, and
16 some are administrative.

17 Question, in terms of staff trying to draft
18 this as part of a report, are these cumulative? If you
19 qualify for one, do you qualify for all three? I'm
20 still troubled by how to try to write up these 45
21 possibilities in something that is a reasonable
22 recommendation.

23 Eric.

24 ERIC BRITTEN: Gene's asking a question here
25 and, you know, it's a good one, but you take a look

1 at -- you know, if you say which one's the easiest
2 perhaps to get buy-in on, acceptance on, will receive
3 the least amount of opposition, particularly when it
4 gets into the legislative process, it's probably Blue
5 Star. That's not taking any money out of anybody's
6 pocket, not going to another agency, you know, or
7 whatever. And that's kind of a reward thing.

8 But C-plan review is what's really going to
9 start saving people dollars. And C-plan review, again,
10 is within the scope of everything that's going on here.
11 You know, it's like everything this Task Force is doing,
12 is setting up the C-plan review requirements. And so
13 therefore we're not sort of reaching into anybody else's
14 bailiwick here.

15 When you get into motor fuel, then we start
16 getting into, you know, some areas that are more
17 departments, and this is revenue and things like this.
18 I mean, even leaving the third one in there, to me it
19 seems like, you know, whatever kind of reward, you know,
20 however we choose the levels or whatever, you probably
21 should qualify for however many of the programs we
22 select and forward. Not just one. Because we took out
23 the two biggies. We took out the fish tax and the spill
24 penalty one. I mean, everybody would want spill
25 penalty. That would be --

1 COMMISSIONER MICHELE BROWN: And nobody's going
2 to get it.

3 BRIAN ROGERS: Heather, and then John.

4 HEATHER McCARTY: Yeah, this is Heather
5 McCarty. I like the three, I think it's good, and I
6 think people would like to see all three as a reward for
7 any kind of program. And that's where I get stuck a
8 little bit, because I'm not sure that my people are
9 going to be as enthusiastic about it at the end of the
10 process as they would be at the beginning when they had
11 the potential for those three rewards. At the end of
12 the process, when they get the Blue Star, maybe only one
13 star or maybe no stars, you know, they might be
14 disappointed in the fact that the incentive was sort of
15 in front of them and then was whipped away. That's my
16 only concern. I'm being really real honest with you,
17 that's my concern with my people. And I don't know
18 whether they'll think it's worth it if the Blue Star
19 program is the only thing they get. It just as simple
20 as that.

21 BRIAN ROGERS: And the Blue Star under the
22 three-tiered system would be one star for one, two for
23 two, three for three, something like that.

24 HEATHER McCARTY: Right. But I do favor the
25 three tiers over the one, and I'll tell you why. I

1 think it's because I don't know what's going to happen
2 under these "others as proposed by operators." That
3 bothers me a little bit, too. That people can come as
4 individual groups or individual companies and propose
5 something to DEC that doesn't have any approbation by
6 anybody else, and it's just sort of like, hey, what do
7 you think of this, and they say, great, and all of a
8 sudden you got, you know, three Blue Stars and nobody
9 knows how you got them sort of thing, except you and
10 DEC. You know what I mean. It's just a little bit sort
11 of outside the process and could be abused. I'm not
12 saying it would be, but it could be.

13 BRIAN ROGERS: Okay. Based on a recommendation
14 that would have a three-tier system, with three credits,
15 as laid out here, how many people would favor that type
16 of a recommendation in the report of the Task Force?
17 One, two, three, four, five, six, seven, eight, nine,
18 ten. And how many would oppose such a --

19 CAPTAIN O'HARA: Is there something else to
20 favor besides that?

21 BRIAN ROGERS: Well, at this point I'm trying
22 to -- I don't have 12 votes for anything, so it maybe
23 doesn't matter.

24 How many would -- does somebody want to try
25 another alternative?

1 GENE BURDEN: Ask how many would support it
2 with the single tier.

3 BRIAN ROGERS: How many would support the
4 three-part with a single criteria?

5 MIKE O'HARA: I would do that. Single trigger.

6 BRIAN ROGERS: One.

7 MIKE O'HARA: I'm going to lose it.

8 BRIAN ROGERS: One person. Well, you can
9 support more than one.

10 STEPHANIE MADSEN: I would change my vote.
11 Then I would support that one.

12 BRIAN ROGERS: Okay. How many would support
13 that one? I'm trying to find something that has a
14 majority, if anything does. One, two, three, four,
15 five, six, seven. Okay. Does anyone want to try
16 something else that they think they can get 12 votes on?

17 COMMISSIONER MICHELE BROWN: How about just
18 C-plan and Blue Star?

19 BRIAN ROGERS: Okay. How many people support a
20 three-tier program for C-plan and Blue Star? One, two,
21 three, four, five, six, seven, eight, nine, ten, 11.
22 How many would support a single trigger with C-plan and
23 Blue Star?

24 MIKE O'HARA: You can vote twice.

25 BRIAN ROGERS: One, two, three -- you can vote

1 as many times as you want. I'm just trying to find some
2 combination that has -- one, two, three, four, five,
3 six, seven, eight, nine, ten, 11, 12, 13, 14. Gets us a
4 majority. Single trigger system for C-plan review and
5 Blue Star, we'll write that up.

6 Now, that now leads to the final issue, which
7 is funding for the administration of the DEC nontank
8 vessel program.

9 COMMISSIONER MICHELE BROWN: It just got more
10 expensive, I might note.

11 BRIAN ROGERS: And clearly, at 6:25 at night,
12 not time for us to try to write a fiscal note, nor is it
13 the Task Force's job to write a fiscal note. But I
14 think the issue has been raised, is there a way that the
15 Task Force can develop a recommendation that addresses
16 the issue of funding in a way that allows the
17 recommendations that have significant cost impacts, and,
18 as noted by the DEC staff, that's really turnaround
19 times and sufficient staff to review issues.

20 Is there a recommendation that would address
21 the issue of funding that tells the legislature we
22 recognize that this program needs to be funded in order
23 to work? Rick?

24 RICK HARRIS: I think probably part of the
25 problem is until we see it, you know, we get it down on

1 paper, it's hard to tell you how much it's going to cost
2 from a private sector perspective and it's hard to
3 figure out what it's going to cost from a government
4 perspective. What I would recommend is that DEC now go
5 back and actually prepare the fiscal notes on these
6 various elements, and then we have the opportunity to
7 comment on those throughout the process, including the
8 final report.

9 BRIAN ROGERS: Stephanie.

10 STEPHANIE MADSEN: I guess I have heard, you
11 know, through this process that the turnaround times are
12 going to be the cost because of staff. And I think
13 that, you know, the turnaround times are only going to
14 be for the spot charter people. I think the people that
15 are doing business in Alaska are willing to go through
16 the 45-day review and wait for three years. And so, you
17 know, in order to look at cost, you know, you really
18 need to get a handle on how many people you think are
19 actually going to look for this five-day turnaround.
20 Because I think the majority of the 900 vessels that you
21 are -- you know, that we've gotten COFRs for, are not
22 going to be those that are going to require that
23 five-day turnaround and will fit into your normal
24 standard review process.

25 CHARLOTTE MacCAY: I don't think that

1 characterizes spot charters. What you're doing is a
2 shell -- this is Charlotte MacCay. You're doing a shell
3 plan, that's what goes through approval, and then you
4 just sign on the boats as they come. They don't fall in
5 that five-day turnaround.

6 STEPHANIE MADSEN: Well, then I'm unclear as to
7 why it's the short -- the turnaround time is going to be
8 so costly. That's what I just heard.

9 CHARLOTTE MacCAY: I don't know.

10 BRIAN ROGERS: As stated by staff in the
11 meetings, the issue was one of ensuring sufficient
12 staff, that there's never a six-day gap in any staff
13 member due to sickness, due to vacation time, and issues
14 such as that.

15 CHARLOTTE MacCAY: That kind of came up before
16 we actually had the shell concept, that you just signed
17 in. It was when every spot charter was going to have to
18 go through a streamlined permit for each and every
19 vessel. But once we get the shell and they just signed
20 into it, that alleviated a lot of that workload.

21 BRIAN ROGERS: Larry?

22 JEFF THOMPSON: That's all identified in the
23 shell.

24 LARRY DIETRICK: I think the costing and the
25 five-day came up when we were talking earlier today

1 about whether or not we'd have to engage in the actual
2 storage buying type thing, and if there was a large
3 buying with those that came in a five-day, that would
4 require more if that volume is high. But I think that's
5 the only context.

6 I think the bigger difference, the bigger
7 driver here in the cost, whether they're high or low, is
8 how many go streamlined versus how many go individual.
9 And the individual otherwise is going to be the
10 bigger -- takes more time, more staff effort. I mean,
11 us reviewing the four-part streamlined plan,
12 administratively, is the easiest, lowest cost way to go.
13 And I don't have a good feel for that right now. I
14 mean, if we end up co-op cards and SOPEPs, it's a lot
15 lighter than if we're going with individual reviews.
16 And I can't quite tell, you know -- I think we're all
17 going to need more time now that we know what the
18 equipment pile is and how it's going to cost and where
19 it's going to be located, for people to start working
20 those issues.

21 But beyond that, if it's an individual review
22 plan, yeah, it takes more time, and it's more labor
23 intensive. I mean, we very much prefer the streamlined
24 options that I think we're trying to encourage. It
25 might not come out that way, though, I don't know.