

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2837 SCOMM 123 TASK FORCE ON MOTORIZED OIL TRANSPORT, 2000

1           BRIAN ROGERS: Commissioner, and then Senator,  
2           and then Gene. We'll come right down the line.

3           COMMISSIONER MICHELE BROWN: I had two, one of  
4           which Larry just covered. It's hard to predict since we  
5           don't know how many are going to be co-op stamps and how  
6           many will be the other individual plans. But the other  
7           factor that we're going to have to grapple with is  
8           what's the funding source. Is this going to be paid out  
9           of GF, is it going to be paid out of fees, is it going  
10          to be paid out of 470 funds? Those are big questions.  
11          Particularly when you're talking about things like  
12          prevention credits.

13          RICK HARRIS: How about the raw fish tax.

14          COMMISSIONER MICHELE BROWN: Or as a comment  
15          from the peanut gallery said, out of Permanent Fund  
16          Dividends.

17          BRIAN ROGERS: Senator Pearce.

18          DRUE PEARCE: Larry's comment that the more  
19          groups that try to self-insure, or self- -- do their own  
20          vessel fleet plans, whatever you want to call it, will  
21          require more time by DEC to do the approval. While I  
22          agree with that, you're also way out there in the future  
23          before any of those come and hit DEC's desk. I would  
24          think there are a number of entities that already know  
25          they're going to be part of a PRAC or a response action

1 contractor who already exists. That's going to happen  
2 reasonably quickly, those are going to start coming in  
3 and look fairly -- they're all going to look a lot  
4 alike.

5 Then, at the same time, DEC's going to be  
6 working on the language they would use for the shell  
7 contingency plan, and that's going to take a while to  
8 develop. But those groups, if they decide at the end of  
9 the day that they really are going to go out and do  
10 their own fleet plan, set up their own system, I don't  
11 expect to see any of those contingency plans walk  
12 through the door for approval for, pretty much until the  
13 end of the process.

14 So, I don't know, Larry, that you're really  
15 going to have that much additional work, in terms of  
16 hitting at the same time is what I'm trying to say. So,  
17 I guess I don't see that factor necessarily adding that  
18 much on top to what the people are going to be doing  
19 kind of out there.

20 Then, on the second point that the commissioner  
21 made, would be when the governor introduced the bill,  
22 and then I introduced the companion bill on the Senate  
23 side, the governor came forward using 470 funds and so  
24 we introduced the same thing. I don't remember any  
25 intense griping -- in fact, the (inaudible) never said

1 boo to me about using 470 funds. There is a finite  
2 amount of 470 funds, so I certainly understand that, and  
3 I think the commissioner has to -- it's part of her job  
4 to worry about going beyond that finite amount.

5 But, clearly, when we set that fund up, and as  
6 we've gone through preparedness and readiness in the  
7 state, that would be the logical first place to look for  
8 the funding for the program, and I don't know if we can  
9 change that now. We'll have to make sure that we keep  
10 the numbers small enough that we can fit in.

11 Now, that's not to say that either the railroad  
12 or the ferry system don't have to come up with their own  
13 (inaudible) to do their contingency plans, but this is  
14 for the DEC part. I don't know why it would change, is  
15 what I'm saying.

16 BRIAN ROGERS: Gene?

17 GENE BURDEN: Senator Pearce covered mine.

18 BRIAN ROGERS: Further discussion of this  
19 issue?

20 Okay, where we're going to go from here, then,  
21 is the facilitators are going to meet with the steering  
22 committee on the legislation issue to discuss sort of  
23 how we want to proceed, what we have not had the  
24 opportunity prior to this meeting to get together on  
25 that, do the vacation and other schedules. So we'll

1 deal with that and get back out to you on that issue.  
2 We'll have an updated report out to everyone by next  
3 Monday, and would ask that people get comments back to  
4 us on those issues, on anything that you think we got  
5 wrong as part of this. This is going to be a fairly  
6 long transcript, so I wouldn't expect that the  
7 transcript would be out, certainly not tomorrow. It's  
8 going to take Kim a while to get that out. We will post  
9 it as soon as we can get it out, to everyone.

10 And with that, that brings to us the final  
11 agenda item. Task Force member and public comments.  
12 Any comments from members of the Task Force before we  
13 break for the day? Yes, Heather.

14 HEATHER McCARTY: I'd like to thank you and the  
15 other members of your team. I think you've done a great  
16 job and I appreciate it.

17 BRIAN ROGERS: Thank you.

18 Any other Task Force -- yes, Eric.

19 ERIC BRITTEN: Just a comment just about the  
20 process in general. I think everybody around here has  
21 put in a lot of time and I think probably everybody  
22 sitting here feeling quite a bit of satisfaction right  
23 now, at least I hope they are. This has been just a  
24 real opportunity to see how this kind of process works.  
25 But I would hope two things. I would hope that this

1    isn't necessarily the end. If we look at best practices  
2    up and down the coast, we see other things happening.  
3    Jeff just left, but we see things like marine exchanges  
4    forming, et cetera, et cetera, et cetera. And we see  
5    industries taking over the ability to police themselves,  
6    under guise of different types of programs. I mean,  
7    this is like the first step, we've spent a lot of time  
8    doing this, and we are where we are. When all this sort  
9    of filters out and we get all the programs in place and  
10   we get the next couple of years under our belt, it's  
11   going to start looking a little different to us, and  
12   there will be new ideas and new ways to do things.

13               So, you know, I look forward to the opportunity  
14   to work with anybody here and everybody here as it  
15   continues to move, because it's, you know, prevention is  
16   a big part of it, but regulation is an equally big part  
17   of it. And none of it is going away. So I'd just like  
18   to say that I've been honored to be a member of this  
19   group and work with everyone here. And certainly I  
20   think that the dedication of our sponsor group here and  
21   staff has been admirable. Thank you.

22               BRIAN ROGERS: Any other Task Force member  
23   comments? Any public comments?

24               JOE LeBEAU: Thanks for doing this, guys.

25               BRIAN ROGERS: If there's no further business,

1 we're adjourned.

2 COMMISSIONER MICHELE BROWN: Thank you,  
3 everybody.

4 (Meeting concluded at 6:35 p.m.)

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## CERTIFICATE

I, the undersigned Notary Public in and for the State of Alaska, do hereby certify:

That the annexed and foregoing proceedings were taken stenographically before me and reduced to typewriting under my direction;

I further certify that I am not a relative or employee of any of the parties to said action, and that I am not financially interested in the said action or the outcome thereof;

I further certify the proceedings, as transcribed, is a full, true and correct transcript of the meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 16<sup>th</sup> day of November, 2000.

Kim R. Behrens  
Kim R. Behrens, RMR-CRR

Notary Public in and for the State of Alaska, residing at Anchorage.

My Commission Expires: 4.24.04

## **TASK FORCE ON MOTORIZED OIL TRANSPORT**

### **Revised Draft Agenda - November 6, 2000**

8:30 a.m.—5:00 p.m. (note: meeting will be extended into evening hours if necessary)

Anchorage Legislative Information Office  
716 West Fourth Avenue – 2nd floor conference room

- I. Welcome from Task Force Chair, DEC Commissioner Michele Brown and Steering Committee Members Senator Drue Pearce and Representative Pete Kott
- II. Presentation by Brian Rogers, facilitator
  - A. Review Task Force decision-making process and meeting logistics
  - B. Update on activities since 9/20/00 Task Force meeting
  - C. Review of all recommendations on Consent Agenda
- III. Public Comment on Agenda Items (limited to 3 minutes)
- IV. Consent Agenda

#### Response Planning Standard Work Group

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

#### Contingency Plan Work Group

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

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

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

#### Prevention Work Group

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

#### Alaska Railroad Subcommittee

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

#### Prevention Work Group (affects all recommendations)

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

#### **V. Discussion and Action on Recommendations Removed from Consent Agenda**

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

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

VI. Contractor Report

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

VII. Railroad presentation (scheduled for 11:30 a.m.)

- A. Progress on the Risk Assessment process
- B. Proposed timetable for Contingency and Prevention plan review.

VIII. Attorney General's office report on legal issues

- A. Legal Issues Memorandum
- B. Task Force Draft Legislation

IX. Discussion and Action on Unresolved Issues

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

X. Final task force member and public comments

To: <jerickso@pobox.alaska.net>  
From: jerickso@pobox.alaska.net (Judith Erickson)  
Subject: Draft Report for Motorized Oil Transport  
Cc: <brogan@infoinsights.com>, <bheavilin@chadux.com>, <dave@seapro.org>

1. I will not be able to attend the Task Force meeting on Monday, 6 Nov as I will be participating in a drill with one of our member companies.
2. I have read your draft report and have two concerns that may need to be further addressed:  
Recommendation 12 - final paragraph - the phrase "assist the vessel in arranging the initial spill response of a response contractor in the event of a spill" may need to be rephrased. I can easily interpret it as meaning that the RPF will be arranging a contract with a co-op at the time of a spill instead of in advance. I think the intent is to have a signed spill response contract as a part of the c-plan before it is approved by ADEC. If this is not the case, I believe that it should be. If the phrase is intended to mean that the RPF will act as a "qualified individual" on the part of the vessel, then I suggest that more appropriate wording be selected so as not to be misleading.  
Recommendation 13 - The IMT capabilities listed in the table are way too low. If I interpret the table correctly, the responsible party only needs an Incident commander ( after taking control of the spill from the QI ) for spill of up to 5000 barrels of persistent oil. This is simply an insufficient number of persons to direct a spill of up to 210,000 gallons. 40 CFR 300 ( the National Contingency Plan ) classes any spill of 100,000 gallons into the coastal waters as a major spill. I don't believe that you can adequately address a spill of up to twice that size with only a command staff. My experience in Cook Inlet is that a 100 gallon spill of crude oil generates sufficient concern/interest for there to be 40 people in the command center, including State and Federal regulatory agencies. Spills of that size and of persistent oil will require a substantial amount of response personnel and equipment and will, in turn, require a substantial staff to ensure travel arrangements, meals, berthing, maintenance, waste stream management, etc, not to mention the actual response operations oversight. The spill will certainly not be recovered in one day and will require a planning staff to plan for future operations. In conclusion, I believe that this issue needs to be carefully reviewed and redone with a larger factor of realism included. I sincerely doubt that ADEC or the USCG would accept such a tiny IMT in the event of a major spill. As a co-op manager, I would not accept this level of management as it is not up to my staff to make such substantial corporate decisions. That is clearly the burden of a responsible party and would not be an acceptable "liability" to the current members of CISPRI.
3. If you have any questions, please feel free to call me at 907-776-7401.

Doug

# Prevention Work Group

## Recommendations: Nontank Vessel Prevention Credit Program

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Components of a Prevention Credits Program**

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

# **Prevention Measures - Weight and Applicability**

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

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

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

## Alternative Point Systems for Prevention Measures

|  | Any<br>Vessel        | Fishing<br>Vessels   | Fish<br>Processors<br>& Tenders | General<br>Cargo     | Cruise<br>Ships      | Container<br>Ships   |
|--|----------------------|----------------------|---------------------------------|----------------------|----------------------|----------------------|
|  | 33 points<br>maximum | 20 points<br>maximum | 20 points<br>maximum            | 31 points<br>maximum | 33 points<br>maximum | 33 points<br>maximum |

### **Three Tiered System:**

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

### **Single Trigger System - 50%:**

|           |           |           |           |           |           |
|-----------|-----------|-----------|-----------|-----------|-----------|
| 17 points | 10 points | 10 points | 16 points | 17 points | 17 points |
|-----------|-----------|-----------|-----------|-----------|-----------|

### **Top Five Measures\* System:**

|          |          |          |          |          |          |
|----------|----------|----------|----------|----------|----------|
| All five | All five | All five | All five | All five | All five |
|----------|----------|----------|----------|----------|----------|

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

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

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

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

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

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

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

## Prevention Measure Tax Credit and Penalty Reductions

**Reduction in  
Spill Penalty**

**Motor Fuel Tax  
Refund**

**Fisheries Tax  
Credit**

### Three Tiered System:

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

### Single Trigger System - 50%:

|                 |                    |                  |
|-----------------|--------------------|------------------|
| 30% off penalty | \$ .015 per gallon | 30% of liability |
|-----------------|--------------------|------------------|

### Top Five Measures\* System:

|                 |                    |                  |
|-----------------|--------------------|------------------|
| 30% off penalty | \$ .015 per gallon | 30% of liability |
|-----------------|--------------------|------------------|

\*\*Top Five" measures do not include those that could only be built into a new ship.

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

### **7. Substantive provisions for tax credits.**

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

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

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

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

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

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

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

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

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

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

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

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

## **Outstanding Issues**

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

## **Implementation of SB273**

**Alaska Railroad Corporation  
November 6, 2000**

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## **Alaska Railroad, pre-SB273**

- Regulated under U.S. DOT for hazardous materials transport
- Not regulated under Alaska statutes
- Developed emergency response plan under provisions of Dunbar spill settlement

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## **ARRC Response Plan**

- Includes common provisions of regulated entity response plan
- Not required to be filed with ADEC
- Not subject to provisions of 18 AAC 75:
  - Periodic training
  - Exercises
  - Verification

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### **Current ARRC plan: Training**

- MOW employees 40-hour trained as first responders
- 6 supervisors/staff trained in first-level tank car course
- 2 employees trained as advanced tank car specialists

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### **ARRC Plan: Train crew duties**

- Spill response notification and safety assessment
- Stop source, if safe to do so
- Provide flag protection against following trains, per General Code of Operating Rules
- Training provided periodically

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### **ARRC Plan: Regional Teams**

- Maintenance of Way delegated first response duties
- Predominance of 40-hr trained employees in MOW
- District roadmaster first on-site commander
- Section crews, equipment deployed

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### ARRC Plan: Equipment

- Extensive lightering/transloading inventory at Anchorage and Fairbanks
- Additional major response vans at Anchorage and Fairbanks
- Secondary caches at strategic locations (Talkeetna, Hurricane, Moose Pass)
- Tertiary, basic first responder packages at all sections

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### 1999-2000 incidents

- Canyon: In-train forces
- Gold Creek: Train meets in poor weather
- Roundhouse: Maintenance best practices
- Matanuska: Deferred maintenance

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### System safety assessment

- Prevention through safety system management
  - Track repair and maintenance
  - Quality control in car/locomotive shops on inspection and maintenance
  - Rules compliance, best practices in switching and train operation

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### **Risk assessment**

- Assess environmental and community risks associated with haz-mat transport
- Determine conditions and locations most susceptible to l/v derailment
- Use assessment to direct both prevention and response planning, with l/v derailment as focus

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### **Risk assessment: Track**

- Walking inspection of all main line track, with emphasis on curvature
- Detailed walking inspection of all switches and turnouts
- Walking inspection of yards and branches
- Gage, tie condition, rail condition, spiking and anchoring

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### **Risk assessment: Shops**

- Inspection of all rolling stock for AAR, FRA, and non-covered defects
- Emphasis on tank cars and equipment run with tank cars
- Audit of inspection for bad orders
- Audit of repair and maintenance quality

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### **Risk Assessment: Operations**

- Rules compliance and operational monitoring
- Assessment of "best practices" compared to other railroads
- Switching rules, train handling, crew coordination
- FRA compliance

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### **Risk assessment: Schedule**

- Track portion complete, data reduction and report being drafted
- Mechanical inspection 90 percent complete
- Operating audit scheduled for Nov. 11-21
- Draft findings available Dec. 31

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### **ARRC and this task force**

- Task force recommending Railroad inclusion under Title 46 and 18 AAC 75
- Awaiting Legislative action
- Prepared to implement the will of the Legislature
- Final implementation schedule based on 2001 Legislative action

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### What's different?

- Reformat, additions to ARRC plan based on c-plan regs
- ADEC approval per 18 AAC 75
- ADEC oversight under 18 AAC 75
  - Periodic training
  - Exercises
  - Verification

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### Likely implementation

- Internal improvements to procedures outside of regulatory scope
- Contract(s) with approved response action contractor(s)
- Exercises and training tailored to risks and regulatory requirements

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## **Nontank Vessel Inspection Authority**

- The proposed legislation does not create or make any new activities subject to inspection but simply extends existing authority to nontank vessels and the railroad.
- The existing language was included in the oil spill legislation passed in 1990.
- The existing inspection language allows DEC to continue to focus its inspection activities on prevention and response capability.
- The existing inspection language is not in conflict with the recent U. S. Supreme Court's decision which allows states to verify and have continued oversight for oil spill contingency plans and proof of financial responsibility.
- The Department of Environmental Conservation and the United States Coast Guard operate under a formal Memorandum of Agreement that explicitly outlines their respective roles for vessel inspection activities to ensure coordination, eliminate duplication, prevent overlap and avoid any jurisdictional conflicts under state, federal or international laws or agreements.
- All DEC staff conducting vessel inspection activities have appropriate training or extensive prior experience conducting vessel inspection work for the United States Coast Guard.

**MEMORANDUM OF AGREEMENT**  
**ON**  
**OIL AND HAZARDOUS SUBSTANCE POLLUTION PREVENTION AND RESPONSE**  
**BETWEEN**  
**THE COMMANDER, SEVENTEENTH COAST GUARD DISTRICT**  
**AND**  
**THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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

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

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

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

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

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

## VI

### PREVENTION OF OIL SPILLS

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

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

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

1. The Parties agree to work together to avoid inconsistent requirements and to find ways to conduct vessel inspections in such a way that disruption to the industry is minimized and efficiency and safety maximized. To this end, the Parties will endeavor to exchange information and conduct joint inspections or may pursue agreements under which a single inspection may fulfill both state and federal requirements.
2. In implementing any State examination programs, the State agrees to avoid conflicts and unnecessary duplication in reviewing Federal inspection programs by on-going consultation with the Coast Guard.
3. Review of inspection records: The Parties each agree to make inspection records available to the other and to cooperatively review inspection results, subject to applicable laws, regulations, and procedures.
4. The State shall report recognized discrepancies in meeting the requirements of international agreements believed to exist aboard United States and foreign-flagged vessels to the responsible Officer in Charge, Marine Inspection (OCMI).
5. Requirements in State Waters: The Parties will cooperate to establish consistent pollution prevention requirements, and to cooperatively monitor, examine and exchange information relative to those requirements, for vessels to operate in State waters.

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

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

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

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

1. The Coast Guard will consult with the State, to the extent practicable, in its evaluation and implementation of additional requirements for crewing, training, and qualification requirements through the crewing standards process.
2. The Parties agree to actively promote and coordinate research projects to identify human factors which need to be regulated to prevent pollution incidents.

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

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

IF A VESSEL'S OPERATING CAPACITY, WHILE IN ALASKA, IS LESS THAN THE MAXIMUM OPERATING CAPACITY, THE VESSEL IN THEIR C-PLAN AND THE PRAC MAY PROPOSE AND ADGC WILL ACCEPT THE ALTERNATIVE MINIMUM EQUIPMENT TO MEET THE CLEAN-UP EQUIPMENT REQUIREMENT.

STORAGE CAPACITY OF A VESSEL, THAT IS VOID DURING ITS TIME IN ALASKA, THAT CAPACITY CAN BE USED AS PART OF THE REQUIRED STORAGE CAPACITY.

## **I. EXECUTIVE SUMMARY**

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

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

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

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

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

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

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

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

### **Summary - Response Planning Standard**

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

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

### **Summary - Contingency Plans**

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

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

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

- meets applicable federal and International Maritime Organization requirements

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

- I. By contracting with a primary response action contractor for containment, control and cleanup, and by contracting with a primary response action contractor for incident management;
- II. By demonstrating to the department equivalent resources for containment, control, cleanup and incident management; or
- III. By a combination of A and B.

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

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

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

#### **Summary – Prevention**

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

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

More to come? . . .

#### **Summary – Alaska Railroad**

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

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

**SCOMM**

**123:6**

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TASK FORCE ON MOTORIZED OIL TRANSPORT

TASK FORCE MEETING

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December 11, 2000  
9:30 A.M.

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

Brian Rogers, Facilitator

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Steering Committee:

Senator Drue Pearce  
Representative Pete Kott (not present)  
Commissioner Michele Brown, Chair (not present)

Task Force members present:

Ed Page  
Bob Heavilin  
Lee Eglund  
Jeff Thompson  
Charlotte MacCay  
Stephanie Madsen  
Gene Burden  
Simon Lisiecki  
Mike O'Hara  
Jeff Ginalias (for Ernie Piper)  
Heather McCarty  
John Hansen  
Rick Harris  
Dave Owings  
Lurilla Lee  
Doug Lentsch

1 ANCHORAGE, ALASKA; DECEMBER 11, 2000

2 DEC TASK FORCE ON MOTORIZED OIL TRANSPORT

3 -oOo-

4 SENATOR DRUE PEARCE: Let's bring the meeting  
5 to order. It is December 11th, 2000, and it's 9:40  
6 a.m., and this is the Task Force on Motorized Oil  
7 Transport. I'm Senator Drue Pearce, I'll be chairing  
8 the meeting today in the absence of Commissioner Brown.

9 Representative Kott is also not with us this  
10 morning; however, his staff, Denise Henderson, is here,  
11 as well as Pat Carter from my office.

12 I'd like to start by all of us introducing  
13 ourselves for the record as we've done in the past and  
14 telling which group we're here representing today.

15 Why don't we start with those of you who are on  
16 line. I think I've got a list. In Ketchikan.

17 DAVE OWINGS: Good morning. This is Dave  
18 Owings representing SEAPRO.

19 PAUL AXELSON: And this is Paul Axelson  
20 representing North Pacific Maritime.

21 SENATOR DRUE PEARCE: In Kenai.

22 DOUG LENTSCH: Doug Lentsch and Buzz Rome  
23 representing CISPRI.

24 SENATOR DRUE PEARCE: Thank you, gentlemen.  
25 Vancouver?

1           JOHN HANSEN: Good morning. It's John Hansen,  
2 Northwest Cruise Ship Association.

3           SENATOR DRUE PEARCE: Good morning.

4           And someone was in Tacoma?

5           LURILLA LEE: Lurilla Lee, representing fishing  
6 vessels.

7           SENATOR DRUE PEARCE: And Gene, I don't  
8 remember where you were.

9           GENE BURDEN: I'm in Auburn. Gene Burden,  
10 Tesoro, representing noncrude shippers.

11          SENATOR DRUE PEARCE: Thank you, sir.  
12 Petersburg?

13          KRIS NORRIS: Kris Norris of Icicle Seafoods.

14          SENATOR DRUE PEARCE: And in Juneau?

15          CAPTAIN ED PAGE: Ed Page from the Coast Guard.

16          SENATOR DRUE PEARCE: Anyone else in Juneau?  
17 And Lee, where were you, sir?

18          LEE EGLAND: Yes, ma'am. I'm in Seattle. Lee  
19 Egland with Crowley Marine Services, representing the  
20 Alaska Petroleum Distributors & Transport.

21          SENATOR DRUE PEARCE: Thank you.

22           Is there anyone else on line with us this  
23 morning? Okay. Then we'll go around the room,  
24 beginning with Mr. Dietrick.

25          LARRY DIETRICK: Larry Dietrick, Alaska

1 Department of Environmental Conservation.

2 DENISE HENDERSON: Denise Henderson,  
3 Representative Pete Kott.

4 SIMON LISIECKI: Simon Lisiecki from BP Oil  
5 Shipping, the oil tanker industry.

6 JEFF GINALIAS: Jeff Ginalias, for Ernie Piper,  
7 for the Alaska Railroad.

8 KIM BEHRENS: Kim Behrens, I'll be  
9 transcribing.

10 MIKE O'HARA: Mike O'Hara, marine pilots.

11 CHARLOTTE MacCAY: Charlotte MacCay, Cominco  
12 Alaska, for the spot charters.

13 STEPHANIE MADSEN: Stephanie Madsen, Pacific  
14 Seafood Processors, for seafood processors.

15 BOB HEAVILIN: Bob Heavilin, Alaska Chadux  
16 Corporation.

17 JEFF THOMPSON: Jeff Thompson, Alaska Maritime  
18 Agencies, representing vessel agents.

19 PAUL FUHS: Paul Fuhs, contractor to the Task  
20 Force.

21 BRIAN ROGERS: Brian Rogers, Task Force  
22 facilitator.

23 PAT CARTER: Pat Carter, Senator Pearce's  
24 office.

25 SENATOR DRUE PEARCE: Thank you. And I

1 appreciate everyone being here today, and also shifting  
2 your schedules so that we could meet today rather than  
3 Friday when none of the co-chairmen were in Alaska, or  
4 at least not in Anchorage.

5 First, we'll have a presentation by Brian  
6 Rogers, our facilitator. And then after that, Breck  
7 Tostevin from the Department of Law will go through the  
8 legislation that he's drafted.

9 Brian?

10 BRIAN ROGERS: What I'd like to do is just  
11 briefly walk through the proposed changes that were  
12 submitted to me. I think I accommodated in one fashion  
13 or another each issue that was raised by anyone  
14 contacting me. That is, prior to Friday. We do have  
15 one that came in Saturday that I'll raise at the end.

16 What I'd like to do is walk through the  
17 proposed changes. Many of them are really  
18 nonsubstantive in nature. I'll try to point out those  
19 that I think anyone might consider in any fashion  
20 substantive. And each one refers to a page and line  
21 number in the draft report. Or page number in some  
22 cases.

23 Page 4 is just technical.

24 Page 5 under the summary response planning  
25 standard, the correction to that one is to correct my

1 error in writing the summary on response planning  
2 standard. And that was, the "able to reach the area  
3 within 24 hours" was in the wrong place in that summary  
4 sentence.

5 The third item, Page 5, summary contingency  
6 plans, just refers to abbreviations.

7 The Page 6 is a suggested reword on the  
8 contingency plan time tables, and that was a suggestion  
9 that the Task Force was advised by the Department that  
10 it will need additional staff, thus additional funding,  
11 rather than a specific -- one person saw it as an  
12 endorsement of, quote, sufficient funding, in the  
13 earlier version.

14 Page 6, fourth paragraph, the ICS system --  
15 that's incident spill command -- as modified for oil  
16 spills, suggested by Doug Lentsch. Also on Page 6, the  
17 word "shippers" was used when it should have been all  
18 vessel owners.

19 The next two paragraphs, Page 6, adding to the  
20 conclusion, are I think a little more meaningful, and I  
21 would want to highlight those. The first one paragraph  
22 basically says this bill is a consensus bill. It was an  
23 attempt by all to balance all of the interests, and is  
24 basically an attempt to say that substantive amendments  
25 to the bill as it goes in could upset that balance that

1 this Task Force has achieved, and therefore the Task  
2 Force wants to suggest to the legislature that, to the  
3 extent possible, is to try to stay as close to this  
4 consensus as possible.

5 Several people have spoken about the success of  
6 the Forest Practices Act when a consensus came forward.  
7 The legislature certainly has had some resistance to the  
8 idea that bills can't be amended, and so this was an  
9 attempt to try to craft a statement from the Task Force  
10 that said there is a balance of interests here.

11 The second paragraph is one merely referring to  
12 the Letter of Intent that was included in the report,  
13 but there was no reference to the Letter of Intent in  
14 the report.

15 The next two, on Page 7, Page 8, technical  
16 amendments.

17 Page 11, recommendation 6. In the explanatory  
18 language in the second paragraph, the one sentence that  
19 was there said additional storage will -- and persistent  
20 and nonpersistent skimming capacity will be required,  
21 but there was no sort of how that's going to be  
22 acquired. And this is my attempt to explain how the  
23 Task Force anticipated the acquisition of equipment.

24 Page 12, recommendation 10. There were several  
25 people that were concerned about the phrase "generally

1 within three miles of shore," which I had suggested as  
2 one way of defining state waters. People wanted a  
3 tighter definition, each of the requests, and so my  
4 suggestion there is in the recommendation delete that  
5 general -- just put a period after "state waters," and  
6 then in the explanation use the statutory definition of  
7 state waters that is commonly understood.

8 On Page 13, in recommendation 11, there's one  
9 sentence right now on Page 13 that says, this  
10 vessel-specific information is already contained in the  
11 COFR. At the suggestion of CISPRI, some further  
12 clarifying information as to why this vessel-specific  
13 information is important. That it is critical to the  
14 responders for vessel salvage, fire fighting, or  
15 preventing additional oil from being discharged.

16 Second, there were several people who expressed  
17 concerns about the certification, where the applicant  
18 certifies that they have a prevention plan. And the  
19 question was, well, who is supposed to be doing the  
20 certification? My understanding as the Task Force was,  
21 this was self-certification, that you just say as part  
22 of your contingency plan, I am in compliance, and that  
23 there wasn't any third-party certification required.

24 Going to the next page of the mailout, Page 13,  
25 recommendation 12. Just to clarify.

1           Page 13, recommendation 13, this is a  
2   modification of the recommendation. I believe it is  
3   consistent with what the Task Force meant, and that was  
4   this additional of a vessel to a fleet plan, that it was  
5   a very expedited review by DEC. My understanding, and  
6   that of the person suggesting this, was that also  
7   applied to a generic C-plan, adding a vessel to that.  
8   That was really -- that's why the generic C-plan was out  
9   there, so that the vessel agent or response planning  
10  facilitator could add a vessel, particularly a spot  
11  charter, quickly. But to make that clear, adding the  
12  word "or generic C-plan."

13           Page 14, recommendation 15. This is the most  
14  significant change, I think, that is being presented to  
15  you here. At the time of the last meeting, it was  
16  unclear whether we were talking about statutory change  
17  or regulatory change. In my correction there is a  
18  missing word on line three, should be defined by statute  
19  "and" regulation, so we're doing both. And the two-page  
20  amendment that's included with this to the bill is to  
21  provide the statutory immunity to response planning  
22  facilitators and incident management teams, so that  
23  would be statute and regulation. Regulations -- and  
24  this is language suggested by the spot charter group --  
25  would also need to include development of a registration

1 application appropriate for response action contractors  
2 who only plan to provide incident management team  
3 services, and to create minimum standards for those  
4 services. And that was part of the group of  
5 recommendations that came from the attorneys of the spot  
6 charters.

7 Page 14, recommendation 16. Again, the  
8 addition of the "as modified for oil spills." And we  
9 list the command staff positions in the existing report.  
10 We call it finance chief, planning chief, et cetera.  
11 That should be planning section chief, operations  
12 section chief, et cetera. And then a -- using the same  
13 definition for qualified individual, a QI, as under OPA.

14 Page 15, recommendation 17. There was concern  
15 about the current training programs that are available  
16 in the private sector on contingency planning, that  
17 those tend to be higher level than what may be  
18 appropriate and necessary, and so what I'm suggesting is  
19 the addition of a sentence in the explanatory text that  
20 talks about there needs to be training in basic issues  
21 of contingency planning and incident command for many of  
22 the newly-regulated vessels.

23 Page 17, recommendation 25, again, is a --

24 SENATOR DRUE PEARCE: Can the people on  
25 teleconference try to move your papers away from your

1 phones. We're getting a lot of backfeed from papers  
2 moving around.

3 BRIAN ROGERS: Page 17, number 25, is again the  
4 issue of self-certification.

5 Page 17 and 18, recommendation 27. There was a  
6 concern as to what are the penalties. And there are  
7 existing penalties under Alaska law for filing false  
8 statements. Wanted to clarify that that is the case.

9 And then on Page 18 on that one, a suggestion  
10 that we raise the issue that we discussed tax credits  
11 and that the Department and affected industry should  
12 review the effectiveness of the proposed prevention  
13 credit program on a periodic basis and recommend changes  
14 to that program, which would allow the issue of tax  
15 credits to come up again in the future should the  
16 Department and the affected industry come to that point.

17 The changes on Pages 25 and 26 are changes to  
18 the tables. And those are just to make the table of  
19 statute and regulation consistent with the changes that  
20 were recommended above.

21 Page 34, in the legislation is a new Section 5  
22 through 8. These are the amendments necessary for the  
23 limitation on liabilities suggested by the spot charter  
24 group.

25 Page 51. The table on Page 51 was pointed out

1 to be an early draft table that really doesn't fit where  
2 we ended up, so we would yank that table out.

3 And one final change is on Page 49, the list of  
4 members, I mistakenly identified Scott Carter with the  
5 former company name of Alaska Nitrogen Products. It's  
6 now Agrium, Inc., and we'll make that correction.

7 So those are the corrections, and changes  
8 that -- and I hope I've reflected the issues that  
9 everyone raised. The two issues that I'm aware of that  
10 aren't addressed in this, one is in an e-mail from Rick  
11 Harris to me, is a suggested language change that we  
12 could deal with after we've gone through these, having  
13 to do with further definition and certification on the  
14 maximum operating capacity issue.

15 And then several people raised the issue of  
16 funding and asked that we deal with that. I didn't feel  
17 that that was one that there had been sufficient Task  
18 Force discussion that I could put a proposal out before  
19 you.

20 What I'd suggest for process that we do, is to  
21 use a process similar to what we did the last round.  
22 And that is, after Breck has done a quick walk-through  
23 of the bill, that people identify which of these changes  
24 need further discussion and then just assume that the  
25 others have consensus, and then we'll walk through these

1 changes and then any new ones that people come up with,  
2 and hopefully in the next two hours complete that  
3 discussion and go home.

4 And that, Madam Chair, concludes my report.  
5 And I guess my suggestion is that we have Breck go  
6 through the bill and then come back and work on the  
7 revision.

8 SENATOR DRUE PEARCE: Okay.

9 BRIAN ROGERS: If any.

10 SENATOR DRUE PEARCE: Any questions for Brian  
11 that are not specific to the changes, because we'll be  
12 going through those? Any general questions?

13 If not, Breck, would you please go through the  
14 proposed legislation.

15 BRECK TOSTEVIN: Good morning, this is Breck  
16 Tostevin from the Department of Law. And what I'm going  
17 to do is walk through pages -- starting on Page 30 of  
18 your draft report, which is the proposed legislation,  
19 what I've called a straw man.

20 The first section would amend part of SB273,  
21 46.04.05(a), which is the financial responsibility  
22 provision, and what it would do --

23 RICK HARRIS: Mr. Chairman, this is Rick  
24 Harris. Could Breck speak just a little bit louder,  
25 please.

1 BRECK TOSTEVIN: I certainly can do that.

2 What I was saying is the first section amends  
3 the existing financial responsibility provision for  
4 nontank vessels, and what it would do is take out the  
5 "cause and permit the operation," and track the -- just  
6 use the word "operate," which is the wording in the  
7 existing tank vessel statute.

8 Section --

9 HEATHER McCARTY: Mr. Chairman, this is Heather  
10 McCarty in Juneau. I still can't hear Breck.

11 SENATOR DRUE PEARCE: We're moving the  
12 microphone.

13 BRECK TOSTEVIN: It's right in front of me.  
14 Can you hear me now?

15 GENE BURDEN: That's much better.

16 BRECK TOSTEVIN: Okay.

17 Section 1 amends the existing financial  
18 responsibility section for nontank vessels, and what it  
19 does is take out the word "cause or permit the operation  
20 of," and tracks the language that applies to the tank  
21 vessel statute, which is "a person may not cause the  
22 operation..."

23 Section 2 is the new section, which is  
24 essentially the C-plan requirement for nontank vessels,  
25 provides effective 180 days after adoption of

1 regulations, addressing nontank vessels by the  
2 Department. And then it uses the "may not operate a  
3 tank vessel" language, "or permit the transfer of oil to  
4 or from a nontank vessel."

5 Proposed Section G simply cross-references some  
6 of the existing contingency plan provisions.

7 Section H outlines what the contingency plan  
8 shall consist of. One is the vessel-specific  
9 information. Two, a response plan consisting of initial  
10 notification procedures. B, the certification that the  
11 applicant is a member of or has a contract with an oil  
12 spill response organization that is a possible primary  
13 response action contractor with a response plan approved  
14 by the Department as meeting response planning  
15 standards. And C-1 is the response planning standard in  
16 existing law.

17 C is a certification that the nontank vessel  
18 applicant has contracted with an oil spill primary  
19 response action contractor providing incident management  
20 team services. And part 3 of the plan would be a  
21 prevention plan certification stating that the applicant  
22 vessel complies with the applicable federal and  
23 international maritime organization requirements.

24 Sections I and J essentially allow one to use  
25 one's own resources in lieu of or in combination,

1 alternatively, than contracting with a primary response  
2 action contractor. So, essentially you don't even have  
3 to use a response action contractor if you had your own  
4 equivalent resources or capability. And that's what I  
5 and J say.

6 K is the C-plan requirement for railroad tank  
7 cars. Again, this would be effective 180 days after  
8 adoption of regulations by the Department addressing  
9 railroad tank cars.

10 L is a similar section, cross-referencing  
11 existing contingency plan procedures and processes  
12 applicable -- would now be applicable to railroad tank  
13 cars, railroad tank car contingency plans and applicants  
14 for such plans.

15 And then Section M provides that the Department  
16 shall adopt regulations to implement both the nontank  
17 vessel and railroad tank car requirements above.

18 Section 3 is a technical amendment. What it  
19 would do is it would extend the innocent passage  
20 provisions of the existing law to contingency plans for  
21 nontank vessels. So, if a vessel does not call on  
22 Alaska ports, is engaging in innocent passage through  
23 our state waters, it would not be required to have a  
24 contingency plan.

25 There's also two other subsections which has to

1 do with innocent passage or, in this case, if there was  
2 imminent danger to the crew, public safety, the vessel  
3 could come into our waters until such time as that  
4 incident is over, and then they could leave and they  
5 wouldn't have to have a contingency plan.

6 And the third provision allows the Coast Guard  
7 to find a vessel in distress and allow it to come into  
8 our waters without a plan, and it could stay until the  
9 situation was over and then it would have to leave.

10 The Section 4 is the compliance verification.  
11 It would allow the Department access to nontank vessels  
12 to examine their compliance. These requirements are in  
13 the provisions of the chapter.

14 It defines -- and there's a subsection B which  
15 says that for purposes of train ... includes the tracks  
16 and associated operations...

17 Section 5 provides that the act would take  
18 effect immediately.

19 And I was going to go over proposed new  
20 sections, which are Sections 5 through 8, which are  
21 included in Brian Roger's proposed changes.

22 This language is a response to a proposal by  
23 the spot charters to specifically include provisions  
24 making clear that incident management team services and  
25 response planning facilitators were primary response

1 action contractors. They proposed in their letter to  
2 create a mirror section just applicable to nontank  
3 vessels.

4 What this section does is actually amend the  
5 PRAC statute itself to include new contingency planning  
6 requirements. So, Section 5 amends the existing PRAC  
7 and includes contingency plans under 46.04.055, similar  
8 to Section 6.

9 Section 7 includes the new C-plan requirements,  
10 says that we aren't creating a response planning  
11 standard -- or a performance standard.

12 And Section 8 includes in the listing of  
13 response action a description of incident management  
14 team services, response plan facilitator services,  
15 within the meaning of response action.

16 So, this should address concerns with respect  
17 to liability of those new entities being brought into  
18 the scheme, but this doesn't change the existing balance  
19 in the PRAC statute.

20 This drafting -- amending the existing statute  
21 is better in that it doesn't create ambiguity between  
22 the currently regulated industries and the new  
23 industries as to the meaning of the statute. Because as  
24 I set out in my earlier memo to Larry Dietrick, which is  
25 included in the Task Force's report, I believe that

1 incident management team services are already included  
2 within the meaning of the response action contractors,  
3 and that response planning facilitator services involved  
4 in response planning is within the definition of the  
5 statute, and simply oil spill planning without oil spill  
6 response is not something that's going to get you, under  
7 existing case law, into liability for removal damages.

8           So, I don't think this is changing the existing  
9 law. It's simply an attempt to clarify existing law and  
10 amend the general section. So this applies to both the  
11 current industries as well as the newly-regulated  
12 industries.

13           And then finally, there would be a Section 9  
14 which is that it takes effect immediately. Section 5 in  
15 the old proposal would become the new Section 9.

16           SENATOR DRUE PEARCE: Are there questions for  
17 Breck? Any here in the room? Paul?

18           PAUL FUHS: I just have one. This is Paul  
19 Fuhs.

20           One issue that was raised earlier about  
21 innocent passage, and this clarifies it. I just want to  
22 make sure people understand, say it's a fishing vessel  
23 headed to the Bering Sea, and it takes inside waters in  
24 Southeast Alaska but doesn't land in any port. Just  
25 en route to the Bering Sea and looking for safer waters.

1 Would they be considered to be in state waters and have  
2 to sign on with the Southeast PRAC?

3 BRECK TOSTEVIN: I believe inside waters are  
4 within state waters, so if you were traveling through  
5 the Inside Passage, you would be within state waters and  
6 you would need to sign on in that region.

7 PAUL FUHS: Okay, I just wanted to be sure to  
8 clarify that.

9 SENATOR DRUE PEARCE: Are there any questions  
10 on teleconference for Breck? Okay.

11 That brings us to public comment, which we will  
12 limit to three minutes per individual. Do we have  
13 anyone who wants to make public comment today to the  
14 Task Force?

15 Is there anyone in Juneau who wants to make any  
16 public comment?

17 What about at any of the other teleconference  
18 sites?

19 PAUL AXELSON: Madam Chair, this is Paul in  
20 Ketchikan.

21 SENATOR DRUE PEARCE: Yes, sir.

22 PAUL AXELSON: And it's actually specific to  
23 some of the changes that Brian outlined earlier. Maybe  
24 it might be better if I held them until then, or maybe  
25 now might work better, I'm not sure. I didn't want to

1 jump ahead.

2 SENATOR DRUE PEARCE: Okay. Well, we're going  
3 to move forward to Task Force action on the revisions  
4 next, so let's just double-check one more time. Is  
5 there anyone on teleconference who wants to make public  
6 comment?

7 RICK HARRIS: Madam Chairman, this Rick Harris.  
8 Just for clarification, I had sent you an  
9 e-mail on Saturday, Brian, with some suggested language.  
10 We'll bring that up at a later date; is that correct?  
11 Or later time today?

12 BRIAN ROGERS: Yes. That's been distributed to  
13 everyone, both here in the room and on teleconference,  
14 and that and the issue of funding would come after we've  
15 gone through these proposed changes.

16 RICK HARRIS: Okay, thank you.

17 SENATOR DRUE PEARCE: Okay. Hearing no public  
18 comment, we'll move forward to Roman numeral V on our  
19 agenda, which is Task Force action on revisions.

20 Brian, I assume the easiest thing to do would  
21 be to go through them one by one and ask if there is any  
22 controversy, and do all of them. And I'll let you take  
23 it from here.

24 BRIAN ROGERS: Okay. I'm going to go through  
25 some of them fairly quickly that I think are totally

1 noncontroversial.

2 Page 4, first line, any objection?

3 Page 5 --

4 STEPHANIE MADSEN: I don't have an objection on  
5 that, but that same sentence is repeated on Page 7, and  
6 I was hoping that we would correct that one as well.  
7 It's the same sentence, just carried over.

8 BRIAN ROGERS: Will do.

9 Page 5, under summary.

10 RICK HARRIS: Madam Chairman, just so I know  
11 where we are, we're going through your proposed changes  
12 memorandum, Brian?

13 BRIAN ROGERS: That's correct.

14 RICK HARRIS: Okay, thank you.

15 BRIAN ROGERS: Page 5, under summary, response  
16 planning standard. Anyone?

17 Page 5, under summary, C-plans.

18 Page 6, second paragraph.

19 Page 6, fourth paragraph.

20 Page 6, conclusion.

21 Page 6, add following to conclusion.

22 PAUL AXELSON: Yes. Paul in Ketchikan.

23 SENATOR DRUE PEARCE: Yes, sir.

24 PAUL AXELSON: I just wanted to ask -- and I'm  
25 not sure -- on Page 6, add following to conclusion.

1 Just reviewing the SB273, specifically under the Task  
2 Force on Motorized Oil Transport, are we -- are we doing  
3 more than providing recommendations here, or are we  
4 actually getting more specific in actually changing  
5 statute? Is that going beyond the scope of what the  
6 Task Force is tasked to do, or -- I just wanted to throw  
7 that out as a question because, reading through it, it  
8 appears that way to me.

9 SENATOR DRUE PEARCE: Well, the Task Force was  
10 asked to provide recommendations, and I don't have the  
11 specific language before me whether it actually spoke to  
12 providing -- Larry is handing it to me.

13 LARRY DIETRICK: That's 273.

14 SENATOR DRUE PEARCE: 273 actually asked us to  
15 deliver a report to the legislature that contains our  
16 recommendations with respect to the actual  
17 implementation of the response planning standard. And I  
18 believe that all of the recommendations we are making  
19 fit under that description.

20 JOHN HANSEN: Madam Chairman, this is John  
21 Hansen in Vancouver.

22 I'd like to make a comment about this proposed  
23 item. I found it useful to have the draft of the  
24 legislation, but I'm not sure if we're ready to make the  
25 jump from the recommendations from the Task Force to at

1    this point, to say, yes, this is the draft or this is  
2    the legislation that we're recommending.

3               I believe I agree with Paul Axelson, who is  
4    raising the question about the extent of the mandate of  
5    the Task Force. And I think the Task Force has in fact  
6    completed its mandate in making the recommendations as  
7    it has, the substantive recommendations, and I think  
8    it's a good, sound, sensible report. But I don't think  
9    that -- I certainly, for one, am not -- I'm not a  
10   legislative drafter and I haven't consulted attorneys or  
11   anything of that sort at this point, so I don't think  
12   that I would be comfortable in accepting this -- the  
13   words that are added to the conclusion.

14              SENATOR DRUE PEARCE: The actual bill -- I'm  
15   sorry -- the resolution, as it was passed on the further  
16   resolved, says that we are supposed to -- contain  
17   recommendations concerning statutes and regulations.

18              So, we are supposed to recommend language as to  
19   how 273 would be implemented. The practical matter is  
20   that a bill that's drafted by the administration and  
21   then brought forward to the rules committees on either  
22   side, to be introduced at the request of the governor,  
23   does not go through legislative drafting. Nor do bills  
24   that would come as a recommendation of the Task Force.  
25   So, the only time we send a bill to legislative drafting

1 is if Representative Kott or myself or one of the  
2 specific legislators or committees decided to have the  
3 bill drafted.

4 So, what you have before you as a draft piece  
5 of legislation is indeed what the language would look  
6 like as it was introduced. That is not to say that the  
7 legislative drafters, during the -- while the bill is  
8 before the legislature, won't look at the language and  
9 say, we think that it would be better if it looked like  
10 this or that. But this is the correct process and the  
11 correct way of drafting legislation for this Task Force  
12 to recommend.

13 And everybody's had the language for weeks and  
14 weeks and weeks. I don't think it's gone through many  
15 changes, other than Breck has responded to a request for  
16 some new language that is before us today.

17 Is the question whether we're -- whether we  
18 should be doing recommended legislation? Because -- or  
19 whether if we say, okay, we'll recommend this  
20 legislation, then individual special interest groups  
21 wouldn't then be expected to come forward and try to  
22 lobby for different provisions in the bill?

23 What exactly are you trying to get to,  
24 Mr. Hansen?

25 JOHN HANSEN: Madam Chair, what I'm concerned

1 about is that when I look at the mandate that was given  
2 the Task Force under Bill 273, it talks to delivering  
3 recommendations to the legislature. And in terms of  
4 reviewing all the technical options and so on, I think  
5 the Task Force has done a very, very good job in doing  
6 that, in making some good substantial recommendation on  
7 how the bill can be recommended.

8 But I don't think that I would be comfortable  
9 at this point, not having really reviewed and understood  
10 what the specific details of this draft bill, with its  
11 references to other legislation, other bills, and so on.  
12 I have not had a chance to review all those connections,  
13 and I don't know if this draft that's presented here  
14 truly reflects the recommendations, the technical  
15 recommendations that are being put forward by the Task  
16 Force in the rest of the report.

17 SENATOR DRUE PEARCE: Mr. Hansen --

18 JOHN HANSEN: I would be more comfortable to  
19 leave the report as the technical report, and not to  
20 make the kind of forceful recommendation that the words  
21 used in the add-on to the conclusion; that is, for the  
22 Task Force to develop legislation through a consensus  
23 process, and so on.

24 SENATOR DRUE PEARCE: Well, Mr. Hansen, from  
25 the very first Task Force meeting when we put forward

1 the time line for this Task Force to take action, we  
2 have had timing to have draft legislation before us, for  
3 us to approve to take it then forward to the  
4 legislature. So it's not as though this has popped out  
5 of the sky somewhere and landed in our laps at the last  
6 minute. It's been planned since day one. You've had it  
7 in your hands for a number of weeks, in terms of the  
8 legislation itself. If we want to change the language  
9 on Page 6 that we add following to the conclusion, we  
10 can certainly discuss that. But, you know, it's not  
11 like -- well, it's not new, and it's not news.

12 JOHN HANSEN: I agree with that, Madam Chair,  
13 and I did say earlier that I think it's useful to have  
14 the draft legislation in front of us. But I'm not sure  
15 at this point whether it truly reflects the intent and  
16 the detailed recommendations by the Task Force.

17 SENATOR DRUE PEARCE: Well, what are the points  
18 of it that you question, sir? Of the draft legislation?  
19 What parts of it that are troubling. We can have  
20 Mr. Tostevin explain it.

21 JOHN HANSEN: I can't go through the individual  
22 points at this point.

23 SENATOR DRUE PEARCE: Well, if you don't know  
24 what your individual concerns are, why didn't you have  
25 your attorneys look at it?

1 Mr. Hansen?

2 JOHN HANSEN: Madam Chair, that's something we  
3 do want to do, and I do want the attorneys to have a  
4 look at the draft, but at this point they have not.

5 SENATOR DRUE PEARCE: I see. So it sounds like  
6 we're going to go into next session the same way we  
7 ended last session.

8 Any other points on Page 6, the additions  
9 following the conclusions?

10 Okay. Brian, you want to hold this out, and go  
11 on to the next.

12 GENE BURDEN: This is Gene Burden. Let me just  
13 inject something that might assist moving this forward.  
14 I think in addition on Page 6, we might toy with  
15 tweaking that first sentence to say the Task Force has  
16 included its recommendations in draft legislation  
17 format, or has included the recommendations that were  
18 generated through a consensus process in a draft  
19 legislative format to meet the requirements of Senate  
20 Bill 273.

21 And then the second sentence could say, the  
22 recommendations contained in this draft legislation  
23 represents the Task Force's best effort to assist the  
24 legislature in the appropriate legislative -- or their  
25 appropriate legislative action. I don't know, I'm just

1 thinking off the top of my head here. But the point is  
2 we really tried to put this in a format that, one,  
3 communicates the recommendations that we've made; and  
4 two, just as importantly, and it's very important I know  
5 to us, in a context that does not invite widening the  
6 areas open via legislation. We would want it to be very  
7 clear that it's -- you know, if there's a bill that goes  
8 in, it's related to 273, and doesn't go in and start  
9 making modifications in a lot of other areas.

10 And I guess, Senator Pearce, if we could tweak  
11 that just a little bit to reflect that we're not trying  
12 to act as legislators here, but we're trying to  
13 incorporate our recommendations in a format to assist  
14 the legislature, I sort of ask both John and you, would  
15 that perhaps satisfy each other's concerns?

16 SENATOR DRUE PEARCE: As I've said, Gene, I  
17 think that if we need to make some changes to those two  
18 paragraphs, that's certainly available to the Task  
19 Force. And what Brian is going to do is pull Page 6,  
20 add following to conclusions, out as he goes through  
21 those proposed changes that everybody can agree with,  
22 and then we will come back to that before approval of  
23 the final report.

24 The -- I would think that, looking at it from a  
25 nonlegislative standpoint, that what you just said,

1 Gene, it should be a concern to everyone to make sure  
2 that the legislature understand that the scope of the  
3 Task Force report is the scope that the group wants to  
4 see the legislature deal with, not to expand and having  
5 draft legislation to put forward. And it isn't just  
6 that, draft legislation, but it was prepared by the  
7 Department of Law. But to include draft legislation  
8 gives you some protection because you can go back and  
9 say, look, we didn't get into that area, we don't want  
10 that to be included, to keep the legislature from  
11 adding, going off into new fields and adding additional  
12 topics to the legislation.

13 GENE BURDEN: And just add one other thing, if  
14 I may. Maybe we'll talk about this when we get back to  
15 it, but there is another option that could -- we could  
16 deal with this issue on, and that is that we have  
17 consensus on all the recommendations contained in the  
18 report, and we have the draft regulations, or draft  
19 legislation that we don't, but it's still submitted.  
20 So...

21 BRIAN ROGERS: This is Brian Rogers.

22 JOHN HANSEN: This is John Hansen.

23 I'd really like to just say that I support the  
24 gist of what Gene is recommending. I think it  
25 summarizes well the way that we can move forward on

1 this.

2 BRIAN ROGERS: I guess, as facilitator, I've  
3 got a little bit of concern in that my understanding of  
4 the Task Force -- this is Brian Rogers -- of the Task  
5 Force request from the legislature was that we deliver  
6 the recommendations concerning Alaska statutes and  
7 regulations, and I've understood through this process  
8 that we were to bring that to conclusion.

9 I suppose we could schedule an additional  
10 meeting of the group to go over legislation again, but  
11 my sense is that if the Task Force does not have a draft  
12 bill endorsed by the Task Force, then you leave it open  
13 to debate during the legislative session, with each  
14 party having the opportunity to try to say, well, what  
15 we really meant by that recommendation was this, or what  
16 we really meant was that. And you end up back in the  
17 circumstance without this kind of consensus process  
18 before the legislature. And I think that's at some risk  
19 to each of you in terms of what you've tried to achieve  
20 in your recommendations.

21 And so -- and I guess that's why it seems to me  
22 that completing your work really does include agreement  
23 on a draft bill, whether today or after we've got one  
24 more set of attorneys look at it.

25 HEATHER McCARTY: Madam Chairman. This is

1 Heather McCarty.

2 SENATOR DRUE PEARCE: Yes, Heather.

3 HEATHER McCARTY: I'm in Juneau, and I have to  
4 agree with what Brian said. Clearly, this is our task.  
5 However, if people aren't prepared to agree to it at  
6 this time, the only thing I can see that we could do is  
7 give more time.

8 Also, if people suggest ultimate language for  
9 this very important session, I would ask that it be  
10 typed up and sent to the various sites where people are  
11 on teleconference so they can see exactly what it says.

12 SENATOR DRUE PEARCE: Okay. I think that's an  
13 excellent idea.

14 Gene, could you --

15 GENE BURDEN: I could e-mail to someone there  
16 in Anchorage if they could print it out and distribute  
17 it.

18 SENATOR DRUE PEARCE: Okay, let us go --

19 GENE BURDEN: And I can do that while we're  
20 going on to some other items.

21 Let me just respond. I think the point Brian's  
22 made is excellent. And, you know, that second  
23 alternative I offered I would withdraw. I think to go  
24 in and not make the specific recommendations really does  
25 leave us exposed to the legislature not having the

1 direction that we were asked to provide.

2 So, I think if we could tweak that Page 6  
3 addition, somewhere in the line of what I suggested,  
4 that it could address John's concern that this is -- put  
5 it in the context of what it is. It's our best efforts  
6 to embody the recommendation in a format that the  
7 legislature would be familiar with seeing, but that  
8 certainly, you know, it's not meant to be an unalterable  
9 piece of legislation.

10 SENATOR DRUE PEARCE: Brian.

11 We're getting you an e-mail address, Gene.

12 GENE BURDEN: Okay. I'll start writing.

13 SENATOR DRUE PEARCE: Brian, why don't you go  
14 back to --

15 BRIAN ROGERS: We now have three issues we're  
16 holding: the issue of maximum capacity, the issue of  
17 funding, and the question about legislation. That we're  
18 holding until we're through these.

19 Page 7, sixth paragraph.

20 Page 8, item 3, technical.

21 Page 11, recommendation 6. Any concerns?

22 Page 12, recommendation 10. State waters.

23 PAUL FUHS: Brian, just a clarification on  
24 this.

25 One of the handouts from the back here was a

1 description of the regions within this. And they all  
2 say generally the regions are -- go out to 200 nautical  
3 miles from which the territorial sea is measured.

4 And maybe this is a question for Breck. Do we  
5 need to change this statute to reflect this three miles  
6 in the definition of the regions? Because one of the  
7 things we discussed, if you stayed off three miles,  
8 then, you know, Larry considered that to be a reduction  
9 in risk; and if people would intentionally do that,  
10 that's great. But this legal definition now says out to  
11 200, and if you were just within 200 miles, you'd have  
12 to sign up with a PRAC. So there's a little bit of a  
13 disconnect here. Maybe there isn't. I just thought it  
14 should be clarified.

15 BRECK TOSTEVIN: Which -- this is Breck  
16 Tostevin. Which 200 miles are you referring to? I  
17 think that's a regulatory planning boundary.

18 PAUL FUHS: That could be.

19 BRECK TOSTEVIN: Yeah, this is actually in  
20 regulations, so --

21 PAUL FUHS: Okay. Then, will it be fixed in  
22 regulation, then? I just wanted to raise this. We do  
23 have a conflict between our current regulations and what  
24 we're stating in this legislation. It just needs to be  
25 resolved. Maybe a separate definition of regions for

1 nontank vessels. Or maybe there's another reason why it  
2 has 200 -- out to 200 miles for tank vessels, but not  
3 for nontanks.

4 BRECK TOSTEVIN: It has those boundaries  
5 because those are the planning boundaries, part of the  
6 unified command and the Coast Guard's command. And  
7 there was also this idea of oil moving out of -- from  
8 outside of state waters in to three miles, and that --  
9 so those planning boundaries do stand out.

10 So, it would seem to me that in the regulatory  
11 process that you would have to somehow amend or make  
12 clear the regions and the three miles going out, if  
13 that's the intention here. You just have to make that  
14 clear in the regulations.

15 BRIAN ROGERS: So should we put in the  
16 explanatory language here, to just note that for  
17 purposes where we speak to the planning regions, it's  
18 only the portion of the planning region that exists  
19 within state waters? Is that what you're trying --

20 PAUL FUHS: I guess so. Or even a statement  
21 that it -- that the regulations will have to be resolved  
22 to what the legislation requires. Like Breck -- I think  
23 that's enough right there, to even have that on the  
24 record to say that's what's going to happen. But if you  
25 want to make a statement, that's fine.

1 CAPTAIN ED PAGE: This is Ed Page.

2 I would suggest that -- to clarify that. I  
3 know our standards, of course, for tank vessels goes out  
4 to 200 miles, the EEZ. But my read -- of course, I'm  
5 not a lawyer -- but that limit to three miles where  
6 anything you can enforce here is going to be actually  
7 people plying through state waters, not in international  
8 waters or the EEZ or what have you.

9 Of course, we have a lawyer there, so he can  
10 speak better on it. But right now there seems to be  
11 some confusion on that, and there is -- if that's the  
12 case, then I think there's a possibility that you ought  
13 to clarify that.

14 And as discussed earlier that, by Paul, that --  
15 and I guess Larry -- that there are some prevention, or  
16 risk reduction measures. If this in fact turns out that  
17 people would avoid coming close to shore, there's some  
18 benefit to that. But that would only happen if they  
19 understood clearly that this all kicks in only when  
20 you're operating in state waters, which is, let's say,  
21 three miles and closer.

22 BRIAN ROGERS: Simon?

23 SIMON LISIECKI: This is Simon Lisiecki.

24 I recommend that you do clarify the three  
25 miles, because in the tank industry it's 200 miles for

1 DEC and there's been a lot of trouble with that, so I  
2 suggest you clarify.

3 BRIAN ROGERS: If there's no objection, in the  
4 explanatory language on Page 12, item 10, we will note  
5 that the planning regions for purposes of the nontank  
6 industry only extend out to the three-mile boundary.

7 SENATOR DRUE PEARCE: Larry?

8 LARRY DIETRICK: Larry Dietrick with DEC.

9 Yeah, the recommendation here -- we put the  
10 three miles in here to provide the clarification that  
11 Paul was talking to. So, I don't know who made the  
12 recommendation here to take it out, which is what puts  
13 the confusion back in.

14 I think we've all agreed here that the nontank  
15 vessel C-plans apply in state waters, which is typically  
16 defined as beyond three miles. There are some nuances  
17 there, that's why it says generally. But do you need a  
18 nontank C-plan beyond three miles? The answer is no.

19 So, that's why -- that's why we had originally  
20 put that, I think, that language with the three miles in  
21 there, was to clarify the issue between the three and  
22 the 200. Now we're saying to take it out, which I  
23 think --

24 PAUL FUHS: It's not saying take out. It's  
25 saying clarify, synchronize the regulations to this

1 requirement. Because the regulations are different as  
2 they're stated in planning regions.

3 LARRY DIETRICK: Yeah, I think but we use the  
4 state water definition.

5 BRIAN ROGERS: Could I ask everybody to please  
6 give their name, so that those on teleconference and so  
7 Kim can get who is speaking.

8 SENATOR DRUE PEARCE: Larry?

9 LARRY DIETRICK: Well, anyhow, in 10, I think  
10 it's generally within three miles. Was that the  
11 recommendation, Brian, was to delete that? Is that what  
12 we're discussing?

13 BRIAN ROGERS: Yes. The recommendation was to  
14 delete the "generally within three miles." The concern  
15 was, I think, as to what that meant, under what  
16 circumstances is it not three miles. There are some  
17 circumstances that it is not three miles, as defined in  
18 46.04, and that's why the word "generally" went in. And  
19 that has to do with certain bays, I guess, or something  
20 to that effect.

21 PAUL FUHS: I apologize, Larry. That was  
22 incorrect. But I think the issue still stands, and I  
23 just raise it because it was brought up either in  
24 contingency planning or one of the others, to say we  
25 knew that these -- when we had Steve Provant there, we

1 knew that these regulatory definitions of the regions  
2 weren't matching up with what we said for three miles.

3 So, wherever it needs to be fixed, I just think  
4 we need to clarify that, if people think that's  
5 important. Clarify, maybe just under the three-mile  
6 section of the report, of the legislation.

7 BRIAN ROGERS: Gene, the e-mail address that  
8 you can send proposed text to is  
9 Barbara\_Norrell@legis.state.ak.us, and we'll get it  
10 here.

11 Anything else on Page 12, recommendation 10?  
12 Yes, Stephanie.

13 STEPHANIE MADSEN: I guess I'm a little  
14 confused. I understand, and I have a copy of the  
15 planning regions and their boundaries, but I thought  
16 that the recommendation on Page 12 -- and I'm sorry,  
17 this is Stephanie Madsen -- was to substitute the  
18 statutory definition of state waters, and I'm not sure  
19 I've seen a copy of what the statutory definition is of  
20 AS 46.04. And looking at this, clearly I don't know how  
21 to read this, but it seems like there's another  
22 definition besides the planning boundary definition that  
23 is the suggested insert here --

24 LARRY DIETRICK: That's correct.

25 STEPHANIE MADSEN: -- that defines the state

1 waters. And I understand that the planning boundary may  
2 be broader. So I think there's two issues here that I  
3 would like to see resolved. One is that there's a  
4 definition of state waters that is clear; and then, two,  
5 that we be clear that for purposes of nontank vessels,  
6 their requirements for contingency plans are only within  
7 state waters based on the statutory definition.

8 So there's almost two issues. One, to define  
9 state waters; and two, to clarify that for planning  
10 boundary purposes for nontank vessels, that definition  
11 holds, not these boundaries.

12 CHARLOTTE MacCAY: This is Charlotte.

13 Would it have helped to keep that "generally  
14 within three miles from shore" if you added to, "and  
15 never extending beyond," or something? So that  
16 generally it's there to explain why sometimes it  
17 shrinks, but the not extending beyond three miles is  
18 there to reassure everybody else that you're not going  
19 to have this gray line that you might push out? Would  
20 that help or cloud it?

21 SENATOR DRUE PEARCE: Waters of the state  
22 include lake space, sound ponds, impounding reservoirs,  
23 so on and so forth. Passages, canals, the Pacific  
24 Ocean, the Gulf of Alaska, the Bering Sea, Arctic Ocean,  
25 and the territorial limits of the state, and all other

1 bodies of service or underwater -- underground water --  
2 which are wholly or partially in or bordering the state  
3 or under the jurisdiction of the state.

4 So, it's territorial limits. That's the three?

5 BRECK TOSTEVIN: That's definitely decided on  
6 three.

7 SENATOR PEARCE: Okay.

8 BRECK TOSTEVIN: The state does claim  
9 jurisdiction to the maximum extent out in other  
10 statutes, so we do have -- but it's definitely  
11 territorial within three.

12 But there's also some distinctions with  
13 historic bays in the Inside Passage. We do claim the  
14 Inside Passage as state waters even though it goes out  
15 beyond -- some of it is further than three miles from  
16 land. So that's why sometimes -- it's not -- that's why  
17 you say generally within three miles, because within  
18 bays and land waterways.

19 BRIAN ROGERS: For the record, that's Breck  
20 Tostevin speaking, and I remind people to say your name.

21 SENATOR DRUE PEARCE: This is Senator Pearce.

22 I think Charlotte's idea is a good one. You  
23 can leave the "generally within three miles," and then  
24 still add a sentence saying that we're using the  
25 statutory definition. And it's not actually a statutory

1 definition of state waters. It's a statutory definition  
2 of waters of the state, 46.04.

3 CHARLOTTE MacCAY: I had something in there --  
4 this is Charlotte -- inserting "but not extending beyond  
5 three miles." And now maybe not -- unless it's been  
6 traditional or something. I think what we're trying to  
7 do is generally -- is making people worried that you'll  
8 start stretching that three miles arbitrarily. So, if  
9 maybe it's not extending beyond three miles unless, you  
10 know --

11 BRECK TOSTEVIN: Inland waters.

12 SENATOR DRUE PEARCE: Pardon?

13 BRECK TOSTEVIN: Inland waters or historical  
14 bays, I believe, are the terms in part --

15 HEATHER McCARTY: Madam Chairman, this is  
16 Heather McCarty in Juneau.

17 SENATOR DRUE PEARCE: Yes Heather.

18 HEATHER McCARTY: Thank you.

19 The part that I'm thinking about and worried  
20 about -- not worried but just picking up on -- is this  
21 Inside Passage issue, because that's important. And I'm  
22 unclear as to whether what people are saying is that  
23 some of the waters in the Inside Passage, even though  
24 they may not be within three miles, are thought of as  
25 state waters. Is that correct?

1 SENATOR DRUE PEARCE: Larry? Correct.

2 LARRY DIETRICK: Yes, that's correct.

3 This is Larry Dietrick with DEC. You can  
4 actually look on the nautical charts, and on the Inside  
5 Passage you can see the infamous donut holes where the  
6 lines are actually drawn on the charts out three miles  
7 on the chart, and then you can see the actual areas,  
8 then, within the Inside Passage, which I think there are  
9 three in total, where you are actually outside state  
10 waters as defined here. And they're pretty small areas.

11 SENATOR DRUE PEARCE: But is there any way to  
12 get to them without going through state waters?

13 LARRY DIETRICK: No.

14 SENATOR DRUE PEARCE: Okay. So, inside the  
15 Inside Passage, if you will, you're going to have to be  
16 covered by a contingency plan because there's no way to  
17 get to those donut holes without going through state  
18 waters. Am I correct?

19 LARRY DIETRICK: That's correct.

20 SENATOR DRUE PEARCE: So, Heather, does that  
21 answer your question?

22 HEATHER McCARTY: Yes, it does. Thank you.

23 SENATOR DRUE PEARCE: Okay. Larry?

24 LARRY DIETRICK: Yeah, this is Larry Dietrick.  
25 I mean, we're in general agreement. The way

1 Stephanie expressed it is, you know, there's the  
2 200-mile planning boundary, and that's what I'm  
3 concerned about this legislation and us adopting  
4 something. Because the language in here is precise, and  
5 we've been through a lot of battles in the Task Force  
6 here. But it references under this first part where it  
7 says may not operate nontank vessels within the waters  
8 of the state, that is dependent on the 04.900  
9 definition, which is the three-mile definition.

10 I don't know if that made it clear, but what it  
11 basically means is the nontank vessel plan, subject to  
12 these nuances of submerged lands and whatnot that you  
13 run on around the coast now and then, are not required  
14 beyond the three-mile limit as a general manner of  
15 speech.

16 So, conceptually, I think we're all in  
17 agreement. If we need to tweak the wording here, I  
18 think we should do that. But at the same time we paid  
19 careful attention to that drafting the straw man bill,  
20 so that it is correct in that bill.

21 SENATOR DRUE PEARCE: Brian, do you want to  
22 tell us what you think we're trying to tweak?

23 BRIAN ROGERS: Well, where I think you are --

24 SENATOR DRUE PEARCE: You're the one taking the  
25 notes.

1           BRIAN ROGERS: Where I think you are is back to  
2 leaving the "generally within," and then referring --  
3 including the statutory definition, since in Senate Bill  
4 273, Section 04.455 says you can't operate within the  
5 waters of the state, and so you are tied to that  
6 statutory definition already in 273.

7           So, I think that the generally is only a --  
8 helps describe it for people, but the law that was  
9 passed last year already defines which definition of  
10 waters of the state we're using.

11           LARRY DIETRICK: Madam Chair, this is Larry  
12 Dietrick with DEC.

13           I'd also point out, as we went through the  
14 recommendations and Brian did the sort, on Page 23 of  
15 the report, under recommendation 10, it deals with that  
16 issue and makes it clear. This is the part of the  
17 report where we're actually trying to make -- for every  
18 recommendation, make a determination whether or not it  
19 should be in a straw man bill in a regulatory package,  
20 and so I think this helps to further clarify it.

21           SENATOR DRUE PEARCE: Okay.

22           BRIAN ROGERS: Ready to move on?

23           PAUL FUHS: One more thing. Paul Fuhs.

24           Sorry to create some confusion over that, but I  
25 just know we're much better dealing with this here than

1     trying to do it in front of legislative committees, when  
2     we have a bunch of legislators who haven't been through  
3     this. So, as I read this again, this regulation, it's  
4     for purposes of preparing substance discharge,  
5     prevention and contingency plans as required by AS  
6     46.04.210. Maybe what we need when the regulation comes  
7     out, we'll just have a new list of boundaries that will  
8     reference the new legislation for nontank vessels.

9             And then instead of 200 miles, it will just say  
10    three miles or the generally the state waters, and then  
11    that will fix it. What I was concerned -- someone's  
12    going to get a copy of this and show up at a legislative  
13    hearing and we're going to have a big blowup over this  
14    kind of thing. So that's what I was trying to clarify.

15            BRIAN ROGERS: Ready to move on?

16            Page 13, recommendation 11. Any questions?  
17    Concerns?

18            Next page, 13, recommendation 12.

19            Page 13, recommendation 13.

20            Page 14, recommendation 15.

21            DOUG LENTSCH: Brian, this is Doug Lentsch down  
22    in Kenai.

23            On number 14, I just was wondering if we may  
24    have skipped something a little bit. We say that a  
25    generic plan will include all the elements of a C-plan,

1 with a couple of exceptions. And one of the ones that  
2 kind of caught my eye was that there's no certification  
3 that the member has a contract with a co-op in that  
4 excepts, so that will the generic plan include that  
5 contract? In which case, then, your generic plan holder  
6 may almost become a plan holder? Or should that be an  
7 exception that will be one of the things to be discussed  
8 at the point in time the vessel wants to join that  
9 generic plan?

10 BRIAN ROGERS: What? I think the consensus  
11 around the table is, "what?"

12 DOUG LENTSCH: If we allow a response plan  
13 facilitator to generate a generic plan, recommendation  
14 14 says that the generic plan will contain all the  
15 elements of a contingency plan except vessel-specific  
16 information, and it shall (inaudible) notification  
17 procedures of the SOPEP, and the prevention  
18 certification. And if you go back and look at what's in  
19 the plan, it includes certification that the applicant  
20 is a member of or has a contract with a spill response  
21 cooperative that is a PRAC.

22 So, I'm asking whether the generic plan that  
23 will be developed by the response plan facilitator will  
24 have that contract in it, or that the contract would  
25 be -- co-op be one of the exceptions that will be worked

1 on at the time a vessel wants to apply to use that  
2 generic plan?

3 SENATOR DRUE PEARCE: Jeff Thompson.

4 JEFF THOMPSON: Madam Chair, Jeff Thompson.

5 The concept, when we were developing the  
6 generic plan, would have all the elements of the plan in  
7 place, including contracts with appropriate response  
8 contractors. The variables, if you will, would be the  
9 vessel-specific information.

10 In other words, the plan would have gone to  
11 ADEC, have been approved, which would require the  
12 contracts be in place for those contingencies, and then  
13 the vessels that were added to a fleet plan or a generic  
14 plan would then be submitted in a streamline form to DEC  
15 for streamline handling. But that the bulk of the plan  
16 itself would already be in place, including those  
17 contracts that would need to be in place for those  
18 contingency plan services.

19 BRIAN ROGERS: Those would probably be somewhat  
20 different contracts from the current contracts with  
21 vessels, in that the provisions of the contract with the  
22 PRAC would not be activated until you had an RP. And by  
23 transfer, as a vessel agent, you get the information  
24 from the vessel, notify the co-op, and that would be the  
25 thing that initiated that vessel and that co-op taking

1 the RPF out of the link. Is that --

2 JEFF THOMPSON: That's correct, Brian. Jeff  
3 Thompson.

4 Basically, the contract would exist between the  
5 RPF, the response planning facilitator, and then those  
6 elements necessary to pass DEC muster in terms of the  
7 plan.

8 SENATOR DRUE PEARCE: Does that answer your  
9 question?

10 DOUG LENTSCH: I guess, then, as a co-op, would  
11 my contract be with the RFP -- or the RPF, the response  
12 planning facilitator? Because that's what it sounds  
13 like through Jeff. Or would that be something -- and  
14 then you would pass it along to the responsible party at  
15 that time, that the generic plan is activated? Is that  
16 the idea, Jeff? I'm just trying to get an understanding  
17 from what you would expect of us and make sure that our  
18 members understand how this process would work when it  
19 comes time to, you know, accepting new membership.

20 JEFF THOMPSON: Sure, Doug. Jeff Thompson  
21 again.

22 Basically, it would be a sit-down between the  
23 RPF and yourself, and we would bring and show you the  
24 class of vessels that would likely be calling, and were  
25 given a period of, say, the year ahead, and to give you

1 some general specifications as to the number of vessels,  
2 the type of vessels. And as those vessels came in to  
3 trade in Alaska, the specifics as to the vessel name and  
4 identification, and those specifics would be provided.  
5 But the idea would be that a contract would be held  
6 between the RPF and yourselves, as CISPRI, for this  
7 class of vessels to be named, basically.

8 DOUG LENTSCH: Okay. That's gives me enough --  
9 more than enough to work with. I appreciate the time,  
10 thanks.

11 SENATOR DRUE PEARCE: Simon?

12 SIMON LISIECKI: Yeah, I think that -- Simon  
13 Lisiecki here.

14 I think that generic C-plan, the moment a  
15 vessel of opportunity calls and says, "I want to be on  
16 that plan," it really then -- that's its contingency  
17 plan. And then the contract, I guess, would be between  
18 it and the cooperative that the PRAC has nominated for  
19 that area, right?

20 CHARLOTTE MacCAY: This is Charlotte. It's my  
21 understanding, I think the -- maybe I'm wrong, too --  
22 the RPF, whatever, sets up the contract, and the terms  
23 and that are all set up and agreed to, and then you kind  
24 of sign that contract over when you sign on for your  
25 contingency plan. So you're a ship, if you come in, you

1 sign in to that generic plan, you sign in to that  
2 contract, it becomes yours. Is that not right?

3 JEFF THOMPSON: Yes, that's essentially how we  
4 see working.

5 Just again, you know, most of this is based  
6 upon the Washington State Maritime Cooperative model,  
7 which allows vessels -- you know, you have existing  
8 contracts in place which allow vessels to enter and  
9 depart the state, and as they enter and depart they are  
10 covered under the plan that is in place. And then the  
11 plan has -- in order to meet DEC muster, has to be able  
12 to have those contracts available when that ship comes  
13 in.

14 And other than the specifics and the terms of  
15 the contract, it would basically be activated,  
16 fundamental activation would be when the vessel enters  
17 Alaskan waters, but then everything is then in place.

18 BRIAN ROGERS: Ready to move on?

19 Page 14, recommendation 16.

20 Page 15, recommendation 17. There's an extra  
21 word in that one; the last word, "it," needs to be  
22 deleted on the first line.

23 Page 17, recommendation 25.

24 Page 17 and 18, recommendation 27.

25 CHARLOTTE MacCAY: Brian?

1 BRIAN ROGERS: Yes, Charlotte.

2 CHARLOTTE MacCAY: I hate to go back, but it's  
3 really minor.

4 BRIAN ROGERS: Go ahead.

5 CHARLOTTE MacCAY: Page 14, recommendation 15.  
6 Third sentence, you need the word "and."

7 BRIAN ROGERS: Yes, actually I mentioned that  
8 earlier. The word "and" after "statute." I'm sorry, I  
9 should have reviewed that.

10 CHARLOTTE MacCAY: Sorry.

11 BRIAN ROGERS: Page 17 and 18, recommendation  
12 27. Paul?

13 PAUL FUHS: This is Paul Fuhs.

14 And, Brian, the issue here was something that,  
15 you know, I sent this to you in an e-mail and we went  
16 through it, for one thing to list that if you file a  
17 false affidavit, there are penalties for filing a false  
18 affidavit. A lot of the whole system we're building  
19 here is based on affidavits, people signing yes, I have  
20 a COFR, I have a contract with people. And we had this  
21 discussion during one of the subcommittees, but not in  
22 front of the full Task Force, which is why I kind of  
23 want to flag it here to you, just bring it to people's  
24 attention that there are penalties.

25 And then also, this says you could lose your

1 Blue Star status if you made a false affidavit, and we  
2 wanted to make sure that was a sanction in there. But  
3 then the question arose, what happens with your  
4 contingency plan? Let's say that you say, okay, I filed  
5 an affidavit saying I've got a contract with Chadux, but  
6 then it turns out you don't. Then you lose your C-plan  
7 status because you're not covered. But what happens  
8 then? How does the Department respond then to false  
9 affidavits? Is there -- you know, you have to come back  
10 as soon as you fixed it and then you show you've got a  
11 contract, then your C-plan is reinstated, or what's the  
12 process here? What happens to people that file false  
13 affidavits?

14 SENATOR DRUE PEARCE: Unfortunately, Larry in  
15 the midst of conversation about innocent passage rather  
16 than false affidavits, so we're going to have to --

17 BRIAN ROGERS: Can you repeat the question so  
18 that our attorney can hear it.

19 PAUL FUHS: This is Paul Fuhs again. The issue  
20 of -- you know, we went over this in prevention credits.  
21 What happens if you file a false affidavit. The  
22 question is, what happens to your contingency plan if  
23 you file a false affidavit? Either on your COFR or  
24 whether you've got a contract, you know, with a PRAC,  
25 and they come and find that that's false. Then what is