

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

2838 SCOMM 123 TASK FORCE ON MOTORIZED OIL TRANSPORT, 2000

1 the sanction of the Department? Obviously, you lose
2 your C-plan, but what is the process after that to
3 regaining your C-plan? Is it restored as soon as you
4 show that you then do have a contract, or -- you know,
5 we're counting on affidavits for a lot of the operation
6 of this system. So it would seem like this wasn't fully
7 explored in the document here, and I thought people
8 should at least know what to expect.

9 SENATOR DRUE PEARCE: Larry.

10 LARRY DIETRICK: Yeah, Larry Dietrick with DEC.
11 Yeah, well, at least with regard to the plan, I
12 mean, you would not have an approved plan at that point,
13 so you can't operate.

14 PAUL FUHS: You can't operate.

15 LARRY DIETRICK: And until you correct that,
16 yeah, you can't operate. So that's your first
17 liability.

18 And the second one, I'll defer to Breck. He's
19 covered that before about what the other statutes are
20 that apply for false affidavits, I think perhaps would
21 kick in for that also.

22 SENATOR DRUE PEARCE: Before he does that,
23 though -- but the question Paul's asking is, so you
24 suddenly have no C-plan in place. Then what process do
25 you have to go through to get a C-plan back in place so

1 you can begin operating again?

2 LARRY DIETRICK: Yes, Larry Dietrick with DEC.

3 Normally, it depends -- I mean, if they were
4 out of compliance, had not a plan, it depends on urgency
5 of the operation. If they didn't have a plan, we would
6 make them go through the application process.

7 Now, the question comes whether or not because
8 of the nature of their operation they would have to do
9 that on an expedited basis, in which case we would try
10 to work with them. Otherwise, yeah, they would have to
11 apply with the correct information, and, depending on
12 their type of plan, whether it was a generic or an
13 individual, we could handle it as a streamline plan
14 approval in 15 days, or if it was an individual it might
15 take longer, if that was their preferred option.

16 SENATOR DRUE PEARCE: Does that answer your
17 question?

18 PAUL FUHS: Yeah.

19 BRIAN ROGERS: Charlotte?

20 CHARLOTTE MacCAY: To add to that, perhaps in
21 an appendix to the packet that goes out to the public,
22 it might be reassuring if they could see what the
23 penalties are, if you could cite that. Because I think
24 the concern here is to the general public, they look at
25 it, and they need reassurance that this is of some

1 significant penalty.

2 BRIAN ROGERS: Perhaps if it would be okay with
3 the group, I could just add a paragraph that would
4 describe briefly what those are, based on the
5 conversation with Breck afterwards, just describe what
6 the penalties are? They are substantial.

7 BRECK TOSTEVIN: There are criminal penalties.
8 If you submit a false affidavit, knowing it's false,
9 that's perjury, which is a felony. There's also another
10 crime which is a lesser crime, where you make a false
11 claim on an official form. And then also there's a DEC
12 regulation that says you're not supposed to falsify
13 anything submitted under the oil pollution statutes.

14 To kind of clarify what Larry -- the process
15 whereby if you submitted a false certification to DEC,
16 DEC finds out about it, then DEC goes through an
17 administrative process, essentially give you notice that
18 they think you've submitted a false claim, and then to
19 suspend or revoke the plan. So there's an
20 administrative procedure for doing that. So you could
21 potentially have your plan suspended for a period until
22 you bring yourself in compliance. So the plan wouldn't
23 necessarily go away. It depends on kind of the
24 egregiousness of the situation.

25 CHARLOTTE MacCAY: What I wanted to point out

1 was kind of the extent of fines and jail times and such,
2 that -- we know it's enough to motivate someone not to
3 do this, but does the public know it's enough to
4 motivate you not to do that.

5 BRIAN ROGERS: We'll add a paragraph.

6 BRECK TOSTEVIN: It's a crime.

7 BRIAN ROGERS: We'll do that.

8 The next four all have to do with making the
9 table that we prepared, the summary of statutes and
10 regulations, and what goes where, to make sure that the
11 recommendation agrees with the recommendation that's
12 contained elsewhere. And there were four that we --

13 HEATHER McCARTY: Madam Chairman, this is
14 Heather McCarty.

15 BRIAN ROGERS: Go ahead.

16 SENATOR DRUE PEARCE: Yes, Heather.

17 HEATHER McCARTY: I'm sorry I didn't get in on
18 this comment a second ago. Remember when we talked
19 about the prevention element that we couldn't agree on,
20 or that we didn't think were reasonable or doable,
21 including the tax credit? There were some other things
22 in there as well that we originally talked about, such
23 as reduction in insurance costs and so forth. All of
24 which, of course, are not within our control, but that
25 we discussed. And then we got real excited about it at

1 the end of the session and said let's just give them the
2 whole plan that we came up with originally.

3 Is there any way that we could do that?

4 Because we were all so pleased with it and thinking that
5 we had accomplished something that people would be --
6 would enjoy seeing. I don't know quite how to put it or
7 whether it even belongs in this report. Does anybody
8 else remember that?

9 BRIAN ROGERS: Well, we do have in the
10 recommendations the prevention credit program with
11 extended contingency plan review cycle and the Blue Star
12 award.

13 HEATHER McCARTY: Yeah, I see that.

14 BRIAN ROGERS: And my understanding was that's
15 as far as the Task Force went in terms of consensus, was
16 just on those two items.

17 HEATHER McCARTY: That's true, but it was
18 mostly for reasons of practicality and doability that we
19 decided not to include any of the other elements of the
20 recommendation. But just, I thought we had agreed to
21 somehow forward it, a potential for the future. Maybe
22 that's not advisable. I just wanted to remind people
23 that we had talked about doing that as part of our
24 report. Apparently nobody else remembers it.

25 BRIAN ROGERS: You're suggesting that we --

1 SENATOR DRUE PEARCE: We're trying to figure
2 out what we would actually put in. Would it be a list
3 of all of the possibilities?

4 HEATHER McCARTY: Well, maybe, maybe. I think
5 we had a document, and I didn't bring them all to the
6 session here, but we had a document at one time that
7 listed all of those things, and maybe we could just
8 include that as part of the report.

9 BRIAN ROGERS: So, in addition to where here we
10 say "including tax credits for affected vessels," list
11 those other items that were under consideration?

12 HEATHER McCARTY: Yes, that would probably do
13 it.

14 BRIAN ROGERS: Is everyone comfortable with
15 that?

16 STEPHANIE MADSEN: Mr. Chairman. This is
17 Stephanie Madsen.

18 I'm very comfortable with that. I had talked
19 to Judy, and I thought I was under the impression that
20 because there had been such detailed work on the tax
21 credit section, that that was going to be attached as an
22 appendix.

23 HEATHER McCARTY: Yeah, I did, too.

24 STEPHANIE MADSEN: And I hate to lose all that
25 work, because there was a lot of work done, and

1 unfortunately we ran out of time to pursue, and really
2 didn't have the knowledge or a feel for what the
3 legislature may do, and it wasn't within our ability to
4 recommend. So, I just hate to see all that work lost,
5 and somehow if we could capture and refer to it so that
6 that document doesn't get shelved.

7 BRIAN ROGERS: And I think that would be in
8 the -- on Page 47, in the list of supporting
9 documentation, the prevention work group summaries that
10 are available on the web contain those documents,
11 including the tax credit document. I think that's where
12 that's included, along with all the other supplemental
13 material. I didn't put it in the report itself because
14 that was not one of the recommendations of the report.

15 STEPHANIE MADSEN: Mr. Chairman.

16 BRIAN ROGERS: But certainly that would be up
17 to the Task Force.

18 STEPHANIE MADSEN: Stephanie Madsen again.

19 Maybe I could suggest that when we refer to tax
20 credits in this paragraph, that you refer to the
21 appendix that the interested party could go to to look
22 for the details of the tax credit without burdening the
23 reader right in this.

24 HEATHER McCARTY: That's a good idea. This is
25 Heather McCarty.

1 I think that's a good idea, Stephanie.

2 BRIAN ROGERS: So we say refer to appendix 12,
3 or Section 12, for details.

4 GENE BURDEN: This is Gene Burden.

5 Brian, I must have written Barbara Novell's --
6 how do you spell her last name --

7 BRIAN ROGERS: N-o-r -- Norrell. Where did I
8 put that?

9 CHARLOTTE MacCAY: Two Rs and two Ls.

10 GENE BURDEN: N-o-r-r-e-l-l.

11 BRIAN ROGERS: -- r-r-e-l-l.

12 GENE BURDEN: Two Rs and two Ls.

13 BRIAN ROGERS: Correct.

14 GENE BURDEN: All right. Thank you.

15 SENATOR DRUE PEARCE: She's a Barbara, b-a-r-a.

16 GENE BURDEN: Yeah, yeah. B-a-r-b-a-r-a?

17 BRIAN ROGERS: Yes.

18 SENATOR DRUE PEARCE: Yes.

19 BRIAN ROGERS: Okay. On Page 51, deleting the
20 table on 51, is the final item then. Anyone disagree
21 with deleting the table on Page 51?

22 Okay. That gets us through, then, these
23 consensus items, with four items outstanding. First,
24 the maximum capacity; second, the funding; and third,
25 the legislation. And I guess my question is --

1 Charlotte?

2 CHARLOTTE MacCAY: I had one other very minor
3 change.

4 BRIAN ROGERS: Okay.

5 CHARLOTTE MacCAY: I noticed -- after my name
6 on the list --

7 BRIAN ROGERS: Yes.

8 CHARLOTTE MacCAY: -- of Task Force members,
9 it's Cominco Alaska.

10 BRIAN ROGERS: Sorry.

11 CHARLOTTE MacCAY: That's all right.

12 BRIAN ROGERS: Cominco Alaska, Inc., right?

13 CHARLOTTE MacCAY: Actually, we're not supposed
14 to abbreviate "Inc.," but it will get abbreviated.

15 BRIAN ROGERS: Cominco Alaska, Incorporated. I
16 can -- it doesn't cost us any more.

17 CHARLOTTE MacCAY: I'm not sure why, but
18 there's a legality there.

19 BRIAN ROGERS: It doesn't cost us.

20 Anyone else who doesn't like the way they're
21 listed, please let me know.

22 UNIDENTIFIED SPEAKER: What page is that on?

23 BRIAN ROGERS: That's on Page 49. It's the
24 list -- the company affiliations for the Task Force
25 members.

1 SENATOR DRUE PEARCE: I think that we should
2 add somehow Denise Henderson, Pat Carter, and certainly
3 Larry Dietrick -- well, Larry is on here -- but Breck,
4 because they have been so much a part of the Task
5 Force's work.

6 BRIAN ROGERS: Okay. Actually, the list on
7 Page 2 is -- probably would be the appropriate place to
8 do that.

9 SENATOR DRUE PEARCE: Okay, good.

10 BRIAN ROGERS: Page 49 is sort of only the --
11 so I would add those.

12 Do you want to take a break before dealing with
13 the remaining issues?

14 SENATOR DRUE PEARCE: We can.

15 BRIAN ROGERS: No.

16 SENATOR DRUE PEARCE: People don't want to take
17 a break. We won't.

18 So, the revisions that Brian just went through
19 and asked if there were no problems with, and the other
20 small ones that were brought to our attention; one last
21 time, is there any concern about any of those?

22 STEPHANIE MADSEN: Madam Chairman.

23 SENATOR DRUE PEARCE: Yes.

24 STEPHANIE MADSEN: Not that I have concerns,
25 but I just wanted to make clear -- and I thought of this

1 when Mr. Hansen was speaking -- it's my understanding
2 once we're done with this, there is the ability for any
3 member to do a, kind of a majority or a minority report,
4 up to two pages, you had said before, and not that I
5 have anything I'm going to put in there, mind you, but
6 that option is available to Task Force members?

7 BRIAN ROGERS: To every member of the Task
8 Force, up to two pages in a concurring or dissenting
9 opinion, since we're all becoming very familiar with
10 concurring and dissenting opinions this week.

11 SENATOR DRUE PEARCE: Okay. Then --

12 BRIAN ROGERS: Maximum capacity.

13 SENATOR DRUE PEARCE: -- should we go to --

14 BRIAN ROGERS: Yeah.

15 SENATOR DRUE PEARCE: Okay. We'll go to the --

16 BRIAN ROGERS: So, Rick, do you want to
17 describe, discuss your proposed changes first on Page 5,
18 and then on Page -- actually, we should probably start
19 with the one on Page 15, since the Page 5 is just a
20 summary.

21 Page 15. So, the item in bold, number 7,
22 recommendation number 7, is operating capacity. And the
23 recommendation is to change the -- to add a sentence to
24 the text.

25 RICK HARRIS: Yes. Thank you, Senator Pearce

1 and Brian.

2 It would help me if I knew what was in front of
3 the group. Do they have a copy of my e-mail with the
4 suggested changes?

5 BRIAN ROGERS: That's correct.

6 RICK HARRIS: Okay, good. I think all we
7 wanted to do in this process was to understand that
8 frequently vessels coming in, and spot charter vessels
9 coming into Southeast Alaska, or at least in the area
10 that I work, do not carry full capacity of their vessel.
11 And what we're asking is that if we can demonstrate to
12 the Department that the capacity of the vessel is less
13 than the maximum capacity, then our response planning
14 standard would be for the actual fuel, demonstrated fuel
15 on the vessel, as opposed to the maximum capacity of the
16 vessel.

17 So, what we tried to do -- and I think we had
18 that discussion, and I appreciate, Brian, you providing
19 all the meeting minutes, and it's fairly convoluted and
20 we had about three topics going on, but I believe that
21 the changes that I have suggested represent the general
22 consensus or the discussion that we had.

23 And what I'm basically suggesting is that we
24 allow the -- to incorporate the sentence that says, "The
25 Task Force recommends that the response planning

1 standards for the demonstrated..." -- and I highlighted
2 "certified" in there, to clarify that that's the -- that
3 there is a test of responsibility by the ship agent or
4 ourselves to provide that information, that the
5 demonstrated or actual fuel volume, and not the maximum
6 operating capacity.

7 The purpose, then, is just simply to make it
8 clear that our response standard, if we go through this
9 process with DEC, would be the actual fuel volume as
10 opposed to some other standard.

11 Now, the question and the issue that came up,
12 and Larry Dietrick raised that question, as to, well,
13 how do we know what the -- what is on the vessel? In
14 many cases we're already certifying a variety of things
15 occurring. We're certifying we have the insurance,
16 we're certifying that we have a relationship with a
17 spill response contractor. And one other thing we want
18 to of course certify is how much fuel we have on board,
19 and we have that certified as being able -- that we have
20 a response contractor that has the equipment and the
21 capacity to clean that up.

22 The question came up, well, how do we really
23 know how much fuel you have on a vessel, and that's a
24 normal reporting procedure. Any vessel coming into our
25 region -- and Paul Axelson had provided me with some

1 information on that, and he says that every time a
2 vessel arrives and departs from any port, the agent
3 receives a vessel -- from the vessel what is called the
4 arrival or departure conditions. And included in that
5 it talks about the amount of fuel that they have.

6 And so I asked Paul to provide me with kind of
7 a summary memorandum, and he did, which showed the
8 maximum capacity and the actual fuel on the vessel, and
9 there's a substantial difference. You know, somewhere
10 between at least 30 to 35 percent of all vessels have
11 fuel below that maximum capacity. So, we're saying in
12 this circumstances, we shouldn't be obligated to have
13 cleanup capacity for fuel that doesn't exist on the
14 vessel. And that's what we're trying to accomplish
15 here.

16 BRIAN ROGERS: Paul Fuhs, you did some work on
17 this.

18 PAUL FUHS: Yes. This is Paul Fuhs.

19 The Department asked me to look into this. I'm
20 still in the process of getting the final research on
21 what's actually happening out there. But this issue
22 involves a number of tradeoffs that are key to issues
23 that we've addressed here. And first is the response
24 planning standard. It's 15 percent. The Department
25 already feels that's fairly low. So, if we are going to

1 go with something that's even below that 15 percent for
2 actuals, it has to be somehow enforceable.

3 And this raises a number of issues, and one of
4 the issues is that, for one, although it's not included
5 in here, it would have to say, I think, that this be
6 nonpersistent -- that this be persistent fuel only.
7 Because you combine nonpersistent fuel in Alaska, and
8 you could, you know, certify, say, a fishing vessel
9 coming up and saying, "I've only got this much," but
10 then they go over to the fuel dock and fill up, well,
11 then how much do they have?

12 So, this is a real enforcement nightmare if you
13 go beyond persistent fuels to nonpersistent. So that's
14 one cut of it. It should be products that -- you know,
15 it references in here that you don't buy fuel in Alaska.
16 Well, the fuel that's not sold in Alaska is persistent
17 fuel. Bunkers and No. 6 and those other things. So, I
18 think if you want to consider this, you at least need to
19 say that.

20 And the other issue on enforcement, when you go
21 in, the issue of inspection was raised and this is a
22 pretty hot button with everybody, and I think if you're
23 going to go in and say I've only got so much fuel on
24 board, that implied within that is if the Department
25 wants to, they can come in and go through your vessel,

1 sound every tank in the vessel, look at the meters or
2 whatever, to determine how much fuel is on there.
3 Otherwise, how is this enforceable? You could say,
4 well, it's by affidavit, but how do you know that the
5 affidavit is wrong unless you actually go on the vessel
6 and sound the tanks and determine how much fuel is
7 actually on board?

8 So, this is -- if you're involved in this
9 letter that -- or this last sentence under 7 that says,
10 "The Task Force further recognize DEC process for
11 approval of lower actual fuel volumes will not be able
12 to accommodate vessels that enter Alaskan waters on
13 short notice."

14 Now, what does this sentence mean? Does this
15 sentence mean that if Rick Harris, for his vessels he's
16 going to say, "I promise that I've told all the vessels
17 that are going to come here in my fleet that they're
18 never going to carry more than 60 percent of their
19 capacity"? Or does this mean you're picking up a vessel
20 off the spot market and saying, well, I'm promising that
21 this vessel, when it comes in they told me they only
22 have 60 percent of their fuel capacity, and now I'm
23 going to say sign an affidavit saying that they only
24 have 60 percent of their fuel capacity?

25 The other way to approach this, if you're not

1 going to go on an individual fleet or an individual
2 vessel basis, is to say, okay, if it's for persistent
3 fuels, we know that at least you're going to burn a
4 certain amount of fuel coming here. Even if you top off
5 in Yokohama and you sail to, you know, Dutch Harbor or
6 wherever, your first port of embarkation here, that you
7 will have burned probably about 10 percent of your fuel.
8 So you could come in and say, for persistent fuels we're
9 going to take off 10 percent of the capacity because we
10 know that at least every vessel is going to burn that
11 much fuel en route here.

12 The other thing you could do, and this is the
13 other research that I'm doing -- I'm sorry it's taking
14 me a little bit longer to get this -- is what is the
15 industry practice when they come here for persistent
16 fuels? And, you know, Jeff Thompson, I asked him to
17 work on this and he's got, you know, one of the
18 survey -- the companies that certify these vessels to
19 say their industry practice is that they never show up
20 here with more than 60 percent of their fuel volume.

21 So, it's either go on a formula or go on an
22 individual affidavit. But I think people have to
23 realize that if you go with individual affidavits for
24 individual vessels, you're going to have to say, yes,
25 we're agreeing that the Department can come on and

1 enforce this and test how much fuel we've got on board
2 the vessel. And this is also a personnel issue with DEC
3 when we get down to funding.

4 So, I don't know how you want to proceed. If
5 you go with this specific recommendation, then you can
6 do that. But I can just tell you that there's a lot
7 more issues, legitimate public policy issues, involved
8 in this than are stated just in what's in front of us
9 here.

10 The other way to do it would be able to put it
11 in a report, you know, which I could write for the Task
12 Force, just saying here's the two options if you go on
13 the issues that are involved there. I don't know how
14 you want to proceed, but this is actually a fairly
15 complex issue when you start looking into it, how it
16 actually would be enforced and implemented.

17 RICK HARRIS: Mr. Chairman.

18 BRIAN ROGERS: Just a second. I just wanted to
19 point out -- this is Brian Rogers. I wanted to point
20 out one other item that this recommendation speaks to is
21 this actually is a modification -- is suggesting a
22 modification to the response planning standard. In 273,
23 the response planning standard is set for control and
24 containment at 15 percent of the maximum capacity. So
25 we have to go in and amend 273. As written now, the

1 maximum in the current version of your report, maximum
2 operating capacity only applies to the issue of cleanup,
3 where -- and it's setting the standard for how much
4 cleanup equipment you need.

5 In recommendation -- let's see. Recommendation
6 6 speaks to how much cleanup equipment, and that's tied
7 to maximum operating capacity. And then we again define
8 maximum operating capacity.

9 So, as written, it doesn't require an amendment
10 to 273. As suggested here, changing the RPS would
11 require a further amendment to 273. Just so that people
12 are aware of that.

13 And someone on line was requesting -- was that
14 Rick?

15 RICK HARRIS: Yes, that was Rick Harris.

16 Mr. Chairman, as far as I understand, I mean,
17 Paul has raised a series of "what ifs," all of which are
18 fair concerns and fair issues, but you have to read item
19 7 in the bold which says that all of this has to be done
20 and approved by the Department of Environmental
21 Conservation before you have a lesser standard. Not a
22 lesser standard, but that you base it on your operating
23 capacity versus your maximum capacity.

24 So, all we're doing at this point in time is
25 saying that it's not really fair to require vessels

1 coming in who do not carry full capacity to be holding
2 or acquiring cleanup capacity for fuel that they just
3 never carry.

4 Now, if I can go out and prove and show that I
5 never carry that fuel, because of where my ships come
6 from, where they fuel up, then I shouldn't be penalized.
7 The irony is that a ship that's coming in at 60 percent
8 of capacity is being penalized, it's receiving an unfair
9 treatment, while a ship that's coming in at 100 percent
10 of capacity both have the same standards, but each of us
11 have different potential liability.

12 And all I'm saying here is we're trying to
13 clarify what this maximum operating capacity means, and
14 it means that if you can demonstrate to the Department's
15 satisfaction that you're coming in with vessels that
16 have less than that capacity, then your RPS would be for
17 your actual fuel on board, not the theoretical full
18 tanks which never occur.

19 So, I mean what you're really doing is you're
20 punishing vessels that are coming in with less than
21 maximum capacity in their ship. They're going to pay
22 the same amount for their fuel, their cleanup standard,
23 as an individual that has a full ship. And that's not
24 fair.

25 And so, we're not trying to make and force this

1 to happen. We're making it a two-step process. First
2 of all, we have to show the Department what it is,
3 convince them that it will work, and then they can --
4 then in our C-plan, would be my expectation, they would
5 be able to then adopt a different, you know, give us a
6 standard based on the actual fuel on the vessel.

7 So, you've raised all these issues, Paul, but
8 I'm saying we don't have to solve them now. All we're
9 asking to do is have that right reserved to us.

10 BRIAN ROGERS: Bob Heavilin.

11 BOB HEAVILIN: Yeah, this is Bob Heavilin.

12 I just wonder if this really has much of an
13 effect on the RPS, if it really does change --

14 RICK HARRIS: He's cutting way out. I can't
15 hear him.

16 BOB HEAVILIN: I'm just wondering if going with
17 what you're carrying as actual versus the capacity, what
18 real effect does that have on the RPS? I mean --

19 RICK HARRIS: What it means is that I have -- I
20 have to have a capability to clean 15 percent of my
21 total fuel capacity, or I have 15 percent of the fuel
22 that I have on board. And what that means is that I
23 have to have a lot more skimming capability, a lot more
24 storage capability, a lot more boom, than I would be
25 required to have if I was doing it with more on what's

1 representative of the actual fuel that I carry on board
2 my vessel.

3 GENE BURDEN: This is Gene Burden.

4 You wouldn't have to have any more boom. The
5 boom is pretty well established what you have to have.

6 You know, I think the question that rises is if
7 you've got 20,000 barrels of storage capacity, and you
8 generally run with 12, what Bob's -- you know, going
9 back through the list of vessels and their cargo
10 capacity that we did early in this process, Bob raises a
11 good point, I think, is that the practical implications
12 of whether you're rated at 12 or 20 for planning
13 purposes, in an area that has traffic with vessels with
14 30 or 40,000 barrels of bunker, it's not going to really
15 make -- it's going to be very negligible in terms of the
16 equipment availability for skimming and removal.

17 RICK HARRIS: Mr. Chairman.

18 BRIAN ROGERS: Go ahead, Rick.

19 RICK HARRIS: If I buy my own equipment, then I
20 have to have that available. I mean, I have to pay for
21 it. If I choose not to go with a co-op, as an example,
22 then I have to have the fuel available for my largest
23 available -- or the cleanup capacity for my largest
24 vessel. And I'm looking at -- you know, I have a chart
25 of about six vessels that have come in, and right now

1 the largest one on its heavy fuels is 1,275 metric tons.
2 But when he arrives in port he only carries about 39
3 percent of his capacity. So, I don't want to have
4 cleanup capacity for 1,275 metric tons; I want to have
5 it for 500 metric tons.

6 If that's indeed the maximum amount that my
7 vessels are going to bring into the area, I don't want
8 to have to go buy all that extra skimming equipment or
9 storage equipment. And as we heard in our prior
10 discussions, is the real sneaker in here is the storage
11 and the cost of the storage.

12 So, I'm not -- we're not asking for anything.
13 I mean, what we say is that there is a material
14 difference between the actual fuel capacity of these
15 vessels and what comes in. And the analysis we did just
16 on these five vessels that just came in this last year,
17 is that they were running at about 30 to 35 percent less
18 than their maximum capacity, and then when you got down
19 to -- that was only -- one vessel had a lot of fuel but
20 he was still below that capacity. And what we're saying
21 is that we shouldn't have to have cleanup capability for
22 fuel that we don't carry.

23 BRIAN ROGERS: Actually -- this is Brian.

24 The current recommendation speaks to that issue
25 of cleanup capacity. If you do -- if you have -- if DEC

1 accepts the lower fuel volume, the current
2 recommendation would subject you to a lower need for
3 skimming and storage equipment. Your language is asking
4 for containment and control, which would require the
5 statutory change.

6 CHARLOTTE MacCAY: It only refers to booms.
7 You're -- and boom doesn't change.

8 BRIAN ROGERS: Right.
9 Larry, and then Paul.

10 LARRY DIETRICK: Yeah, Larry Dietrick with DEC.
11 Yeah, I'm not sure what the issue is here.

12 We've had this debate before. I thought we had made a
13 decision. I thought the decision is accurately
14 reflected in condition 7 and in the -- and on Page 23,
15 on operating capacity. We did indicate this is
16 fraught -- there's a whole bunch of nuances here, but I
17 thought that we had made a decision to accept either
18 maximum or actual, and that the details, verification
19 stuff, would be worked out in regs, which is properly
20 reflected, I think, on Page 23.

21 So, I don't see that the nature of this change
22 is significant unless you're asking us to change the
23 boom part, which I think is what Brian is saying. Right
24 now the boom is based on the length of the boat. It
25 wouldn't be adjusted by a change in the fuel volume.

1 That the skimming capacity and the storage capacity
2 would.

3 So, if you're not suggesting we change the
4 recommendation that says how many feet of boom you had.
5 There's nothing new here, then, because we've already
6 accepted this in concept.

7 BRIAN ROGERS: Other than the change in statute
8 that would be required to change the response planning
9 standard of the vessel.

10 LARRY DIETRICK: Well, this wouldn't require --
11 the response planning standard is based on 15 percent of
12 the operating capacity. And if you define operating
13 capacity, then, as either a full tank or an actual fuel
14 tank, then it can be either one of those. But we
15 wouldn't have to change the 15 percent standard unless
16 we wanted to change this boom requirement, which I don't
17 think is --

18 RICK HARRIS: We weren't suggesting that.

19 LARRY DIETRICK: No, I don't think anybody is
20 suggesting that.

21 BRIAN ROGERS: 273 says maximum oil capacity,
22 not operating.

23 LARRY DIETRICK: But that's subject to being
24 defined, by rule making. Isn't that what we agreed to
25 do?

1 BRECK TOSTEVIN: Yeah.

2 BRIAN ROGERS: All right.

3 LARRY DIETRICK: So, what we're saying here is
4 we would craft a definition for maximum operating
5 capacity as currently worded in 273 that would include a
6 full tank or an actual tank.

7 BRIAN ROGERS: In that case we probably should
8 use the term "maximum oil capacity," so that it is
9 consistent with what 273 says.

10 LARRY DIETRICK: 273 currently says maximum oil
11 capacity, is the actual term.

12 BRIAN ROGERS: Yeah. But in the report we're
13 saying maximum operating capacity.

14 LARRY DIETRICK: And in 273, maximum oil
15 capacity is not defined. So what we're saying here is
16 we can make that language say the maximum operating
17 capacity, or actual oil capacity. What we're saying
18 here is we will define by rule in the regs. That's what
19 we've indicated on Page 23.

20 BRIAN ROGERS: So, the amendment that would cut
21 through that would be recommendation number 6 on Page
22 10, to change the term "maximum operating capacity" to
23 "maximum oil capacity." And in recommendation 7 on Page
24 11, to change "maximum operating" to "maximum oil
25 capacity."

1 LARRY DIETRICK: Yes; if we want to make it
2 clear that that term is the term as it's used in 273,
3 that would be the correct change. Because that's what
4 273 is: maximum oil capacity.

5 BRIAN ROGERS: Does anyone object to changing
6 the term "operating" to "oil," so that it's consistent
7 with 273?

8 And with that, then, the language that is
9 suggested by Rick Harris is consistent with the
10 recommendation and with the statute. Everybody okay
11 with that?

12 HEATHER McCARTY: Brian, this is Heather
13 McCarty.

14 BRIAN ROGERS: Yes, Heather.

15 HEATHER McCARTY: I missed something. On Page
16 11, number 7, you want to change the heading of that to
17 "oil capacity" rather than "operating capacity"?

18 BRIAN ROGERS: To "actual maximum oil
19 capacity."

20 HEATHER McCARTY: Okay.

21 LARRY DIETRICK: Brian, this Larry Dietrick.

22 I mean, if you want to change the subtitle for
23 7 also to "maximum oil capacity" --

24 BRIAN ROGERS: Yes.

25 LARRY DIETRICK: -- that would be okay, I

1 think.

2 Just closes the door there between what we're
3 talking -- or makes it very clear that we're talking
4 about the term as it's used in 273.

5 SENATOR DRUE PEARCE: Rick, does that answer
6 your question, or --

7 RICK HARRIS: Yes, senator, I think it helps.
8 And the only part that I'm missing, and I think we're
9 all agreeing on it, is the "so what"? The statement
10 says, right now as written in the report, and it's not
11 the item 7 but the narrative explanation, says that
12 we're going to look at this and we understand that
13 vessels are going to come in without -- sometimes with
14 less fuel than their maximum capacity. But then we go
15 on to say that, you know, there are safety issues
16 associated with it and that, you know, we can't always
17 have a short notice review on that. But we don't make
18 any statement as to why we even included Section 7, and
19 that is that if we can demonstrate to the Department
20 that we should use a different -- or we can conclude
21 that we have a different maximum oil capacity than the
22 maximum capacity, then we can use a different response
23 standard, once we reach an agreement with the
24 Department.

25 And that's why I felt that the statement was

1 kind of -- it sort of left it hanging. It didn't make
2 the statement that Larry Dietrick made, which was we
3 will do this somewhere, we will consider the actual fuel
4 capacity. And we don't state that anywhere in this
5 report, that why are we trying to define maximum oil
6 capacity. And even in the introductory section on Page
7 5, we make these statements but we don't explain what
8 the operative provision or the operative purpose of the
9 statement is. And that's all I'm asking for, is to make
10 it clear that we all understand why we're doing this.

11 SENATOR DRUE PEARCE: Okay. So, what
12 Mr. Harris has asked for is the addition of the
13 underlined language in the explanation of recommendation
14 number 7. And that language is, "The Task Force
15 recommends that the response planning standard be for
16 the demonstrated certified actual fuel volume and not
17 the maximum operating capacity."

18 Does anyone have a problem with adding that
19 sentence? Larry?

20 LARRY DIETRICK: Yeah. It's just -- if that's
21 added to it, as long as that doesn't become -- right now
22 the way it's in the recommendation, it's maximum oil
23 capacity of a vessel or actual fuel volume.

24 If this is inserted in for actual demonstrated
25 certified fuel volume --

1 RICK HARRIS: Yeah.

2 LARRY DIETRICK: -- so that both of those are
3 an option, there's no problem.

4 If it precludes the maximum --

5 RICK HARRIS: No, I don't expect it to preclude
6 the maximum.

7 LARRY DIETRICK: Right, it's either/or.

8 RICK HARRIS: It's either/or. I have work to
9 do with you to convince you that my demonstrated
10 capacity is not the maximum but it's something
11 different, and if I can demonstrate that to you to your
12 satisfaction, then I have a cleanup -- an RPS that is
13 based on the -- more related to the actual fuel coming
14 in, and not this theoretical amount of fuel that's on
15 board or could potentially be on board a vessel.

16 LARRY DIETRICK: So, substituting "demonstrated
17 certified actual fuel volume" in for "actual fuel
18 volume" in that, Madam Chair, would be okay.

19 RICK HARRIS: Yeah, I would stay consistent,
20 which would be the maximum -- you know, the oil
21 capacity, or the actual fuel volume.

22 I use the "demonstrated" because I felt that
23 was a word that you were looking for, to -- you know, to
24 not imply that this was a free gratis. I mean, I have
25 some work to do in order for this to happen.

1 LARRY DIETRICK: Yeah, "demonstrated" is okay,
2 as long as we maintain the either/or option, that we
3 don't have a problem with that, Rick.

4 RICK HARRIS: You may want to check with others
5 on the spot charter group. As you might notice in my
6 e-mail, I was freelancing a little bit on a Saturday
7 evening, trying to write something that made sense.

8 SENATOR DRUE PEARCE: Charlotte, did you have a
9 question.

10 CHARLOTTE MacCAY: Yeah, I did. This is
11 Charlotte.

12 I don't mean to undo anything that we're doing
13 here, but we're comfortable saying "response planning
14 standard," or did we need to say "cleanup planning
15 standard"?

16 BRIAN ROGERS: Actually, it is -- if you go to
17 the term "maximum oil capacity," that's the same term as
18 is used in cleanup, you're okay.

19 CHARLOTTE MacCAY: Okay.

20 BRIAN ROGERS: It's consistent with that.

21 CHARLOTTE MacCAY: Okay.

22 SENATOR DRUE PEARCE: So, Brian, what changes
23 are you making?

24 BRIAN ROGERS: The changes that I have noted
25 are in recommendation 6, on Page 10, the change of the

1 term "maximum operating capacity" to "maximum oil
2 capacity."

3 On Page 11, number 7, changing "operating
4 capacity" to "maximum oil capacity;" and changing, in
5 quotes, "maximum operating capacity" to "maximum oil
6 capacity."

7 Adding a sentence slightly modified to what
8 Rick Harris proposed, that would read, "The Task Force
9 recommends the response planning standard be for the
10 demonstrated certified actual fuel volume and not the
11 total tankage."

12 And then the two changes in the summaries on
13 Page 5, again we'd use "maximum oil capacity" instead of
14 "maximum operating capacity."

15 And finally, in recommendation 7, second line,
16 "or the demonstrated actual fuel volume."

17 I think that incorporates everything that
18 everyone has asked for, and would not require further
19 change to 273. Is everyone okay with that now?

20 RICK HARRIS: Yes. The only thing I would like
21 to ask a clarification on, if I could --

22 SENATOR DRUE PEARCE: Go ahead.

23 RICK HARRIS: -- is the maximum oil capacity in
24 273 is not defined?

25 LARRY DIETRICK: That's correct.

1 RICK HARRIS: Okay.

2 BRIAN ROGERS: And so, we're defining it by --
3 this would require defining it by regulation.

4 RICK HARRIS: That's fine.

5 LARRY DIETRICK: That's correct.

6 BRIAN ROGERS: Paul Fuhs.

7 LARRY DIETRICK: As either/or.

8 PAUL FUHS: This is Paul Fuhs.

9 I just wanted to be sure to point out to
10 everybody and make sure that we have the understanding
11 that it's vessels that can't refuel in Alaska. Is that
12 correct? We're talking about persistent fuel here?
13 We're referencing this. Some vessels are currently
14 unable to refuel in Alaska. That means persistent fuel.
15 Is that what we really mean? Or do we want other people
16 just burning diesel or anything, that could go get fuel
17 somewhere, to be able to say, "I'm not carrying any more
18 than 60 percent of my cargo"?

19 HEATHER McCARTY: Madam Chairman, this is
20 Heather McCarty.

21 SENATOR DRUE PEARCE: Heather, can you let Paul
22 finish.

23 PAUL FUHS: Well, that's just it. I just want
24 to pose that question and make sure, because if we're
25 not answering that question clearly, we're going to have

1 a mess.

2 SENATOR DRUE PEARCE: Heather?

3 HEATHER McCARTY: Yes, thank you. This is
4 Heather McCarty.

5 My recollection of the discussion that we had
6 about this at the Task Force meeting when we last met
7 did not indicate that this was just for persistent fuel
8 products and not just for people that couldn't refuel in
9 Alaska. I don't think that was made clear at that time.
10 I don't think that was the intent of the Task Force. I
11 could be wrong, but that's my remembrance of it.

12 BRIAN ROGERS: And I guess just -- this is
13 Brian Rogers.

14 I would concur with what Heather is saying, is
15 that my understanding was that any vessel could make
16 this application. Certainly, a vessel that made the
17 application and then refueled and exceeded it would be
18 in a situation of being out of compliance with their
19 C-plan at that point.

20 PAUL FUHS: Well, then what is the reference to
21 "some vessels are currently unable to refuel in Alaska"?
22 If that's your intent, then you ought to remove that out
23 of there, because that implies persistent fuel, so those
24 are the fuels that are not sold in Alaska.

25 And other than that, you know, Heather, I guess

1 you'd have to be saying, well, I promise that when I go
2 to the fuel to fill up my fishing vessel or whatever,
3 I'll tell them not to fill it more than 60 percent full.

4 HEATHER McCARTY: Madam Chairman, this is
5 Heather.

6 BRIAN ROGERS: Go ahead.

7 HEATHER McCARTY: Yeah, Heather McCarty from
8 Juneau.

9 I recall this discussion pretty clearly because
10 it was mentioned at the time, that those people who are
11 in any kind of cooperative group with those vessels that
12 have very large fuel capacity are then responsible
13 collectively for the expense of preparing for the
14 eventuality of an oil spill from those vessels. It was
15 thought of as fair that if those vessels could
16 demonstrate, just as Rick Harris's vessels might, that
17 they weren't carrying their full capacity of the tanks,
18 that then that would reduce the liability not just for
19 them but for the entire co-op. And that it was thought
20 to be an advantage in that sense for people other than
21 those who just couldn't refuel in Alaska.

22 BRIAN ROGERS: Just a question for the group.
23 Would it make sense after the "unable to refuel in
24 Alaska," if we inserted "or operate with less fuel than
25 total tankage"? Would that make it clear that there was

1 more than one circumstance under which someone might
2 apply?

3 CHARLOTTE MacCAY: This is Charlotte.

4 I think it's going to be a harder sell for them
5 to demonstrate, but there may be a way for them to
6 demonstrate so I don't think we should exclude them.

7 HEATHER McCARTY: We can't hear that comment.

8 CHARLOTTE MacCAY: I'm sorry. It's Charlotte.

9 I said, it may be a harder sell for those who
10 are -- other types of fuel that could refuel, it's going
11 to be a harder sell for them to demonstrate, but I don't
12 think it should be excluded that there would not be a
13 way for them to demonstrate.

14 PAUL FUHS: Okay. Then I just want to be sure
15 to clarify that, because it was the way this was
16 implying something different. So that clarifies that.

17 The other thing I just wanted to point out on
18 this is the information I'm requesting is from the very
19 largest vessels. Because like, for instance, the APL
20 ship pulling in to Dutch Harbor, if it's carrying less
21 fuel, that is going to affect everybody that's in the
22 co-op there, and if we have to plan for that largest
23 vessel. So that's the data that I'm collecting.

24 The other thing I just wanted to say, just to
25 be sure that everybody knows, this means you're going to

1 have to allow the Department to get on your vessel to
2 inspect it and do a much more invasive inspection than
3 you might be looking for otherwise. So, it won't be
4 fair for people to come up and say, later on when we get
5 in front of the legislature, well, here the Department
6 wants to come on and inspect our vessel again. If you
7 want to comply with this, implied within that is you
8 have to let people on to inspect. Otherwise there is no
9 other real way to verify it.

10 SENATOR DRUE PEARCE: Well, that's true, except
11 from an agent standpoint, when a ship gives you their
12 fuel in, fuel out, whatever, what -- why do you get it?
13 Who cares? Why do they give that to you? Is there
14 something about how much load they can take.

15 JEFF THOMPSON: Yeah, Jeff Thompson.

16 I've spoken to this before. And in the
17 maritime industry, vessels operating worldwide, it is of
18 primary concern to operators and owners, their fuel --
19 their fuel consumption, for the obvious reason of the
20 expense. It's one of their largest expenses in
21 operating a vessel on an ongoing basis.

22 As such, there are very determined and very
23 defined protocols that have the chief engineer is
24 responsible for reporting to the vessel master, who then
25 of course reports to the vessel owner and operator the

1 amount of oil fuel, all fuels on board at any given
2 moment. And it's something that is audited and
3 something that is fairly precisely calculated throughout
4 the voyage.

5 And the chief engineer, again being
6 responsible, after a 60- or 70-day voyage back to home
7 port, better be within some very fine tolerances in
8 terms of the amount of fuel he's actually used. Because
9 the owners are using that information, of course, to
10 plan their voyage and this is their business.

11 So, from our standpoint, as agents, the
12 departure conditions that Mr. Harris alluded to earlier
13 as provided by Paul Axelson, another vessel agent, is to
14 our mind a very reliable and very substantial report of
15 the facts. And that for the instance of ullaging or
16 innaging, when you measure capacities within a vessel,
17 it would actually be, I think, a fairly routine matter
18 in terms of an inspection aspect for DEC to come on
19 board, to look at the fuel logs of the chief engineer
20 and to concur with maybe some measurements. Wouldn't
21 have to measure the entire vessel, but could do some
22 spot checking of measurements, of those who are familiar
23 with ullaging and innaging, to verify. Because the fuel
24 log itself is a very detailed and very comprehensive log
25 book that's kept on board and is a record that would

1 always be referred to, just like -- it's as important to
2 the vessel as the log itself.

3 SENATOR DRUE PEARCE: Okay. So, one would
4 assume, I would assume, that if indeed the log is that
5 important to the owners, and I can certainly see how it
6 would be, that if all these ships presently coming in
7 have a record already in place, and they had no idea
8 that we were going to be sitting here talking about
9 lowering RPS because they don't bring in full fuel, so
10 the chances of them going back and dinking with those
11 records are nil.

12 So, if any ship, whether it's one of the APL
13 ships or one of the others, can just bring in copies of
14 the logs showing a year's worth or, you know, the
15 Department would have to decide how much detail they
16 want, but I just still don't see -- while it's true that
17 the Department has to have the ability to go on and
18 check, I really can't see that we're opening ourselves
19 up, or the ship owners are opening themselves up to
20 have DEC employees running around their ships to try to
21 figure out how much fuel they actually have on board.
22 Except that they might ask, as the Coast Guard does
23 their checks, that might be one of the things they'd ask
24 them to just check for, are they within some tolerances
25 of those amounts.

1 Because -- and I don't want us to start getting
2 before legislative committees and start talking about,
3 oh, my God, this is going to open us up to all these
4 inspections, because the Department hasn't ever said
5 this during session, but I think real important -- to my
6 knowledge, the Department has never undertaken under
7 present law an inspection where they've gone -- of
8 anything that has caused complaints back to the
9 Department or to the legislature.

10 So, I would shy away from the conversations
11 where we start talking about it's opening us up to more
12 inspections, as though those were bad. But I just --
13 the information is there, and one would assume it's
14 dependable. And I don't see that that's going to be a
15 problem.

16 PAUL FUHS: Okay, well, that's a good answer.
17 I just wanted to raise it because, you know, these
18 hot-button issues, if we can go through them, the fuel
19 log is probably a good answer, but we need to have
20 answers for those. That's all I was trying to do, is
21 raise these issues and make sure we had a good answer
22 for verification.

23 BRIAN ROGERS: Anything else on maximum oil
24 capacity before we move on to funding?

25 GENE BURDEN: This is Gene Burden. One other,

1 in advertising. We do have bunker fuel that's available
2 in Alaska; it's just not --

3 SENATOR DRUE PEARCE: Do we have to come to
4 Nikiski.

5 GENE BURDEN: Yeah, well, we might even come up
6 with a coupon program for it.

7 RICK HARRIS: Some of the best fuel sold, at
8 Tesoro.

9 SIMON LISIECKI: We buy it from Tesoro but not
10 in Alaska. I agree with that.

11 SENATOR DRUE PEARCE: Would you like a
12 recommendation?

13 BRIAN ROGERS: So the recommendation be that
14 buy from Tesoro.

15 GENE BURDEN: Get a consensus in some fashion.
16 A buy Alaska program. Yeah, yeah.

17 BRIAN ROGERS: The issue of funding. The
18 question was raised whether the Task Force wants to
19 speak at all to funding. And I believe, Stephanie, that
20 was in your e-mail about specific fund sources.

21 STEPHANIE MADSEN: Well, Mr. Chairman, I did
22 recollect that we did have that on our last agenda, and
23 we looked at three funding sources. And that was GF,
24 fees, and 470 funds. And Senator Pearce had indicated
25 that when she introduced the bill -- please correct me

1 if I'm wrong -- that the funding source was 470 funds,
2 and my recollection was that Senator Pearce didn't feel
3 that that situation had changed. And if that's the
4 case, I'm wondering if we should make that statement or
5 reflect that discussion that the Task Force had.

6 I do think that the funding issue is going to
7 be an issue, and certainly we would have comments on how
8 that was funded, because we would be interested to know
9 how that was funded. And if there's a way to kind of
10 get a consensus or a feel for what Senator Pearce or
11 others may have in mind as a preferred option, I would
12 be interested in that. But not to the extent to drag
13 out or, you know, postpone adoption of this report.

14 SENATOR DRUE PEARCE: Okay. The bill, as it
15 was introduced last year, 273, as it passed the Senate
16 and went to the House, had a fiscal note. I've been
17 sitting here trying to remember what the number was, and
18 I don't remember. I believe it's fair to -- but it did
19 use 470 funds as the fund source.

20 LARRY DIETRICK: Yeah.

21 SENATOR DRUE PEARCE: I think it's fair to say
22 that the recommendations embodied here will increase the
23 fiscal note to a degree -- I'm not sure to what degree
24 -- and there's no way, I don't think, for the Department
25 to guesstimate that.

1 What I would suggest -- speaking for myself,
2 and I can't speak for the commissioner or the governor,
3 and since we still haven't quite figured out who is
4 going to be the prime sponsor -- I would suspect that
5 the original fiscal note as it comes from the Department
6 would use 470 funds inasmuch as they're available. One
7 of the problems with the 470 fund, for those of you who
8 aren't familiar with the five cents a barrel funding
9 source broken out to two cents and three cents -- the
10 two cents going into the \$15 million emergency fund, and
11 the three cents going for operations of spill response
12 and other things by the State. As production from
13 Prudhoe Bay has gone down, obviously there are fewer
14 nickel per barrels going into the 470 fund, and the
15 Department has seen a pretty drastic reduction in those
16 dollars available.

17 My recommendation would be that the Task Force
18 recommend that 470 funding be utilized to pay for the
19 program inasmuch as is possible, with the default
20 funding going to general funds. And I think it would be
21 fair for the Task Force to make a statement,
22 recommendation, if you will, that we do not envision
23 fees, additional fees, as being part of the funding
24 mechanism.

25 Certainly, there are additional fees used for

1 the tanker vessels, and I think there's enough cost, if
2 you will, already embodied in the legislation without
3 adding fees on top of that, for the Department to come
4 see if you did what they made you pay to do. So that
5 would be my recommendation.

6 STEPHANIE MADSEN: I would second that
7 recommendation.

8 BRIAN ROGERS: Would the -- in terms of getting
9 exact language for that as, I guess, a 31st
10 recommendation of the report, would the Task Force be
11 comfortable if we try to draft up something and if
12 Senator -- that reflects Senator Pearce's language; and
13 if she says yes, that's it, we're okay? Or do you want
14 to see the language before it goes out?

15 I don't sense a whole lot of objection to that.

16 SENATOR DRUE PEARCE: I know that there must be
17 some capacity to the 470 funding because the Department
18 did bring that forward last year. I just truly don't
19 have any idea of where we're at, and that's something
20 that will go through the process of the DEC budget
21 anyway.

22 BRIAN ROGERS: Phillips says production is
23 going up this year, so we'll have more nickels.

24 SENATOR DRUE PEARCE: That's true. More
25 nickels. We like that.

1 LARRY DIETRICK: I think your question is
2 really on the peak, because the agencies have been
3 getting heavily pushed toward fees.

4 STEPHANIE MADSEN: Yes, I think I participated
5 in that.

6 LARRY DIETRICK: Yeah, that's what we're trying
7 to get the clarification on. I mean, we just should all
8 keep in mind that the 3 percent is being paid for by one
9 of our Task Force members here.

10 SIMON LISIECKI: There is a consensus.

11 BRIAN ROGERS: Okay.

12 LARRY DIETRICK: And it is declining.

13 BRIAN ROGERS: That brings us to the issue of
14 legislation. And everybody should have received the
15 three-page e-mail from Gene Burden to Barbara Norrell
16 this morning. And the third page of that contains
17 Gene's suggested language that would attempt to split
18 the difference here on the issue of legislation.

19 SENATOR DRUE PEARCE: Did all -- did everyone
20 on teleconference receive their copies of Mr. Burden's
21 e-mail, by fax.

22 HEATHER McCARTY: Oh, yes, I did. Thank you
23 very much.

24 UNIDENTIFIED SPEAKER: We did in Ketchikan.

25 DOUG LENTSCH: Kenai got theirs, too. Thank

1 you.

2 UNIDENTIFIED SPEAKER: I'm in my office in
3 Juneau, so I don't have it, but I think it's being faxed
4 to me.

5 LURILLA LEE: I have it. Lurilla Lee down in
6 Tacoma.

7 KRIS NORRIS: We got it in Petersburg, yes.

8 JOHN HANSEN: John Hansen.

9 I haven't seen it yet here, but I will keep
10 looking for it.

11 CAPTAIN ED PAGE: I haven't gotten mine
12 either -- this is Ed Page -- but I'll check my fax
13 machine.

14 SENATOR DRUE PEARCE: Okay. Mr. Hansen, what's
15 your fax number there?

16 BRIAN ROGERS: We'll refax that.

17 CAPTAIN ED PAGE: This is Ed Page here. You're
18 asking mine?

19 SENATOR DRUE PEARCE: No, sir; I was asking for
20 Mr. Hansen's. Mr. Hansen.

21 BRIAN ROGERS: Was yours 604-681-4364, John?

22 (No response.)

23 RICK HARRIS: Mr. Chairman, I wonder if we
24 could have a short break and I'll go see if I can find
25 mine as well.

1 BRIAN ROGERS: Who is that?

2 RICK HARRIS: I'm sorry. That was Rick Harris.

3 BRIAN ROGERS: And, Rick, we'll fax again just
4 to make sure.

5 RICK HARRIS: It's 586-2304, but it apparently
6 was faxed from the Ketchikan LIO, so I'm going to go
7 look and see if I have it now.

8 BRIAN ROGERS: Okay.

9 SENATOR DRUE PEARCE: We'll take a short at
10 ease while we double-check on the faxing.

11 JOHN HANSEN: John Hansen, Senator.

12 I do have a copy of it now.

13 SENATOR DRUE PEARCE: Great.

14 BRIAN ROGERS: So we'll just wait for a minute
15 while Rick gets it.

16 (At ease.)

17 BRIAN ROGERS: Okay. So, this would add a new
18 conclusion, in the conclusion, "The Task Force
19 recommendations were reached through a consensus process
20 in response to its obligations under the provisions of
21 Senate Bill 273." And we should probably add SCR1.
22 "The recommendations have implications for both state
23 law and regulations. In an effort to meet its
24 obligations and assist the legislature, the Task Force
25 has incorporated recommendations requiring legislative

1 action formatted as draft legislation. The Task Force
2 also reached consensus that any legislation in response
3 to Senate Bill 273 avoid changes to oil spill liability
4 laws beyond those described in this report. The Task
5 Force recommends the provisions of the draft legislation
6 appended to this report be adopted without substantive
7 legislative amendments in order to preserve the balance
8 of interests envisioned by the Task Force."

9 And then in addition, in the Letter of Intent
10 we talk about serving as a record of the legislative
11 intent for any future interpretation of the legislation,
12 is the other addition.

13 HEATHER McCARTY: I have one question, Madam
14 Chairman. This is Heather McCarty.

15 SENATOR DRUE PEARCE: Yes, Heather.

16 HEATHER McCARTY: In the second paragraph on
17 the third line where it's referring to the transcripts
18 of the Task Force meeting, does that include the
19 transcripts of the subgroups of the Task Force, or just
20 the Task Force itself?

21 BRIAN ROGERS: We don't have transcripts of the
22 work groups. We have summary documents that were
23 prepared, and those would be the -- the term, "the
24 documents the Task Force used in preparing the report"
25 would include any summaries that were prepared. But the

1 only transcripts are those of the full Task Force
2 meeting, and those are the word-for-word transcripts.

3 HEATHER McCARTY: Okay, thank you.

4 BRIAN ROGERS: Is everyone comfortable with
5 Gene's proposed revision, with the addition in line 2
6 after "Senate Bill 273," "and Senate Concurrent
7 Resolution 1"?

8 JOHN HANSEN: Madam Chair, it's John Hansen.
9 Since I brought this up earlier, I'll make a
10 comment. I like the -- I like Gene's revisions to the
11 section. I would recommend that the last sentence be
12 drafted a little bit differently. And let me make a
13 suggestion, if I may.

14 I would say, "The Task Force has prepared the
15 appended draft bill, which we believe reflects the
16 balance of interests envisioned by the Task Force."

17 And the reason I'm suggesting that is, as I
18 said earlier, some of us have not had a chance to really
19 go through the draft bill that was circulated. Some of
20 it was circulated on Friday last week. So, we haven't
21 had a chance to really understand whether or not the
22 detailed wording of what's presented truly reflects the
23 overall intent of the Task Force recommendation. So I
24 would recommend the words along the lines that I just
25 read.

1 GENE BURDEN: This is Gene.

2 Could you repeat that, John.

3 JOHN HANSEN: What I suggest is that the last
4 sentence in the first paragraph read, "The Task Force
5 has prepared the appended draft bill, which we believe
6 reflects the balance of interests envisioned by the Task
7 Force."

8 It seems to me by phrasing it this way, it
9 captures the intent of the Task Force, without at this
10 point saying that these are the final, final words that
11 we recommend.

12 GENE BURDEN: This is Gene Burden. I don't
13 have any problem with John's -- I think that's, you
14 know, that's basically what we're doing, is we're
15 trying -- doing our best we can to incorporate our
16 recommendations in a legislative format. And it sounds
17 like he's captured it with less words, so unless I'm
18 missing something, I think that sounds okay.

19 HEATHER McCARTY: This is Heather McCarty.
20 Could we hear that wording one more time,
21 please.

22 JOHN HANSEN: Heather, it's John Hansen.

23 "The Task Force has prepared the appended draft
24 bill, which we believe reflects the balance of interests
25 envisioned by the Task Force."

1 HEATHER McCARTY: Okay. Thank you. So -- this
2 is Heather again.

3 So, all it leaves out is the recommendation
4 that it be adopted without substantive legislative
5 amendments, correct?

6 JOHN HANSEN: That's correct.

7 HEATHER McCARTY: Thank you.

8 SENATOR DRUE PEARCE: There were some people
9 who were concerned about the legislature moving off into
10 other areas and trying to go into areas where the Task
11 Force didn't have recommendations, or maybe going far
12 beyond the Task Force's recommendation, which is why the
13 language originally talks about without substantive
14 legislative amendments. That was to keep, hopefully,
15 the legislature in check or within the boundaries. Is
16 anyone concerned about dropping that language?

17 GENE BURDEN: Senator Pearce, this is Gene
18 Burden.

19 If you look at the sentence that was added just
20 above the sentence John is suggesting changed, it
21 suggests that we reflect a consensus that any
22 legislation in response to Senate Bill 273 avoid changes
23 to oil spill liability laws beyond those described in
24 this report. So, at least my way of thinking would
25 arguably keep some sideboards on the review process in

1 the legislature.

2 SENATOR DRUE PEARCE: Okay. I was actually
3 reading that, taking liability in the legal tort sense
4 and then in the overall sense.

5 GENE BURDEN: Yeah. Well, we could change this
6 to "oil spill laws," just take "liability" out.

7 HEATHER McCARTY: That would be better, I
8 think. This is Heather.

9 JOHN HANSEN: John Hansen.
10 I agree with that.

11 BRIAN ROGERS: Does anyone object to the
12 deletion of the term "liability" on the fifth line
13 from -- sixth line from the bottom in the first
14 paragraph on the proposed revision by Gene?

15 Larry?

16 LARRY DIETRICK: Well, I just want to -- I
17 mean, if you deleted it, it doesn't mean to say -- a
18 change to oil spill laws also includes liability.

19 BRIAN ROGERS: Right.

20 SENATOR DRUE PEARCE: Right.

21 BRIAN ROGERS: So is there -- the proposal from
22 John Hansen then is to delete the last sentence, "The
23 Task Force recommends..." et cetera, through
24 "substantive amendments," and replace it with, "The Task
25 Force has prepared the appended draft bill, which we

1 believe reflects the balance of interests envisioned by
2 the Task Force."

3 Does anyone --

4 SENATOR DRUE PEARCE: (Inaudible)

5 BRIAN ROGERS: Draft bill, draft legislation?

6 Okay. Does anyone object to that change?

7 MIKE O'HARA: Clarify. This is O'Hara.

8 How would -- is that a substantive change from
9 what Gene has written up?

10 BRIAN ROGERS: What Gene has written up
11 recommends adoption. This one just says here it is.

12 GENE BURDEN: I think -- this is Gene Burden
13 again.

14 I think if we -- we ought to indicate some, you
15 know, affirmation that we not only come up with these,
16 these recommendations, but we're asking the legislature
17 to adopt them.

18 BRIAN ROGERS: Larry?

19 LARRY DIETRICK: Yeah, Larry Dietrick, DEC.

20 I mean, I think the key point there, Mike, that
21 we're dancing around here is the, without substantive
22 legislative amendments is the extent to which the Task
23 Force wants to convey their intent to the legislature
24 with regard to how much further they think the straw man
25 legislation should or should not be amended. And I

1 would just like to put forth our perspective on this.
2 Having gone through the original 273 and SCR1 exercise,
3 the whole effort, including substantial work group by
4 Senator Pearce during the initial drafting, has been to
5 sort out the language to get to where we are.

6 And the whole effort in this Task Force to
7 date, I mean the straw man bill here hasn't been just
8 the recent. It's the culmination of the debate that's
9 occurred in this Task Force since day one, in terms of
10 sorting out liability, state waters, maximum oil
11 capacity, whatever it is, so that we knew what should be
12 left and included in the bill, in a statute, and what
13 needed to be in the Betty Crocker book for DEC to
14 prepare the regulations.

15 And that's -- that, to me, has been the bulk of
16 the work to date, is distilling that out and making it
17 clear. To the extent that Brian, I thought, has done a
18 very good job all along the way under Section 8, as we
19 have made those decisions, for each recommendation to
20 try, you know, in a box type format to provide clear
21 direction as to which goes into a statutory change and
22 which into a regulatory change, for each and every
23 recommendation, so that there is no fuzziness about
24 this. To the extent now that it is all captured in the
25 straw man bill, it's clear we've got good direction, I

1 think, on what needs to be in the regulatory package in
2 the recommendation, and I think we've got good guidance
3 as to what needs to be in the straw man bill, which I
4 think has been captured, and what we need to put in the
5 reg package.

6 So, I don't know, to -- I think we need to
7 think about, there are some risks here, and Brian might
8 be able to speak to the Forest Practices Act. They got
9 to this same point, where, you know, do we want to
10 entertain a lot of other -- encourage amendments from a
11 lot of other groups that could dramatically change the
12 dimensions and intent of the Task Force, or do we want
13 to convey some intent here that, you know, there's been
14 a substantial narrowing of the issues here. We've
15 fine-tuned it. I don't think we can preclude any
16 amendments whatsoever, of course, but certainly I think
17 we would support something that would recognize the work
18 of the group in the form of let's not start over again
19 by amending from any side. I mean, when we agree to
20 this, I interpret that to mean you don't want to see
21 amendments from the State, or at least any of the
22 members of the Task Force.

23 BRIAN ROGERS: Jeff?

24 JEFF THOMPSON: Madam Chair, Jeff Thompson.

25 I would just kind of reiterate that and say I

1 think as a Task Force, speaking, if I may, for all of
2 us, is we have an interest in recommending specifics
3 that would -- are appropriate in draft legislation form,
4 because that's really what we're coming down to. And
5 that these do cover the issues that we covered and
6 raised as a group in our process. And I wouldn't want
7 to dilute proposed draft legislation, because it is
8 draft legislation after all.

9 But because it is draft, we want to also impart
10 the message to the legislature that we've spent a lot of
11 time going over these details and we've reached a
12 consensus on these, and that they are -- they're not
13 really to be taken apart or really be detracted from to
14 any substantial degree.

15 LARRY DIETRICK: I mean, one follow-up -- Larry
16 Dietrick here.

17 The other thing I'd point out is the legal
18 analysis, too, I think, which is another document that
19 now it's appended. I mean, we put Breck to the test
20 here with every legal question that somebody's come up
21 with along the way, which is I think also a useful part
22 of the record. But our understanding of the deal going
23 into this was that we weren't going to debate in this
24 Task Force the politics of whether or not there should
25 be a legislation. I think we've appropriately focused

1 on if there is a bill, let's figure out what it would be
2 so that we at least have a good starting point. It's
3 not that people can't still argue for or against, but
4 that would be things done outside the Task Force.

5 GENE BURDEN: This is Gene Burden.

6 Just one follow-up to that. I think Jeff made
7 some really good points that speak to perhaps leaving
8 some of the -- some of this reference that we don't want
9 substantive legislative amendments.

10 And to John, just looking at this, we all -- it
11 sounds like we're in agreement on the recommendations
12 contained in the report. And the language in this
13 section makes it clear that the Task Force expects the
14 transcripts and the record of the Task Force, as well as
15 the report, to be utilized in interpreting any
16 legislation and as a direction and guideline for
17 regulations.

18 So, you know, with that caveat, it looks like
19 that that would cover most of -- or really cover all the
20 concerns you might have, John, in regards to having that
21 last section in. And I know from our perspective, we've
22 looked at the draft legislation and it looks like it's
23 covered all the points that were raised that will
24 require legislation. So, we didn't have any sense of
25 discomfort with, you know, with what it contains. But

1 more importantly, sometimes when there's an
2 interpretation question, is what kind of a legislative
3 record of intent is there, and this -- if we go forward
4 as we are presently in draft, we're going to have one of
5 the best legislative records for intent that any bill
6 has ever had. And so, certainly the prospects for some
7 editing as it goes through the legislature is out there,
8 but I think it is important to convey that, you know,
9 this is something that stands together, and you start
10 taking pieces out of it or adding pieces to it, it could
11 certainly change any or all of our perspective to this
12 as a consensus effort.

13 BRIAN ROGERS: Captain O'Hara?

14 RICK HARRIS: Yeah, this is O'Hara.

15 I kind of liked Gene's language. And to
16 address John's concern, it seems to me that his problem
17 may be in the details, and that's the regulation part
18 which is also always subject to public scrutiny, and the
19 record of this board. Over.

20 JOHN HANSEN: It's John Hansen.

21 I agree with of all of what you've all said,
22 and I think the report and the recommendations are
23 strong and really unambiguous. I think it's a really
24 good solid report. But where I have a difficulty at
25 this moment -- and maybe I'm the only one who has not

1 taken the time and opportunity to really go through the
2 draft, the draft bill that is appended, to be able to
3 say at this point that yes, this is exactly the bill
4 that reflects what the intent and what the detail, the
5 recommendations of the Task Force is.

6 That's the only thing -- maybe what I'm really
7 asking for is a little more time to review.

8 GENE BURDEN: Well, you know, we start running
9 into some real time crunches for all of us, John. If
10 I'm not mistaken, we got this on the 22nd of November.
11 I know we've had it a couple of weeks, the bill, and
12 it's going to be real tough for some of us to
13 participate in any additional meetings. I guess -- I
14 don't know what the answer is there, but --

15 SENATOR DRUE PEARCE: This is Senator Pearce.
16 Let me make a comment and throw out a suggestion.

17 One of the early decisions by the Task Force
18 that has driven our activities was to go through all the
19 language and then do draft legislation that only
20 embodied the minimum number of changes to statute that
21 have to be in statute to implement our recommendations.
22 But then to further give direction to the Department for
23 the regulatory process and for the promulgation of the
24 regs, so that the Department can respond to individual
25 concerns, to regional concerns, to things like fuel

1 capacity, and make those changes through regulatory
2 process, which is much easier than at the statutory
3 process.

4 So what you have before you as draft
5 legislation is the minimum amount needed to implement
6 fully 273 and the response planning standard that I
7 would remind everybody is actually already in law, as
8 was in 273.

9 My suggestion might be to tweak Gene's original
10 language a little bit, saying that the Task Force
11 recommends that legislation be adopted to implement --
12 to fully implement Senate Bill 273 or the provision, and
13 then go further to say we have appended to this report
14 draft legislation that was developed by the Task Force,
15 and we recommend that the -- that legislation be adopted
16 without substantive amendments. So that you're not
17 specifically tying yourself to every comma, "and," "or"
18 and "but" in the draft, if you're uncomfortable with
19 that, but you do move forward with a recommendation that
20 legislation be adopted and make that a straw man
21 recommendation.

22 BRIAN ROGERS: So that would, if I understand,
23 Senator, replace the Gene Burden language with basically
24 the sentence proposed by John Hansen, plus, "The Task
25 Force recommends legislation be adopted to fully

1 implement Senate Bill 273 without substantive
2 amendment"?

3 SENATOR DRUE PEARCE: Something along those
4 lines. And say that here's a draft. Because we do need
5 to bring something forward. I mean, you always start
6 with something, and I've never yet seen a piece of
7 legislation that got dumped in on day one that everybody
8 didn't want to look at to make sure it said exactly what
9 they thought it said, whether they'd already looked at
10 it to make sure of that 20 times before or not. That's
11 the process that we go through.

12 But we do have to recommend that legislation be
13 adopted, and here's our draft, which kind of says here's
14 our best effort and -- but I guess the provisions -- we
15 ask that the legislature not go beyond the
16 recommendations, but also that the provisions in the
17 draft become law.

18 BRIAN ROGERS: People okay with that? I guess,
19 John, you're the primary person objecting to this
20 language. Is Senator Pearce's alternative acceptable?

21 JOHN HANSEN: I like the spirit of the
22 alternative or the added comment, that here's our best
23 effort and we recommend you adopt it.

24 BRIAN ROGERS: Everyone else okay on that?

25 STEPHANIE MADSEN: Yes.

1 RICK HARRIS: Brian, this is Rick Harris.

2 BRIAN ROGERS: Yes, sir.

3 RICK HARRIS: I fully endorse the concept and
4 the effort that we've done here. And if people started
5 to come forward and try to introduce legislation that
6 was outside the scope of our discussions, at least from
7 my perspective, we would take a fairly strong position
8 of not seeing that added to this legislation. I think
9 we would be very concerned about diluting what we've
10 done. And we've done the same thing in Forest
11 Practices, and I think we had a very effective program,
12 it was able to go through the legislature generally
13 unamended other than making technical corrections, and I
14 think we have a very solid product and we certainly want
15 to support it.

16 BRIAN ROGERS: Are there any other amendments
17 that people wish to see to the Task Force report?

18 HEATHER McCARTY: This is Heather in Juneau.

19 BRIAN ROGERS: Go ahead.

20 HEATHER McCARTY: I would like to see the
21 language that we have ultimately decided upon regarding
22 this last long discussion. Either that or have it
23 repeated again so that I can write it down myself, if
24 that's okay.

25 BRIAN ROGERS: Here's what I have in my notes

1 to add to the -- we would delete the last sentence from
2 Gene Burden's first paragraph, and add the following two
3 sentences: "The Task Force has prepared the appended
4 draft legislation developed by the Task Force that we
5 believe reflects the balance of interests envisioned by
6 the Task Force. The Task Force recommends legislation
7 be adopted to fully implement Senate Bill 273 without
8 substantive legislative amendment."

9 HEATHER MCCARTY: Thank you.

10 GENE BURDEN: Let me -- this is Gene Burden.

11 Would it be without substantive amendments to
12 those proposed by the Task Force?

13 BRIAN ROGERS: Okay. To those prepared --

14 GENE BURDEN: To those proposed by the Task
15 Force.

16 BRIAN ROGERS: Okay. Or without substantive
17 amendment to the recommendations.

18 GENE BURDEN: That's fine.

19 BRIAN ROGERS: Yeah, that would be -- with
20 those changes, and the changes laid out in the Friday
21 list that we've gone through, and the addition of 470
22 funding, and the changes to maximum oil capacity, and
23 conforming changes on Page 25 to 28 in the table, are --
24 and the change in the planning regions, are there any
25 further amendments?

1 HEATHER McCARTY: Brian, I have -- this is
2 Heather again.

3 I have one question that may or may not have
4 already been covered, and I apologize but I need to ask
5 it.

6 Heather McCarty in Juneau.

7 The last sentence of the second paragraph of
8 the addition to the conclusion creates "to be used by
9 the Department of Environmental Conservation as a
10 guideline for drafting regulations which implement the
11 legislation."

12 My question goes to that and, again, you may
13 have mentioned this when I wasn't listening. How does
14 that work? If the process -- if at some point during
15 the process those regulations be not the same as what we
16 sort of anticipated they would be, how do we know, and
17 how does that get communicated to the Task Force or the
18 public? In other words, what is the intent of the
19 Department here exactly? And if they decide to change
20 something, how do we know right away? How can we argue
21 with them if we want to?

22 LARRY DIETRICK: Yeah, Larry Dietrick, DEC.

23 The Department still has to go through the
24 complete rule promulgation process for the rule making,
25 with public hearings and public input. So, that whole

1 loop is out there. So, there will be formal public
2 notice, a formal public review window, and so the
3 opportunities to make known your concerns, complaints,
4 whatever, have the same full opportunities as any rule
5 making. It's just our starting point here now is the
6 scope and content, and this guidebook is -- I mean, this
7 is very good specific instructions for us. This is the
8 equivalent of a negotiated rule making process that was
9 referred to during the session. Essentially what we've
10 done here.

11 HEATHER McCARTY: This is Heather again.

12 Okay. So, that's what this was thought of as,
13 then, from the Department, is the rule making process.
14 And if we -- if you had disagreed with any of these
15 regulations, or draft regulations, as we talked about
16 them, we would already know that?

17 LARRY DIETRICK: That's correct. Right.

18 HEATHER McCARTY: Okay, that's what I thought.
19 I just wanted to make sure.

20 BRIAN ROGERS: Charlotte. Oh, I'm sorry.

21 SENATOR DRUE PEARCE: Heather, if I could just
22 add. It's clear to me that the commissioner will take
23 an active role in the promulgation of regs on this bill,
24 as I'm sure will Representative Kott and myself and
25 others in the legislature, if there are questions, if we

1 end up with concerns over specific areas. There will be
2 lots of people to go back and look at what the Task
3 Force subcommittees and the full Task Force recommended
4 and what we meant by our recommendations.

5 BRIAN ROGERS: Charlotte.

6 CHARLOTTE MacCAY: This is Charlotte.

7 Maybe perhaps DEC could make sure that they
8 specifically notify the Task Force members when the
9 regulations are out, so that we're not just counting on
10 them to --

11 LARRY DIETRICK: Sure. And I don't think we
12 have any hesitation if there's a mini group or subgroup
13 or to whatever extent this Task Force wants to play a
14 key role in the drafting and promulgation, that would be
15 more than welcome.

16 HEATHER McCARTY: I think that would be a good
17 plan. It would certainly carry forward the ideas
18 without any lapses.

19 SENATOR DRUE PEARCE: Well, let me ask this,
20 then. Would -- this fits into the next point on the
21 agenda. I don't remember whether we talked about it as
22 a Task Force or whether it was just the commissioner and
23 I talking, but it was our intent to request that the
24 subcommittee co-chairmen come forward with us to the
25 legislative session as the primary spokespeople for the

1 Task Force bringing the legislation forward. And then
2 to add to that, I would think those would be the proper
3 people for DEC to have on their initial list of contacts
4 for bringing -- as regs get promulgated, which of course
5 won't happen until after the legislative session.

6 Is there anyone that would be uncomfortable
7 with the subcommittee co-chairmen being the primary
8 spokespeople for the Task Force before the legislature?
9 You'll notice I'm not asking any of them if they want
10 not to be.

11 HEATHER McCARTY: Yeah.

12 BRIAN ROGERS: If there are no further changes
13 on the final report, is there a motion to adopt the
14 report as amended?

15 STEPHANIE MADSEN: Mr. Chairman, I would move
16 to adopt the report.

17 This is Stephanie Madsen.

18 HEATHER McCARTY: I second that motion.

19 This is Heather.

20 BRIAN ROGERS: Any discussion? Any objection?

21 The report is adopted unanimously, then.

22 Congratulations.

23 SENATOR DRUE PEARCE: The legislation was --
24 the draft legislation is drafted as a submission to the
25 legislature by the Rules Committees on both the House

1 and Senate side by request of the Legislative Task Force
2 on Motorized Oil Transport.

3 I would suggest, and I think the commissioner
4 agrees with me, although I am putting words into her
5 mouth, that that would be a good formal way to get this
6 piece of legislation before both bodies. It makes it
7 clear that it did come from the Task Force; neither the
8 governor nor any individual legislators took it and kind
9 of made it their own, as opposed to being the Task
10 Force's. Is there anyone who would object to our
11 introducing it in that manner?

12 CHARLOTTE MacCAY: Could you repeat how we're
13 going to -- I missed it.

14 SENATOR DRUE PEARCE: If you look at the draft,
15 it says by the Rules Committee by request of the
16 Legislative Task Force on Motorized Transport.

17 BRIAN ROGERS: That's on Page 30.

18 SENATOR DRUE PEARCE: It will actually come to
19 the legislature, to the Senate Rules Committee and the
20 House Rules Committee both, as a by request bill, by the
21 Task Force. It will then go into the process, be
22 assigned to committees, and you can expect both the
23 Department, certainly fair to say on the Senate side me,
24 and House side I assume Representative Kott, will follow
25 with it, along with the Task Force members. And the

1 Department will be responsible still for the fiscal
2 notes.

3 BRIAN ROGERS: Did you know in advance that the
4 two Rules chairs were going to be on this?

5 PAUL FUHS: I was just going to point that out.

6 SENATOR DRUE PEARCE: How good are we at
7 planning? Not that it was preordained or anything.

8 BRIAN ROGERS: Any other discussion on the
9 legislative session issues?

10 LARRY DIETRICK: Yeah, this is Larry Dietrick
11 with DEC.

12 I would like to get the -- I know not everybody
13 would be interested from the Task Force in terms of
14 speaking to the committees on the bill. We can
15 represent it. I just wanted to seek some Task Force
16 guidance to see -- I mean, any member that wants to come
17 forth and testify is welcome. But to the extent they're
18 few and far between, and the committees need an
19 overview, I would like to get the Task Force advice with
20 regard to trying to use somebody impartial, and my
21 backstop on this would be to use our facilitator as
22 appropriate to make the representations. I mean, we can
23 get up there and testify, and we're one member, but in
24 terms of an impartial viewpoint, to supporting the Task
25 Force recommendations, does anybody have a problem if we

1 try to work something out with Brian as the Task Force
2 surrogate for any members then who might get asked to
3 come forward but aren't available? Is everybody
4 comfortable with that?

5 CHARLOTTE MacCAY: Yeah, sounds good.

6 LARRY DIETRICK: Thank you.

7 BRIAN ROGERS: Anything else on the legislative
8 process? Anyone have final comments then before we
9 adjourn, sine die?

10 CHARLOTTE MacCAY: I'd like to say something on
11 behalf of the spot charters. I know that we were a
12 complex and difficult group to fit into this process,
13 and we were very persistent as well, and we appreciate
14 the time and effort that incorporated us, and we're
15 quite satisfied with how it all worked out. So thank
16 you all for the extra time and effort.

17 HEATHER McCARTY: This is Heather in Juneau.

18 SENATOR DRUE PEARCE: Yes, Heather.

19 HEATHER McCARTY: I wouldn't say that we were
20 persistent. We were sort of nonpersistent. At least
21 most of us. But I would like to thank the Task Force
22 and the leaders of this effort for their patience with
23 the fish people, because we did make a bit of a fuss
24 from time to time, but thanks very much.

25 SENATOR DRUE PEARCE: Anybody else on line want

1 to make a comment?

2 RICK HARRIS: This is Rick Harris as well.

3 I guess what I'd like to do, Senator Pearce, is
4 first thank you for your leadership and your willingness
5 to agree to this Task Force, because as we headed into
6 the session, or at the end of the session last year, it
7 was looking -- everybody was very frustrated. I think
8 that we've come out with a good product and I think
9 everybody will be very appreciative of it. So I want to
10 thank you for your leadership. And I want to thank
11 Brian just specifically for his patience at weaving
12 through. It's like herding cats, and you did an
13 excellent job, Brian, appreciate it.

14 BRIAN ROGERS: Thank you.

15 RICK HARRIS: And appreciate working with Larry
16 Dietrick and with Breck, who of all effectively argued
17 different positions and we appreciate the ability to
18 work through and find compromise and solutions for
19 everyone.

20 SENATOR DRUE PEARCE: Thank you.

21 Mr. Hansen?

22 JOHN HANSEN: John Hansen in Vancouver.

23 I would just like to echo those comments and
24 thank you, Senator Pearce, for the leadership that you
25 have exercised in this whole process. I think it's been

1 a good process and excellent to have the opportunity
2 over the last few months to really go through all the
3 issues and details. So, it's been good. And also
4 thanks to Representative Kott and Commissioner Brown,
5 and to the staff of DEC who have added good value to the
6 whole process. So, thank you all.

7 SENATOR DRUE PEARCE: Thank you, John.

8 Anyone else on line?

9 CAPTAIN ED PAGE: This is Ed Page of the Coast
10 Guard.

11 I'd just say, please no more laws for a while.
12 This has taken too much time. Actually, I think it's a
13 good process. I think it got everybody working on a
14 common issue. And I know there were some concerns
15 earlier about, you know, how much we want to outline
16 where the legislature go, but you certainly have
17 controlled your destiny. You can consider this to the
18 reg neg, we call it, negotiated regulatory process, that
19 we tried also in the past, and I think that's the way to
20 get the best results. And everyone made some
21 compromises here. Ultimately, I think that we've
22 clearly outlined a course that will provide a better
23 capability and a fairness, a parity issue, with respect
24 that our oil spills of nontank vessels is an issue that
25 should be part of the solution of spill response, and

1 hopefully there's some prevention involved, too.

2 So, I think it's very balanced, and applaud
3 everyone's efforts, and I think it will seed well for
4 the legislature when they see how much work is done and
5 how well thought out. I'm glad to be part of the
6 process even though it took a lot of my time. Thank
7 you.

8 SENATOR DRUE PEARCE: And, Captain Page, we
9 look forward to seeing you in civilian life upon your
10 retirement. I think you're still going to be involved.

11 CAPTAIN ED PAGE: That's true. I'll still be
12 involved with you folks. That's part of reasoning. You
13 either go to the Coast Guard, go back to Washington,
14 D.C., or stick around in Alaska and play with my
15 friends, so I'm going to stick around and play with my
16 friends.

17 SENATOR DRUE PEARCE: Thank you.

18 Anyone else on line? Anyone here in the room?

19 LARRY DIETRICK: Yeah. On behalf of
20 Commissioner Brown, I just -- personal thanks to all the
21 Task Force members. It does take something to -- it
22 does take a commitment to put in the time and energy,
23 and I would just comment, I don't think I've been on a
24 task force where I have seen, one, as many meetings as
25 we've had, but, two, the attendance at the meeting has

1 been extremely good. Almost all the sessions have been
2 incredibly well attended. And the level of dialogue, I
3 haven't seen any nappers during the whole time. It's
4 been a very good exchange. And so I think the real
5 appreciation goes out to the Task Force members for
6 their contributions. Representative Kott, Denise on
7 behalf of Representative Kott, Senator Pearce, and to
8 our -- to Paul and Brian for kind of guiding us through
9 this whole mess. Thank you very much. Breck, too.
10 Breck, for keeping us legally correct.

11 STEPHANIE MADSEN: Senator Pearce, ditto for
12 all the other comments that came before, and also an
13 appreciation from those of us in Juneau that got to
14 travel in late so that we could get in and out in one
15 day. I know that my members appreciate the opportunity
16 for participation and the adjustment of the schedules.

17 SENATOR DRUE PEARCE: Happy to do that.

18 Joe?

19 JOE LeBEAU: Senator Pearce, thanks very much.

20 SENATOR DRUE PEARCE: You're welcome.

21 JOE LeBEAU: I appreciate all the work that
22 everybody's done. You know, it was like herding cats,
23 and you all got through it. It's not as strong as I'd
24 like it, but it never is. Thanks very much.

25 SENATOR DRUE PEARCE: And that's probably a

1 good final reminder to everybody.

2 JOE LeBEAU: That's right.

3 SENATOR DRUE PEARCE: It could be worse.

4 I have to say that from my standpoint, this
5 process has been, frankly, much less painful than that
6 that followed 567 and the tanker vessel rules and
7 regulations and getting those put into place. We've
8 learned a lot in these past ten years. I think it is
9 important that we have that parity that Captain Page
10 talked about and bring everybody under the umbrella of
11 our oil spill laws.

12 I, too, want to thank Brian and Paul, and
13 particularly Judy who is not here with us today, for all
14 of their efforts. The work has been excellent, and the
15 availability of all the information on the web has been
16 terrific. And I know that it is being used, it will
17 continue to be used.

18 I want to thank each and every one of you for
19 your participation. On behalf also of Representative
20 Kott and the commissioner. It has been very gratifying
21 to see how many people have come to each and every
22 meeting and how much interest we've had, and that the
23 interest has been continued from meeting to meeting.
24 Thanks for all your ideas, for all of your spirited
25 discussions. And there are still some ideas out there,

CORRECTION

**THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION**



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Department of Education & Early Development
State of Alaska

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22 meeting and how much interest we've had, and that the
23 interest has been continued from meeting to meeting.
24 Thanks for all your ideas, for all of your spirited
25 discussions. And there are still some ideas out there,

1 and I think in the future we can utilize, particularly
2 prevention credits, which we certainly haven't
3 completely given up on for the future.

4 So, with that, unless there's anything else,
5 happy holidays, thank you very much, and we'll see you
6 in Juneau sooner than you all probably want.

7 We're adjourned.

8 (Meeting concluded at 12:35 p.m.)

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CERTIFICATE

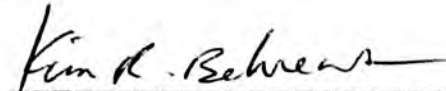
I, the undersigned Notary Public in and for the State of Alaska, do hereby certify:

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 29th day of December, 2000.



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

Agenda – December 11, 2000

9:30 a.m. to 12:00 noon

Anchorage Legislative Information Office

716 West Fourth Avenue – 2nd floor conference room

- I. 9:30 am Welcome from Task Force Steering Committee Member Senator Drue Pearce
- II. 9:35 am Presentation by Brian Rogers, facilitator
 - A. Review Task Force meeting logistics
 - B. Review of Final Report Revisions
- III. 9:50 am Legislation presentation by Breck Tostevin, Department of Law
- IV. 10:00 am Public comment (limited to three minutes)
- V. 10:15 am Task Force action on revisions
- VI. 11:30 am Task Force approval of final report
- VII. 11:40 am Discussion of Legislative session, participation by Task Force members
- VIII. 11:55 am Final comments from Task Force members

Task Force on Motorized Oil Transport
Proposed Changes to 11-22-00 Draft Report
Brian Rogers, Facilitator

- p. 4. First line, delete "long"; after "been in place" insert "since 1990"
- p. 5. Under summary – Response Planning Standard, second paragraph, after "operation" delete "or be able to reach the area within 24 hours"; fifth line, after "available" insert "or be able to reach the area within 24 hours."
- p. 5. Under Summary – Contingency Plans, first bullet, insert "(COFR)" after "state law"; second bullet insert "(QI)" after "on behalf of vessel owner"
- p. 6. Second paragraph. Edit first sentence as follows: "The Task Force recommends that the Department of Environmental Conservation act upon contingency plans under tight timeframes. The department advised the Task Force that additional staff will be needed to meet the recommended timeframes, which will require additional funding."
- p. 6. Fourth paragraph, after "ICS system" insert "as modified for oil spills."
- p. 6. Conclusion, last word, delete "shippers" insert "vessel owners."
- p. 6. Add following to Conclusion:

"The Task Force developed draft legislation through a consensus process designed to implement the provisions of Senate Bill 273. The draft legislation is crafted to avoid new changes to oil spill liability laws not necessary for that implementation. The Task Force recommends the draft legislation developed by the Task Force by consensus and appended to this report be adopted without substantive amendments during the legislative process in order to preserve the balance of interests envisioned by the Task Force.
- p. 7. Sixth paragraph. Delete "was" insert "were".
- p. 8. Item 3, line 2, delete "shippers" insert "vessel owners"
- p. 11. Rec. #6. In the explanatory language, second paragraph, add a new sentence "Decisions about what equipment, and who will purchase the equipment, are dependent upon vessel owner decisions and will be left to market forces."
- p. 12. Rec. #10. In the recommendation delete "generally within three miles of shore." In the explanatory text, insert new second sentence: "In this recommendation, the Task Force uses the statutory definition of "state waters" in AS 46.04."
- p. 13. Rec. #11. In the explanatory language, add: "This vessel-specific information may be critical to oil spill responders in making decisions regarding vessel salvage, fire fighting, or preventing additional oil from being discharged from the vessel. The Task Force understands prevention plan certification as self-certification, a statement by the

applicant attesting the vessel complies with the applicable federal and IMO requirements. There are existing provisions in Alaska law establishing penalties for false affidavits."

p. 13. Rec. #12. In the explanatory language, last word, after "fleets" insert "of vessels."

p. 13. Rec. #13. In the recommendation, after "approved fleet plan" insert "**or generic contingency plan**"

p. 14. Rec. #15. In the explanatory text, after "response planning facilitators" insert "and incident management teams." At end of paragraph, insert new sentences: "Response planning facilitators and incident management services will be defined by statute regulation as primary response action contractors, receiving the same immunities as other PRACs. The regulations will need to include development of a registration application appropriate for response action contractors who only plan to provide incident management team services, and to create minimum standards for response action contractors providing incident management services."

p. 14. Rec. #16. In the recommendation, after "Incident Command System (ICS)" insert "**as modified for oil spills**". In the explanatory text, amend first sentence to read: "Use of an Incident Management Team contractor is anticipated for many vessel owners under the recommendations adopted by the Task Force." In the second section, change the list of command staff positions to "including the Finance Section Chief, Planning Section Chief, Operations Section Chief, Logistics Section Chief, and . . ." After the second sentence, add a new sentence: "The state should use the same definition for Qualified Individual (QI) as defined under OPA."

p. 15. Rec. #17. In the explanatory text, add a new sentence: "The Task Force believes it that training in basic issues of contingency planning and incident command procedures will be required for many of the newly-regulated vessels."

p. 17. Rec. #25. In the explanatory text, line 7, after "require vessel owners to simply" insert "self-" before "certify".

p. 17-18. Rec. #27. In the explanatory text, page 17, after first sentence insert "There are also penalties under existing Alaska law for filing false statements on state applications." On page 18, after "periodic basis." insert "The Task Force considered other possible prevention credit programs, including tax credits for affected vessels. The Department and the affected industries should review the effectiveness of the proposed prevention credit program on a periodic basis, and recommend any changes to that program."

p. 25. Rec. #13. In the recommendation, after "approved fleet plan" insert "or generic contingency plan" for consistency with p. 13, rec. #13 above.

p. 25. Rec. #14. In the recommendation, delete "and hold" from third line of paragraph, for consistency with recommendation 14.

p. 25. Rec. #15. In comment, add "and incident management teams" after "facilitators."

p. 26. Rec. #16, after "(ICS)" insert "as modified for oil spills" to be consistent with p. 14, rec. #16 above

p. 34. Legislation. Insert new section 5-8 (attached)

p. 51. Delete table.

***Sec. 5.** AS 46.03.825(a) is amended to read:

(a) A response action contractor who responds to a release or threatened release of oil is not civilly liable for removal costs or damages that result from an act or omission in the course of providing care, assistance, or advice

(1) consistent with a contingency plan

(A) approved under AS 46.04.030 or 46.04.055 if the response action contractor is listed in the contingency plan; or

(B) prepared under AS 46.04.200, 46.04.210, or 33 U.S.C. 1321(d) if the response action contractor is not listed in the contingency plan; or

(2) as otherwise directed by the federal or state on-scene coordinator.

***Sec. 6.** AS 46.03.825(b) is amended to read:

(b) The limitation on liability contained in (a) of this section does not apply to

(1) an action for personal injury or death or;

(2) a response action contractor who

(A) would otherwise have been liable for the release or threatened release under AS 46.03.822;

(B) acts with gross negligence or intentional misconduct; or

(C) has agreed in writing to be listed as a primary response action contractor, who is listed as a primary response action contractor in a contingency plan approved under AS 46.04.030 or 46.04.055, and who fails to respond to a release or threatened release of oil that the primary response action contractor was required to respond to under its contract with the applicable contingency plan holder; this subparagraph does not apply to a primary response action contractor if the failure to respond to a release or threatened

release of oil results from a prior and ongoing response under another contingency plan approved under AS 46.04.030 **or 46.04.055** in which the primary response action contractor has the primary duty to respond and a significant portion of the response action contractor's oil spill cleanup equipment listed in the contingency plan approved under AS 46.04.030 **or 46.04.055** is in use.

***Sec. 7.** AS 46.03.825(f) is amended to read:

(f) Nothing in this section is intended to amend AS 46.04.030(l), **46.04.055**, or to create a cleanup or performance standard that must be met by a holder of a contingency plan or by a primary response action contractor.

***Sec. 8.** AS 46.03.825(g) is amended to read:

(g) In this section,

- (1) "consistent" means in substantial compliance with a contingency plan;
- (2) "primary response action contractor" has the meaning given in AS 46.04.035;
- (3) "response action" means an action taken to respond to a release or threatened

release of oil, including mitigation, clean up, marine salvage, **incident management team services, response plan facilitator services,** or removal of a release or threatened release of oil.

Subject: DRAFT language for changes to P. 6 Conclusion

Date: Mon, 11 Dec 2000 13:56:32 -0600

From: "Burden, Gene" <gburden@tesoropetroleum.com>

To: "'barbara_norrell@legis.state.ak.us'" <Barbara_Norrell@legis.state.ak.us>

CC: "Burden, Gene" <gburden@tesoropetroleum.com>

First draft is proposed language and second has changes proposed identified.

<<page 6 Amendments.doc>> <<page 6 Amendments with changes highlighted.doc>>

 page 6 Amendments.doc	Name: page 6 Amendments.doc Type: Microsoft Word Document (application/msword) Encoding: base64 Download Status: Not downloaded with message
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 page 6 Amendments with changes highlighted.doc	Name: page 6 Amendments with changes highlighted.doc Type: Microsoft Word Document (application/msword) Encoding: base64 Download Status: Not downloaded with message
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