

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
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Citizens' Oversight Council
on Oil and Other Hazardous Substances

3111 C Street, Suite 150 • Anchorage, Alaska 99503
(907)561-2101 • 561-7538 (FAX)

Memo To: Senator Sam Cotten, Chair
Senate Oil and Gas Committee

From: Michele Brown, ^{MB} Executive Director

Date: February 6, 1992

Re: HB 196 Report

Enclosed please find a copy of the Citizens' Oversight Council's recommendations made pursuant to its Section 11, 196 report to the Legislature. The entire report and appendices are currently being printed and will be delivered to you shortly. The Council wanted you to see this portion as soon as possible in preparation for the Council's presentation to the {insert proper committee for each}.

Please contact us if you need any further information. The Council is looking forward to its presentation to your committee and to assisting you in your analysis of this subject.

Council Members

Harry R. Bader, Fairbanks • Leo J. Hannan, Anchorage • Kathryn L. Kinnear, Kodiak
Gary P. Kompkoff, Tatitlek • John H. Lucking, Jr., Unalaska



Citizens' Oversight Council

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HB 196, SECTION 11, REPORT OIL SPILL RESPONSE ACTION CONTRACTORS

RECOMMENDATIONS

OBJECTIVE

The Citizens' Oversight Council, as required by the Legislature, has reviewed the entire subject of response action contractor civil liability and the status of oil spill contingency plan holders. The Council's objective in formulating recommendations is to assess the adequacy of the current laws limiting liability for oil spill response action contractors and to propose, where appropriate, alternatives that further the public's interest in a timely and reliable response to an oil spill.

EVALUATION CRITERIA

The Council first analyzed the liability laws and the realities of spill response in Alaska. Whenever the Council identified a risk that there might not be a timely and reliable response to an oil spill, the Council considered various options to ameliorate that risk. The Council was guided by the following criteria in making its final recommendations:

- * minimizing interference with private choices
- * providing incentives for maximum best effort in response
- * allowing for adaptability for regional and unique circumstances
- * achieving maximum shoreline protection
- * offering administrative efficiency
- * assuring clarity and consistency in standards
- * assuring reliability and responsibility in performance

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OIL SPILL RESPONSE ACTION CONTRACTORS
RECOMMENDATIONS, continued
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RECOMMENDATION #1: The liability standard for oil spill response action contractors may be limited to gross negligence or intentional misconduct, with certain conditions that ensure a reliable response.

Problem Identified: There is a fear among response action contractors that they face serious potential liability for their actions taken in response to an oil spill and, consequently, they will not respond.

Rationale: The Council found that there is a public benefit in avoiding any deterrence of spill response due to fears of potential liability. The Council also believes that there is a public benefit in encouraging more cooperatively based, pooled response efforts. These goals can be furthered, in part, through limited liability provisions, provided there are conditions in place that do not allow this limit to reduce the quality of an oil spill response. These conditions are set forth below.

RECOMMENDATION #2: Professional response action contractors should be certified by the state.

Problem Identified: Response action contractors serve a vital function in oil spill response. Yet, the state currently has no means to verify the capability and the capacity of these contractors to perform.

Rationale: As the requirements for oil spill preparedness have increased, contingency plan holders have accordingly increased their reliance upon response action contractors to demonstrate to the state that the contingency plan holders have access to equipment and personnel to respond to a spill. There must be a means for the agency evaluating contingency plans to verify that the response action contractors relied upon in contingency plans are able to respond during the implementation of any particular contingency plan. The Department of Environmental Conservation should be authorized to promulgate regulations to develop a certification program for response action contractors. Response action contractors relied upon by contingency plan holders to demonstrate compliance with equipment and personnel preparedness requirements must be certified in order for the contingency plan to be approved. Professional response action contractors must be in compliance with certification provisions in order to be afforded liability limits.

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RECOMMENDATIONS, continued
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RECOMMENDATION #3: A certification program should contain minimum professional standards for response action contractors and direct DEC to establish the criteria by which it can readily assess a response action contractor's capability to perform as stated in a contingency plan.

Problem identified: There is currently no professional standard set out in the law for the actions of oil spill response action contractors. Normally, that standard would be provided by the basic negligence standard for evaluating conduct that leads to injury. If response action contractors are relieved of the liability that attaches to a failure to exercise reasonable care, there is concern that there will be no incentive for the contractor to take the precautions and the care that it normally would.

Rationale: The Council believes that a professional standard should be incorporated into the certification program in order to provide an incentive that contractors maintain the quality of their performance. DEC should establish the criteria by which to certify response action contractors for minimum standards of personnel training and to verify the equipment, services, and response organization that the response action contractor offers. This will result in: a level playing field for standards; a means to assure that response action contractors will be able to perform as set out in a contingency plan; and a baseline of generally accepted professional standards and practices.

RECOMMENDATION #4: A certification program should authorize DEC to maximize coastal protection and to enhance regional response capabilities through response action contractor certification.

Problem identified: There are substantial regional disparities in spill response capabilities, limiting effective response in parts of the state.

Rationale: If limiting liability is to have the benefits of encouraging improved response, there should be a more proactive approach to using those provisions well. Through the response action contractor certification program and DEC's contingency plan approval program, DEC could approach response in a broader, regional approach rather than piecemeal, individual contingency plan basis. This would enhance the most efficient use of response resources and reduce the agency's administrative burdens, as well as assure that regional differences in response needs will be fully addressed.

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RECOMMENDATIONS, continued
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RECOMMENDATION #5: Certified response action contractors must be subject to all orders of the state on-scene coordinator during an actual or threatened spill response.

Problem identified: The state currently has no means to ensure performance of a critical response action contractor. Currently, performance requirements are the subject of private contractual agreements between contingency plan holders and response action contractors. The state is neither a party to nor reviews those terms. Therefore, while the contingency plan may on its face offer sufficient equipment and personnel to handle a spill, there is no means to ensure that the equipment and personnel will indeed be deployed. This problem could be exacerbated if liability limits are granted.

Rationale: In order for a contingency plan to be a reliable document rather than merely a regulatory formality, there must be a duty to perform by all the key participants of a contingency plan. It is appropriate that there be private contractual arrangements between contingency plan holders and response action contractors to maximize the choices and to allow private operators to allocate duties and responsibilities privately among themselves. However, there must simultaneously be a means for the state to direct actual field performance of a response action contractor relied upon in an approved contingency plan to prevent dangerous response delays or failures to perform. Only response efforts meeting this duty should obtain the limited liability benefits.

RECOMMENDATION #6: Certified response action contractors should respond, when directed by the state on-scene coordinator, to mystery or orphan spills, except that regional cooperatives will not be required to respond outside their region of operation.

Problem identified: There are frequently spills where the responsible party cannot be readily identified or forced to respond.

Rationale: Once the state has certified a cadre of professional oil spill responders and provided them limited liability, those responders should be available to respond to spills when it is in the public interest. The state would guarantee reimbursement for reasonable operational expenses.

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RECOMMENDATION #7: The Trans-Alaska Pipeline System ("TAPS") agent should clearly maintain the duty to control and remove pollution within state boundaries related to the transportation of TAPS crude oil.

Problem Identified: There has been a substantial increase in spill response preparedness for the TAPS tanker traffic in Prince William Sound since the Exxon Valdez spill. However, for reasons which appear to relate to fear of liability for potential damages due to spills, there has been a confusing juggling of the parties who actually bear the legal responsibility for spill response efforts. The result is a commendable supply of equipment and personnel but very little, if any, clear duty to deploy it.

Rationale: The Trans-Alaska Pipeline Authorization Act provided that parties responsible for a spill related to TAPS are strictly liable for damages. However, Congress separately imposed upon the pipeline right-of-way holders the duty to respond to pollution. Congress' goal was to eliminate uncertainty in critical initial response without necessarily forcing the responder to simultaneously acquire all liability for the damages resulting from that pollution. Alyeska Pipeline Service Company is the operator of the TAPS and has also been designated by the pipeline right-of-way holders as their agent. Accordingly, Alyeska submitted for years contingency plans for spills throughout the pipeline, including in Prince William Sound.

After the Exxon Valdez spill, Alyeska has taken the position that it will not submit or hold a contingency plan, but rather is a volunteer response action contractor for spills from the tankers. For many reasons recited to the Council in public comment, Alyeska is significantly different from other response action contractors. Alyeska's self-denomination as a response action contractor has resulted in the anomaly that the central figure for response, Alyeska, which has all the response equipment (indirectly paid in part by the state) has no legal obligation to respond to a spill. However well-intentioned Alyeska may be in its plans to respond, there is insufficient assurance for the public that a response will occur and that there will be no confusion generated from Alyeska's mandatory 72 hour hand-off of the response to the spiller or contingency plan holder. Therefore, in order to maximize effective response in a region of grave risk, the Council believes that Alyeska, as the operator of TAPS, should have a clear duty to control and remove pollution related to TAPS crude in Prince William Sound.

Statement
of
Mr. G. Stephen Duca
Vice President
Readiness and External Affairs
Marine Spill Response Corporation
before the
State of Alaska
of the
Senate Special Committee on Oil and Gas
February 11, 1992

Good morning Mr. Chairman and members of the Committee. My name is G. Stephen Duca, I am the Vice President for Readiness and External Affairs at the Marine Spill Response Corporation. I welcome the opportunity to comment on the Citizens' Oversight Council recommendations and responder immunity.

Mr. Chairman, MSRC is pleased to have been asked to participate in the public debate on Section 11 of H.B. 196 (Ch.92 SLA 1991). We have been part of this dialogue for some time, beginning with an appearance before Alaska's distinguished Oil Spill Commission in 1989 chaired by Mr. Parker and ending just last week with a statement via teleconference presented to the Citizens' Oversight Council on Oil and Other Hazardous Substances. Our position on the issue of Responder Immunity in Alaska is therefore a matter of long public

record. Attached is pertinent correspondence which specifically addresses our concerns with H.B. 196 -- a statute which places liability on a responder rather than the responsible party where it belongs. Such a condition violates a fundamental principle of the Oil Pollution Act of 1990 (OPA-90) -- "the polluter pays". I will not comment further on the particulars of H.B. 196 since our previous remarks and letters are available for your review.

However, I would like to underscore a couple of key points for the Committees' consideration. At the end of all the discussion related to H.B. 196, Alaska needs to enact a responder immunity provision at least as protective for a responder as Section 4201 of OPA-90. This is sound public policy -- which nineteen other coastal states have enacted as law. It is plain common sense that Alaskan law should be consistent with the federal liability regime that exists three miles off its coast. Oil moves swiftly from jurisdiction to jurisdiction and a responder should not be slowed in his cleanup by having to take valuable time to consider the legalities and risks associated with each action taken in Alaska's jurisdiction.

Please remember that the overarching purpose of this limited immunity is to insure a bold and vigorous response during uncertain and/or emergency operating conditions. Some would have you believe that this standard was trying to get someone "off-the-hook." This is not the case, rather it places the liability on the spiller, again in accordance with the maxim of: "the polluter pays". Working in concert with the other provisions of the Oil Pollution Act of 1990, this limited responder immunity if enacted in Alaska would:

- 1) Promote a bold and vigorous response by persons whose sole purpose is to remove as much oil from the environment as is possible, since responders (all

categories of responders) are protected from liability for good faith errors (simple negligence) under very limited circumstances.

2) By riveting liability to the responsible party it doubly insures a bold response by encouraging his prompt action. Since any liability another person (responder) is relieved of is passed on to the responsible party, there is little incentive for the responsible party to attempt to deflect liability to a responder in the first place. His best course of action is to get as much response and cleanup capability to the scene and begin operations as soon as possible.

Mr. Chairman, one cannot be part of this debate without soon confronting the central argument made against providing this limited immunity. The issue has, unfortunately taken on the mantle of a canard. The story goes like this -- 'the only way to insure that responders will act responsibly is to make sure they are punished (incur liability) if they don't act in a prescribed way (by a contract)'. This approach to providing emergency response services of any kind, not just oil spills, is absolutely wrongheaded. It defeats the main purpose of the immunity -- the encouragement of a bold and vigorous response -- in several ways. First, the contract would have to cover all of the circumstances likely to be faced in a spill. The larger the spill the larger the number of circumstances and the larger the contract. Can you imagine a bold and vigorous response to an oil spill occurring under a contract the dimension of an encyclopedia? Can Alaska's fishermen (who proved to be so vital a force during the Valdez spill) reasonably be expected to perform in every circumstance in a way prescribed by a contract? What about tug and barge owners, operators and lessors? Every action they took could be subject to a lawsuit to determine if their actions were in accordance with the

contract and therefore, was in fact covered or not covered by the immunity. Fishermen, tug and barge owners and other responders would need to rush to their lawyers to determine risk/exposure before rushing to the scene of a spill to begin the cleanup. It would be a lawyer's playground and have a chilling if not killing affect on a response effort.

Furthermore, such a condition defeats the cardinal rule of OPA-90 that "the polluter pays". Any liability that can be transferred from the spiller to other parties will be seen as an opportunity to defeat the responsibility for performance that a spiller should be held liable for. Having immunity flow to responders by way of a contract would shift the responsibility for response and cleanup performance during a spill to responders, not the spiller. OPA-90 lays the requirement for the execution of response plans on the spiller. The spiller must use private resources to cleanup, to the maximum extent practicable, a worst case spill. To enact a provision laying the responsibility for cleanup on responders would be a serious mistake, especially since there are already many protective provisions of OPA-90 that insure satisfactory performance of responders.

In Representative Bill Hudson's letter to MSRC President, Admiral Jack Costello requesting our participation today, he asked that I address two specific issues: 1) MSRC's decision not to locate any of our corporation's national centers in Alaska and 2) Any disagreements that we may have with the report of the Citizen's Oversight Council.

As to the first Mr. Chairman, I must take you back to the days just after the Valdez spill. The industry recommended the creation of what it determined the nation did not have -- the capability to make a best effort response to catastrophic spills of persistent oils in the

offshore environment. Most agree that the capability of the existing oil spill response infrastructure is sufficient to deal with the thousands of small releases that occur in the nation each year. What Valdez demonstrated was a lack of capability to deal with the catastrophic spill. MSRC closely analyzed the oil transportation patterns of persistent oils and made decisions on its operating sites based upon the threat posed by these patterns. Our analysis indicated that Alaska had two areas of likely threat - Cook Inlet and the TAPS terminus. When we reviewed the capability at these locations we found that Valdez had (and at the time was programmed to increase) a large capability to a considerable degree.

In fact, due in large measure to the work of the Alaska Legislature and Executive and Regional Citizens' Advisory Councils, Alyeska has a capability that would exceed one of MSRC's Regions and the capability of the Cook Inlet Cooperative is being upgraded. This led MSRC to conclude that there was not a need for MSRC capability in Alaska.

Although we had not received the full Citizens' Oversight Council Report by the time we had to depart for Juneau, the recommendations appear to be an outstanding example of good government at work. MSRC is pleased that the Council, in recommendation # 1, has acknowledged the essential need for the "gross negligence and willful misconduct" standard.

Because with it comes the real foundation for assuring a bold and vigorous response to oil spills in Alaska, since responders will not unreasonably fear responding in the face of the risks and uncertainties surrounding oil spill response and cleanup. Adoption of this standard will create comity between the state and federal government. This is one of the things MSRC has advocated for some time. MSRC wishes to commend the Council for its insight into recognizing the heart of a very complex problem. MSRC strongly urges this committee to

enact this standard into any revision of H.B. 196.

The Council's recommendations then focused on conditions to assure response action contractor performance. We will speak to this below, but I want to underscore some key points with respect to the implementation of this limited immunity standard to ensure consistency with the federal standard.

1. It should apply to all responders, regardless of the category; i.e. volunteer, not-for-profit organization or for-profit organization,
2. It should only apply to acts or omissions taken in the course of rendering care, assistance or advice that are consistent with the NCP, or as otherwise directed by the President (USCG) or appropriate state officials,
3. It should not apply to the responsible party, or for acts under CERCLA,
4. It should not apply to acts that cause personal injury or wrongful death
5. And of *critical importance*, a responsible party should be held liable for any removal costs or damages that another person is relieved of.

We noted that the Council was silent about a time limit to accompany any immunity. We take this lack of a positive statement on this critical issue as a recommendation to eliminate this feature from future Alaskan law. We concur with this position.

Council recommendations two (2) through six (6) focus on the need for, and how, the state should assure that response action contractors satisfactorily perform. MSRC has no disagreement with the basic goal or the need for response action contractors to do a good job. We also do not object to a reasonable certification program and have supported certification in the Coast Guard's process to establish vessel response plan rules under OPA-90. We do however, believe that some of the recommendations may go too far. If certification establishes standards and requirements that are too burdensome, certification could severely limit the number of persons willing or able to be responders. These types of requirements also can serve to shift responsibility away from the spiller and on to the responder or even the state. Certification should not serve to advertently or inadvertently undermine or even negate the responder's immunity. The imposition of performance standards is problematical and any certification program must be implemented so that federal/state and local requirements are integrated into an effective and efficient whole consistent with OPA-90.

Recommendation two (2) asserts that the state "...currently has no (underlining supplied) means to verify the capability and the capacity of these contractors to perform...." While we do not believe this statement is technically accurate, the ability to verify the capability and capacity of responders certainly exists under OPA-90. Section 4202 of OPA-90 requires that the President, "...shall require- (A) periodic inspection of containment booms, skimmers, vessels, and other major equipment used to remove discharges and ... periodically conduct drills of removal capability, without prior notice, in areas for which Area Contingency Plans are required...The drills may include participation by Federal, State and local agencies, the owners and operators of vessels and facilities in the area, and private industry. The

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President may publish annual reports on these drill, including assessments of the effectiveness of the plans and a list of amendments made to improve plans...."(Underlining supplied.) We believe that OPA-90 provides an excellent starting point to implement this recommendation and we urge the legislature to carefully consider if additional state requirements are really needed. We do not believe that tying responder immunity to responder certification is good public policy. MSRC believes that all responders require the limited immunity of OPA-90, and so long as they act consistent with the NCP or as directed by federal and state officials that their limited immunity should be left intact. We urge the legislature not to adopt this portion of the recommendation.

Recommendation three (3) would provide for the design of "minimum professional standards" for responders. In theory this is laudable, but MSRC believes there are major hurdles to be overcome, not the least which is the creation of a bureaucratic nightmare. The Council's recommendation itself recognizes that such standards do not presently exist. Unless the program was very basic in its construct, identifying operational and logistics support performance standards and then attempting to come to some agreement on how to measure performance to these standards, while a worthy goal, will be an exceedingly arduous task for the state. One needs to ask the question, "and to what real benefit?", since there are existing provisions for the state (as well as federal and local agencies) to be a party to drills and exercises where shortfalls in performance will be identified and action plans generated to eliminate discrepancies. Returning back to our original statement - a certification program should only be implemented if federal/state and local requirements are integrated into a single and effective whole.

We have no disagreement with the purpose of Recommendation four (4). We believe however, that this purpose can be achieved through the federally mandated Local Area Planning process found in Section 4202 of OPA-90. ADEC will be a full and active participant, among other interests in the state, in this process and therefore we urge that the need for any legislation in this area be the result of a complete review of the protection provided by the federal planning process.

Recommendation five (5) is problematical. It is assumed that the financial implication of giving direct orders to a responder, such as in the case of a mystery spill, can be worked out, but that notwithstanding, given the overarching structure of OPA-90 it is difficult to identify a real problem that needs to be solved. MSRC believes that implementation of this recommendation will create serious problems.

Section 4201 of OPA-90 states that the President "... shall ...ensure (underlining supplied) effective and immediate removal of a discharge...." It further states that in those cases where there is a substantial threat to public health or welfare that he "...shall direct all (underlining supplied) Federal, State, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge...." All now agree that decision-making during a spill response cannot be diffused but must attach to a single professional. The citations above demonstrate that the President will be in charge. We believe that this responsibility is being taken very seriously by the federal government. The state is a partner in the direction of these response efforts as a member of the federal Regional Response Team and Area Committees that will be developed. The way that OPA-90 insures response and cleanup performance is by placing the burden where it belongs - on the spiller. The spiller must

demonstrate to government that his plan is a reasonable one to remove, to the maximum extent practicable, a worst case spill. We see no clear and present danger that equipment and personnel will not, in the words of Recommendation five (5), "... indeed be deployed...."

Please also consider that under OPA-90:

- A. The state is intimately involved with the planning for the resources needed for a worst case spill; the federal government assures that response resources are inspected and
- B. That unannounced drills are conducted to assure that what has been written in the plans, (1) actually exists and (2) will perform as agreed upon in the plans and
- C. That Title V provides for the establishment of Regional Citizens Advisory Councils for special areas that have among their many advisory roles ones to:
 - 1. provide advice and recommendations...on the policies...and regulations relating to operation of...terminal facilities and tankers which may affect the environment
 - 2. monitor...the environmental impacts of the operation of the terminal facilities and crude oil tankers
 - 3. review...the adequacy of oil spill prevention and contingency plans for the terminal facilities and the adequacy of oil spill prevention and contingency plans for crude oil tankers...

There are considerably more of these types of advisory duties, but the sum of (A) (B) and (C) above is a very high level of inspection and verification of response capability by a variety of organizations. This appears to be adequate to insure that if Alaska wants to get something done during a response that it has a more than reasonable assurance that the resources will be there to execute the orders.

legislature and the administration. We are encouraged by the report of your Citizens' Oversight Council. We urge you to join with the 19 other states and adopt Section 4201 of OPA-90. It is sound public policy. I would be happy to answer any questions which you may have.



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D. N. LAKIN

Mr. G. Stephen Duca
Vice President
Readiness and External Affairs

August 28, 1991

John A. Sandor
Commissioner
Department of Environmental Conservation
P.O. Box O
Juneau, AK 99811-1800

RE: Alaska State Department of Environmental Conservation Proposed Oil and Hazardous
Substances Pollution Control Regulations

Dear Commissioner Sandor:

Our letter to you of July 26, 1991 dealt with issues prompted by our review of your oil pollution statute. We recently learned that your office has embarked on a new round of rulemaking regarding contingency planning. We share a mutual concern with the State of Alaska on creating a legal regime that is conducive to the most effective oil spill response. Since we will soon be meeting with you and other interests in Alaska we wanted to offer these comments on the draft rules in a spirit of cooperation.

The fundamental problem with this rule is that it establishes unrealistic planning standards. Alaska's response planning standards for crude oil tank vessels and barges (18 AAC 75.438) sets response planning standards that provide that a 300,000 barrels discharge must be controlled, contained, and cleaned up within 72 hours. It also requires that all equipment, personnel, or other resources must be accessible to the plan holder and will be deployed and operating at the discharge site within 72 hours. In addition, 18 AAC 75.440 requires that resources in a contingency plan for non-crude oil tank vessel or barge must be adequate to contain and control 100 percent of the total cargo capacity within 48 hours. Even if these are just "planning" standards from a responder's perspective, they are unrealistic given the present state of technology. We know of no professional and experienced responder who can honestly claim the capability to meet those standards in practice.

John A. Sandor
August 28, 1991
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The planning factors are unrealistic because they ignore the large number of variables, many of them interrelated but uncontrollable, that affect a responder's ability and the time it takes to clean up a particular spill. For example, the biggest variable is weather. In adverse weather, it is often impossible or too dangerous to allow equipment and personnel to leave the shore even when the equipment is locally staged and ready to begin the response. Other factors include the following:

- the type of accident
- the remoteness of the location
- the rate of discharge
- the time of day
- the season
- currents and tides
- oil characteristics
- regulatory approvals
- inherent equipment limitations
- equipment mechanical difficulties
- the presence of debris
- health and safety considerations
- legal constraints
- political disputes
- inefficient decision-making processes
- accidents

Does the state have any evidence that anyone can perform to this planning standard, even under the best of conditions? We believe the state would be better served by focusing on how to develop a realistic and useful plan for the sustained effort it will take in the face of the inevitable uncertainties, difficulties and surprises. We think it does a real disservice to the public, and to the professionals in the spill response business, to require a plan for unachievable results. In fact, an unachievable planning standard is counterproductive: It encourages planners to depart from the hard realism that it takes to produce a plan that is effective in the real world.

Equally important, unrealistic planning standards encourage unrealistic public expectations. Such expectations ensure that, no matter how good the response, it will still be viewed as a failure. This result demoralizes and discourages good responders. It also creates serious legal risks to them, as it encourages plaintiffs to sue and courts to judge the reasonableness of responder's performance harshly. This hostile legal and public environment strongly discourages responders from getting involved at all.

We realize that Alaska's statutes may constrain what the agency can do to adjust this planning standard. However, we believe that we owe you an explanation of our strong opposition to this type of regulatory approach.

Mr. Commissioner, we share the basic goal of assuring adequate response capability and readiness. We support and recommend for your consideration what we believe is a realistic and useful approach to this matter. We believe that regulators should specify a presumptively acceptable equipment list. The equipment list would vary with the size of the hypothetical spill. Individual response plans that use the specified equipment list would be acceptable to the agency. If the plan holder has good reason to believe that different equipment is more appropriate, then the plan holder can make its case to the Department. This alternative approach can be analogized to specifying the equipment necessary for a fire house rather than requiring each fire station to show how it will put out any large building fire in "x" minutes (without a complete description of all the facts related to the fire). No plan or regulation can anticipate all the variables in any particular emergency response, and no two large oil spills (or fires) are exactly alike. We understand that the U.S. Coast Guard is currently considering this methodology and working on such a list, and we urge the department to consider such a unified approach.

John A. Sander
August 28, 1991
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There are also other requirements in the proposed rules that appear to be unrealistic. For example, the plan holder must demonstrate the availability of adequate temporary storage and removal capacity for recovered oil and oily wastes "at or near the site of the spill" to keep up with skimming and recovery operations. We agree that storage capacity for skimmed oily wastes is an essential element to consider in each response plan. Given the size of Alaska, however, the requirements for and number of approved sites, and the remote areas through which vessels travel, this appears to be of doubtful achievability.

We well understand the importance in Alaska of taking a very strong approach to oil spill response. However, we all know that legislative decrees cannot repeal the laws of nature - simply declaring it so does not make it so. Laws and regulations will be most effective when they are built on a solid scientific foundation that recognizes the art of the possible. We believe in high standards, but a requirement to develop a plan for unachievable standards is counterproductive.

We offer this candid appraisal in a spirit of cooperation as helpful suggestions for our mutual goal of improving spill response. We look forward to our meeting on September 10.

Sincerely,





Marine Spill Response Corporation

David N. Lakin
Director of Government Affairs

August 19, 1991

Representative Ronald L. Larson
Alaska State
House of Representatives
P.O. Box 53
Palmer, Alaska 99645

Dear Representative Larson:

I enjoyed meeting you at the National Conference of State Legislatures meeting in Orlando and discussing the Marine Spill Response Corporation (MSRC). I am enclosing brochures on MSRC and a map representing the states which have passed the federal responder immunity standard for oil spill response.

I wanted to take this opportunity to discuss with you the recently enacted H.B. 196 which would grant a limited immunity in certain instances for those acts that relate to an oil spill response. Unlike seventeen other coastal states, including its neighbors on the west coast (Washington, Oregon, Alaska, and Hawaii), Alaska has enacted a standard of limited immunity other than the federal standard. As responders, MSRC finds the standard enacted in Alaska insufficient to encourage bold and aggressive responses to a major oil spill. The main difficulties that MSRC has with this law are addressed below and are enclosed in a recent letter to Department of Environmental Conservation Commissioner John Sandor:

◆ **Fifteen Day Liability Limit.** This arbitrary limit is unrealistic given the nature of oil spill response operations. The statute does not provide a liability-free opportunity to exit the scene. These provisions are a major disincentive for responders to get involved in remedial actions in the first place.

◆ **"Backdoor" Liability.** Joint and several liability is a real disincentive for any person involved in response activities who by contract arranged for disposal or treatment of hazardous substances possessed by such person, or who accepts hazardous substances for transport to a vessel from which a release occurs.

◆ **Limits on Immunity when Conflicting Orders are Received from Officials.** This provision places the responder in a quandary if conflicting orders are received from the state and federal governments.

Representative Ronald L. Larson
August 19, 1991
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◆ Response Action Contract Requirements and Substantial Deviation from Oil Spill Contingency Plans. Written contracts cannot contain all the actions that should be taken during a response, yet these are the only ones that would carry immunity (except for volunteers). This will discourage expedient actions while written agreement issues are sorted out. Moreover, these provisions will energize the impulse to litigate so that every factual element of response action may be scrutinized to determine if "substantial deviation" from a plan actually took place.

◆ Damages to Property not caused by Oil. Given that oil spills generate emergency operations, sometimes under adverse operating conditions, good faith accidents are sure to result. Thus, this limitation on responder immunity will have a chilling affect on response actions. As with OPA-90, the spiller -- not the responder -- should remain liable for these damages.

I hope you will find this summary and the enclosed information useful. I do, however, feel the need to point out that changes to the Alaska responder immunity statute will not be the determining factor of MSRC's participation in response efforts in Alaska waters. More importantly, consistency with the federal statute will allow responders of all kinds to make a best effort response to protect the pristine coast of Alaska. Again, it was a pleasure meeting you and should you have any questions please feel free to contact me at (202) 408-5795.

Sincerely,



Enclosure



John D. Costello
President

July 26, 1991

Mr. John A. Sandor
Commissioner
Department of Environmental Conservation
P.O. Box 0
Juneau, AK 99811-1800

Dear Commissioner Sandor:

Thank you for your letter of July 2, 1991. As you know and reference in your correspondence, I wrote to your predecessor in March of 1990 requesting a meeting with appropriate state officials to discuss what role, if any, our organization might have in Alaska. We welcome the opportunity to begin this direct dialog and I have asked our Vice President for Readiness and External Affairs, Mr. G. Stephen Duca, to make the necessary arrangements.

Your letter indicated that the impediment for MSRC establishing a presence in Alaska was the nature of the state's responder liability statutes. This is really only one of our concerns. Several events have occurred in the intervening time since our letter to you that directly bear on answering the question of what role is an appropriate one for MSRC in Alaska. Since our last correspondence we have been incorporated as MSRC with a charter and by-laws that specifies our response and cleanup activities. It states in part, that we are to establish programs to render a best effort response to contain and cleanup catastrophic oil spills in coastal zone or tidal waters of the U. S., in particular open sea spills estimated to be in excess of 25,000 barrels and protected water spills estimated to be in excess of 40,000 barrels. We are specifically precluded from responding to spills of less than 1200 barrels unless certain conditions are met. This limitation was inserted into our by-laws for several reasons, one of which was to insure that we do not compete with the existing oil spill response and cleanup infrastructure. The existing infrastructure is generally recognized as having the capability to respond to the vast majority of the nations spills; i.e., small spills under 1200 barrels. In addition, you may recall that PIRO (now MSRC) was created to specifically fill a national response/cleanup capability void at the high end of the spill spectrum; i.e., the catastrophic spill.

In the aftermath of the Valdez spill and due in large part to the leadership of the Legislature and other state officials, Alyeska spill response capabilities have significantly increased in size and scope. My understanding is that current Alyeska capability is probably

Mr. John A. Sandor
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equal or greater to the size of a planned MSRC regional response center. A similar response and cleanup improvement process is underway in Cook Inlet and, presumably, will result in a capability there to meet the requirements of OPA-90; i.e., the capability to respond to a "worst case discharge". It is our understanding that between the resources of Prince William Sound and Cook Inlet well over 95% of the persistent oil transported in Alaska's marine environment will be covered. In the light of this considerable capability the question must be asked "Is there really any role or indeed need for MSRC in Alaska?"

As a responder, we have carefully followed the development of Alaska's comprehensive oil spill legislation. We fully support state legislation that enhances oil spill response and clean up capability, however you should know that here are certain portions of your existing statutes that we feel could be improved. For example, requiring a capability to remove 300,000 barrels of oil in 72 hours is an unrealistic planning standard given today's technology and the average weather conditions responders must face in your state. Although the statute attempts to provide for technical relief from this standard, we believe that a very false expectation of capability has been created. Moreover, such a standard invites litigation -- a chief element in discouraging prompt responder action.

We are of course, vitally concerned with state responder immunity legislation. We were happy to see that HB 196 recognized this as a critical element in promoting an effective oil spill response system. We note however, that it falls significantly short of the national standard of immunity provided for responders in OPA-90. Some of the major concerns we have with this law include:

- o **Fifteen Day Liability Limit.** This arbitrary limit is unrealistic given the nature of oil spill response operations. The statute does not provide a liability-free opportunity to exit the scene. These provisions are a major disincentive for responders to get involved in remedial actions in the first place. Moreover, there is less likelihood for prompt responder action in cases where there is only the threat of a spill.

- o **"Backdoor" Liability.** Joint and several liability is a real disincentive for any person involved in response activities who by contract arranged for disposal or treatment of hazardous substances possessed by such person, or who accepts hazardous substances for transport to a vessel from which a release occurs.

- o **Limits on Immunity when Conflicting Orders are Received from Officials.** This provision places the responder in a quandary if conflicting orders are received from the state and federal governments.

- o **Response Action Contract Requirements and Substantial Deviation from Oil Spill Contingency Plans.** Written contracts cannot contain all the actions that should be taken during a response, yet these are the only ones that would carry immunity (except for volunteers). This will discourage expedient actions while written agreement issues are

Mr. John A. Sandor
July 26, 1991
Page Three

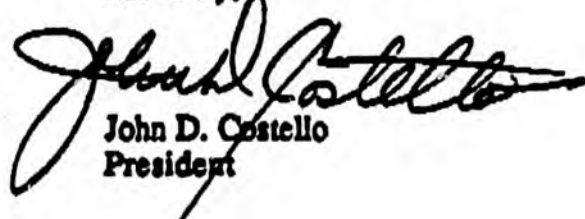
sorted out. Moreover, these provisions will energize the impulse to litigate so that every factual element of response action may be scrutinized to determine if "substantial deviation" from a plan actually took place.

o **Damages to Property not Caused by Oil.** Given that oil spills generate emergency operations, sometimes under adverse operating conditions, good faith accidents are sure to result. Thus, this limitation on responder immunity will have a chilling effect on response actions. As with OPA-90, the spiller -- not the responder -- should remain liable for these damages.

These are some of the issues we feel need improvement in the current statute. We believe, and parenthetically so do the legislatures of 17 other states that have enacted the federal standard over the past 18 months, that the provisions of Section 4202 of OPA-90 are sound public policy. It balances the issues of how to provide incentives for bold and decisive action with assuring that appropriate damages are allocated to the appropriate parties. The gross negligence willful misconduct standard of responder conduct is appropriate for emergency operations. Responder actions that cause personal injury and wrong death are not specially protected. Only acts that are consistent with the NCP or the directions of appropriate federal and state officials are protected. Enacting a statute that provides an immunity at least as protective as the federal standard would eliminate a major disincentive for responders in Alaska. Since the responder immunity law is subject to review including a report to the Legislature, MSRC would welcome the opportunity to work closely with you. Our role in Alaska notwithstanding, we want to ensure that your responder immunity legislation provides reasonable protection for responders. By doing so it will simultaneously facilitate a swift and effective response to help mitigate harm to your environment.

The foregoing provides you the major issues we see in Alaska in advance of our meeting so that you can have some insight into our perspective. We look forward to working up an agenda and meeting with you in the very near future,

Sincerely,



John D. Costello
President



Joseph E. Lees
Vice President &
General Counsel

May 13, 1991

Hon. Drue Pearce
Alaska State Senate
Box V
Juneau, Alaska 99811

Dear Senator Pearce:

Thank you for your telecopy of today regarding H.B. 196, the pending responder immunity bill, as well as certain proposed modifications of that bill. You asked me to provide you with comments on the bill and the modifications, and I am happy to do so. We previously provided comments on earlier versions of H.B. 196, which I enclose for your reference. Please note that my comments represent an analysis of the responder immunity provision only, and do not reflect any type of definitive list of MSRC concerns with Alaska law. They also do not represent the preconditions that would define MSRC's plans or willingness to respond in Alaska. In other words, inadequate responder immunity is one very significant barrier to MSRC involvement in Alaska, but it is not the only such barrier.

I will not repeat the detailed comments in our prior letter. Most of these comments are still applicable. Instead, I want to focus on the major issues that make the current provisions inadequate. I will take them in the order of importance.

First, the limitation on the time frame for responder immunity in H.B. 196 (15 days) is so tight as to make the responder immunity provision essentially useless for most responders. For very large spills, it is simply unrealistic to expect that a 15-day immunity period will be adequate to cover the time period when oil is still on the water. Such a limitation will not encourage spill responders to become involved in spill response or to act promptly and decisively when oil is on the water and time is of the essence. Further, it is an impractical standard -- if a release occurs over several days (e.g., an offshore facility or a sunken vessel) how is the time limit to be judged? Would each part of the oil slick have to be traced back to the date it was originally released?

MSRC's position is that there should not be a time limit on responder immunity. Any time limit is arbitrary, since one cannot predict ahead of time the specific circumstances of a spill. The larger the spill, the more difficult it will be to control within a short period of time, while the greater the potential damage and hence the potential liability will be. The proposed modification of the bill to extend the time limit to 60 days is a step in the right direction, but is still inadequate. The note suggests that the time frame is commensurate with the new California statute, but it differs from the California provisions in important ways. First, the

California statute allows for administrative extensions of the immunity provision beyond 60 days by the State oil spill coordinator. Second, the California provisions explicitly protects from liability a responder who withdraws from the spill response before the expiration of the responder immunity provision. Without such protection, the responder could be subject to liability based on grounds that once the duty of cleanup is assumed, then the responder cannot abandon that duty. Even with these protections, which are not provided in the Alaska bill, we believe the California bill still is unsatisfactory because of its arbitrary time restrictions.

Another major concern with H.B. 196 is that responder immunity provision is limited to response action contractors who, without approval by the federal or state onscene coordinator, substantially deviated from an oil spill contingency plan previously approved under AS 46.04.030, and the contractor previously agreed to comply with the terms of that plan under a contract with parties responsible for the release under AS 46.03.822. We have always maintained that the appropriate linkage for spill response should be to the National Contingency Plan, not to a local plan. The National Contingency Plan provides the basic framework for an appropriate response; the local plan establishes one way of achieving those overall goals. Unfortunately, no single plan can anticipate every eventuality. A plan provides the starting point for response, but responses inevitably must adapt to the circumstances of the actual event. Responders should not be subject to loss of immunity for deviations from the individual plan.

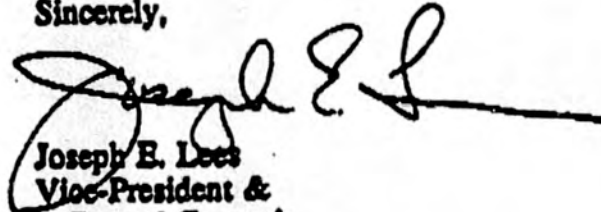
The proposed modifications of H.B. 196, which defines when action has "substantially deviated" from a plan, is, again, a step in the right direction. It defines a substantial deviation in terms of a significant, unjustifiable and unauthorized departure from the fundamental requirements of a plan. But it still links responder immunity to an individual plan rather than the National Contingency Plan.

Another major problem with H.B. 196 is that responder immunity does not apply to actions for damages to tangible personal property not caused by oil. MSRC's position is that responder immunity should apply to all removal costs or damages related to a response action, other than personal injury or wrongful death. It is not clear what "tangible" personal property is, or the degree of "causation" required. This appears to preclude immunity for claims, such as for damages resulting from the application of dispersants, or personal property damage from the placement of boom or local storage sites, etc. There is no justification for limiting responder immunity only to direct oil damage, when the response action will necessarily involve the movement of much machinery and equipment, etc. that is an integral part of the spill response. Limiting responder immunity to actions or omissions "consistent with the National Contingency Plan" provides a sufficient nexus between the type of damage and the spill response.

Finally, the proposed addition to Section 8 clarifying that nothing in this section is intended to create a cleanup standard is another positive and helpful provision. MSRC strongly opposes the setting of performance standards for oil spill cleanup as unrealistic and misleading. One cannot control an emergency situation, nor the circumstances of the spill, or the weather and other conditions of a spill response. One can only make one's best efforts with the equipment and personnel available. It is important that people realize that one cannot prevent damage in a major oil spill under all circumstances anymore than one can promise a certain damage level in a large fire.

Our other comments are contained in the attached materials. We hope this analysis is helpful to you. We encourage your efforts to amend H.B. 196 to make it less objectionable. Please let us know if you need anything further.

Sincerely,



Joseph E. Lees
Vice-President &
General Counsel

F. "Good Samaritan" Removal and Response

Oil Pollution Act of 1990

Under the OPA, any person taking response action to a spill, if the action is consistent with the National Contingency Plan or in compliance with presidential order, is immune from liability. This immunity of liability extends to vessel operators, cleanup contractors and cleanup cooperatives, or any person "rendering care, assistance, or advice consistent" with the NCP or presidential order. At the same time, responders are not immune from liability in the event of their gross negligence or willful misconduct, or in the event of personal injury or death. 4201.

State authority to impose requirements or standards for persons other than the responsible party responding to an oil spill are expressly preserved. 4202(c).

State "Good Samaritan" Provisions

Hawaii: Persons "rendering care, assistance, or advice" in accordance with the State law or at the direction of the on-scene coordinator are immune from liability. Immunity is not available in the event of "gross negligence or intentional misconduct on the part of such person." See Hawaii Environmental Response Law, sec. 128D-6.

California: Persons, including "oil spill cooperatives," that act "in good faith" in the course of "rendering care, assistance, or advice" in accordance with the National Contingency Plan, the state contingency plan, or orders from the on-scene coordinator or the Coast Guard, are immune from liability. Immunity is not available in the event of "gross negligence or willful misconduct" on the part of the responder, or in the event of personal injury or wrongful death. See Oil Spill Prevention and Response Act, Title 2, sec. 8670.56.6.

In the event of oil spill cooperatives or others that are "regularly engaged in the business of responding to oil spills" the immunity is only available for 60 days after the commencement of the response effort. The 60 day time period can be extended 30 more days if certain requirements are met. For persons not regularly engaged in oil spill response, there is no time limitation on the immunity from liability. See Oil Spill Prevention and Response Act, Title 2, sec. 8670.56.6.

Florida: Persons who are officially authorized to respond to oil spills are not liable for damages except for gross negligence or willful misconduct. 1990 Fla. Laws Ch. 90-54, sec. 16 (1990).

A Review of the Oil Pollution Act of 1990

With Examples of Related State Oil Pollution Legislation



The Coastal States Organization

MARCH 1991

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"(i) dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the Plan,

"(ii) the waters in which such dispersants, other chemicals, and other spill mitigating devices and substances may be used, and

"(iii) the quantities of such dispersant, other chemicals, or other spill mitigating device or substance which can be used safely in such waters,

which schedule shall provide in the case of any dispersant, chemical, spill mitigating device or substance, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants, other chemicals, and other spill mitigating devices and substances which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters.

"(H) A system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed in accordance with the Oil Pollution Act of 1990, in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred for that removal, from the Oil Spill Liability Trust Fund.

"(I) Establishment of criteria and procedures to ensure immediate and effective Federal identification of, and response to, a discharge, or the threat of a discharge, that results in a substantial threat to the public health or welfare of the United States, as required under subsection (c)(2).

"(J) Establishment of procedures and standards for removing a worst case discharge of oil, and for mitigating or preventing a substantial threat of such a discharge.

"(K) Designation of the Federal official who shall be the Federal On-Scene Coordinator for each area for which an Area Contingency Plan is required to be prepared under subsection (j).

"(L) Establishment of procedures for the coordination of activities of—

"(i) Coast Guard strike teams established under subparagraph (C);

"(ii) Federal On-Scene Coordinators designated under subparagraph (K);

"(iii) District Response Groups established under subsection (j); and

"(iv) Area Committees established under subsection (j).

"(M) A fish and wildlife response plan, developed in consultation with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other interested parties (including State fish and wildlife conservation officials), for the immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife resources and their habitat that are harmed or that may be jeopardized by a discharge.

and fishing.
life.

"(3) REVISIONS AND AMENDMENTS.—The President may, from time to time, as the President deems advisable, revise or otherwise amend the National Contingency Plan.

"(4) ACTIONS IN ACCORDANCE WITH NATIONAL CONTINGENCY PLAN.—After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan."

(b) DEFINITIONS.—Section 311(a) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)) is amended—

(1) in paragraph (8), by inserting "containment and" after "refers to"; and

(2) in paragraph (16) by striking the period at the end and inserting a semicolon;

(3) in paragraph (17)—

(A) by striking "Otherwise" and inserting "otherwise"; and

(B) by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

"(18) 'Area Committee' means an Area Committee established under subsection (j);

"(19) 'Area Contingency Plan' means an Area Contingency Plan prepared under subsection (j);

"(20) 'Coast Guard District Response Group' means a Coast Guard District Response Group established under subsection (j);

"(21) 'Federal On-Scene Coordinator' means a Federal On-Scene Coordinator designated in the National Contingency Plan;

"(22) 'National Contingency Plan' means the National Contingency Plan prepared and published under subsection (d);

"(23) 'National Response Unit' means the National Response Unit established under subsection (j); and

"(24) 'worst case discharge' means—

"(A) in the case of a vessel, a discharge in adverse weather conditions of its entire cargo; and

"(B) in the case of an offshore facility or onshore facility, the largest foreseeable discharge in adverse weather conditions."

(c) REVISION OF NATIONAL CONTINGENCY PLAN.—Not later than one year after the date of the enactment of this Act, the President shall revise and republish the National Contingency Plan prepared under section 311(c)(2) of the Federal Water Pollution Control Act (as in effect immediately before the date of the enactment of this Act) to implement the amendments made by this section and section 4202.

33 USC 1321
note.

SEC. 4202. NATIONAL PLANNING AND RESPONSE SYSTEM.

(a) IN GENERAL.—Subsection (j) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)) is amended—

(1) by striking "(j)" and inserting the following:

"(j) NATIONAL RESPONSE SYSTEM.—";

(2) by moving paragraph (1) so as to begin immediately below the heading for subsection (j) (as added by paragraph (1) of this subsection);

(3) by moving paragraph (1) two ems to the right, so the left margin of that paragraph is aligned with the left margin of paragraph (2) of that subsection (as added by paragraph (6) of this subsection);

(4) in paragraph (1) by striking "(1)" and inserting the following:

"(1) IN GENERAL.—";

(5) by striking paragraph (2); and

(6) by adding at the end the following:

"(2) NATIONAL RESPONSE UNIT.—The Secretary of the department in which the Coast Guard is operating shall establish a National Response Unit at Elizabeth City, North Carolina. The Secretary, acting through the National Response Unit—

"(A) shall compile and maintain a comprehensive computer list of spill removal resources, personnel, and equipment that is available worldwide and within the areas designated by the President pursuant to paragraph (4), which shall be available to Federal and State agencies and the public;

"(B) shall provide technical assistance, equipment, and other resources requested by a Federal On-Scene Coordinator;

"(C) shall coordinate use of private and public personnel and equipment to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President pursuant to paragraph (4);

"(D) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph (4);

"(E) shall administer Coast Guard strike teams established under the National Contingency Plan;

"(F) shall maintain on file all Area Contingency Plans approved by the President under this subsection; and

"(G) shall review each of those plans that affects its responsibilities under this subsection.

"(3) COAST GUARD DISTRICT RESPONSE GROUPS.—(A) The Secretary of the department in which the Coast Guard is operating shall establish in each Coast Guard district a Coast Guard District Response Group.

"(B) Each Coast Guard District Response Group shall consist of—

"(i) the Coast Guard personnel and equipment, including firefighting equipment, of each port within the district;

"(ii) additional prepositioned equipment; and

"(iii) a district response advisory staff.

"(C) Coast Guard district response groups—

"(i) shall provide technical assistance, equipment, and other resources when required by a Federal On-Scene Coordinator;

"(ii) shall maintain all Coast Guard response equipment within its district;

"(iii) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph (4); and

"(iv) shall review each of those plans that affect its area of geographic responsibility.

"(4) AREA COMMITTEES AND AREA CONTINGENCY PLANS.—(A) There is established for each area designated by the President an Area Committee comprised of members appointed by the President from qualified personnel of Federal, State, and local agencies.

"(B) Each Area Committee, under the direction of the Federal On-Scene Coordinator for its area, shall—

"(i) prepare for its area the Area Contingency Plan required under subparagraph (C);

"(ii) work with State and local officials to enhance the contingency planning of those officials and to assure preplanning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife; and

"(iii) work with State and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

"(C) Each Area Committee shall prepare and submit to the President for approval an Area Contingency Plan for its area. The Area Contingency Plan shall—

"(i) when implemented in conjunction with the National Contingency Plan, be adequate to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area;

"(ii) describe the area covered by the plan, including the areas of special economic or environmental importance that might be damaged by a discharge;

"(iii) describe in detail the responsibilities of an owner or operator and of Federal, State, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge;

"(iv) list the equipment (including firefighting equipment), dispersants or other mitigating substances and devices, and personnel available to an owner or operator and Federal, State, and local agencies, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge;

"(v) describe the procedures to be followed for obtaining an expedited decision regarding the use of dispersants;

"(vi) describe in detail how the plan is integrated into other Area Contingency Plans and vessel, offshore facility, and onshore facility response plans approved under this subsection, and into operating procedures of the National Response Unit;

"(vii) include any other information the President requires; and

"(viii) be updated periodically by the Area Committee.

"(D) The President shall—

"(i) review and approve Area Contingency Plans under this paragraph; and

"(ii) periodically review Area Contingency Plans so approved.

"(5) TANK VESSEL AND FACILITY RESPONSE PLANS.—(A) The President shall issue regulations which require an owner or

Establishment.

Regulations.

(B) Not later than 18 months after the date of the enactment of this Act, each Area Committee established under that section shall submit to the President the Area Contingency Plan required under that section.

(C) Not later than 24 months after the date of the enactment of this Act, the President shall—

- (i) promptly review each plan;
- (ii) require amendments to any plan that does not meet the requirements of section 311(j)(4) of the Federal Water Pollution Control Act; and
- (iii) approve each plan that meets the requirements of that section.

establishment.

(2) NATIONAL RESPONSE UNIT.—Not later than one year after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall establish a National Response Unit in accordance with section 311(j)(2) of the Federal Water Pollution Control Act, as amended by this Act.

establishment.

(3) COAST GUARD DISTRICT RESPONSE GROUPS.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall establish Coast Guard District Response Groups in accordance with section 311(j)(3) of the Federal Water Pollution Control Act, as amended by this Act.

President of U.S. Regulations.

(4) TANK VESSEL AND FACILITY RESPONSE PLANS; TRANSITION PROVISION; EFFECTIVE DATE OF PROHIBITION.—(A) Not later than 24 months after the date of the enactment of this Act, the President shall issue regulations for tank vessel and facility response plans under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act.

(B) During the period beginning 30 months after the date of the enactment of this paragraph and ending 36 months after that date of enactment, a tank vessel or facility for which a response plan is required to be prepared under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act, may not handle, store, or transport oil unless the owner or operator thereof has submitted such a plan to the President.

(C) Subparagraph (E) of section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act, shall take effect 36 months after the date of the enactment of this Act.

(c) STATE LAW NOT PREEMPTED.—Section 311(o)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1321(o)(2)) is amended by inserting before the period the following: “, or with respect to any removal activities related to such discharge”.

14 USC 92 note.

SEC. 4203. COAST GUARD VESSEL DESIGN.

The Secretary shall ensure that vessels designed and constructed to replace Coast Guard buoy tenders are equipped with oil skimming systems that are readily available and operable, and that complement the primary mission of servicing aids to navigation.

SEC. 4204. DETERMINATION OF HARMFUL QUANTITIES OF OIL AND HAZARDOUS SUBSTANCES.

Section 311(b)(4) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)(4)) is amended by inserting “or the environment” after “the public health or welfare”.

SEC. 4205. COASTWISE OIL SPILL RESPONSE COOPERATIVES.

Section 12106 of title 46, United States Code, is amended by adding at the end the following:

“(d)(1) A vessel may be issued a certificate of documentation with a coastwise endorsement if—

“(A) the vessel is owned by a not-for-profit oil spill response cooperative or by members of such a cooperative who dedicate the vessel to use by the cooperative;

“(B) the vessel is at least 50 percent owned by persons or entities described in section 12102(a) of this title;

“(C) the vessel otherwise qualifies under section 12106 to be employed in the coastwise trade; and

“(D) use of the vessel is restricted to—

“(i) the deployment of equipment, supplies, and personnel to recover, contain, or transport oil discharged into the navigable waters of the United States, or within the Exclusive Economic Zone, or

“(ii) for training exercises to prepare to respond to such a discharge.

“(2) For purposes of the first proviso of section 27 of the Merchant Marine Act, 1920, section 2 of the Shipping Act of 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection shall be considered to be owned exclusively by citizens of the United States.”

Subtitle C—Penalties and Miscellaneous

SEC. 4301. FEDERAL WATER POLLUTION CONTROL ACT PENALTIES.

(a) NOTICE TO STATE AND FAILURE TO REPORT.—Section 311(b)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)(5)) is amended—

(1) by inserting after the first sentence the following: “The Federal agency shall immediately notify the appropriate State agency of any State which is, or may reasonably be expected to be, affected by the discharge of oil or a hazardous substance.”;

(2) by striking “fined not more than \$10,000, or imprisoned for not more than one year, or both” and inserting “fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both”; and

(3) in the last sentence by—

(A) striking “or information obtained by the exploitation of such notification”; and

(B) inserting “natural” before “person”.

(b) PENALTIES FOR DISCHARGES AND VIOLATIONS OF REGULATIONS.—Section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)) is amended by striking paragraph (6) and inserting the following new paragraphs:

“(6) ADMINISTRATIVE PENALTIES.—

“(A) VIOLATIONS.—Any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility—

“(i) from which oil or a hazardous substance is discharged in violation of paragraph (3), or

“(ii) who fails or refuses to comply with any regulation issued under subsection (j) to which that owner, operator, or person in charge is subject,

operator of a tank vessel or facility described in subparagraph (B) to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.

"(B) The tank vessels and facilities referred to in subparagraph (A) are the following:

"(i) A tank vessel, as defined under section 2101 of title 46, United States Code.

"(ii) An offshore facility.

"(iii) An onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.

"(C) A response plan required under this paragraph shall—

"(i) be consistent with the requirements of the National Contingency Plan and Area Contingency Plans;

"(ii) identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to clause (iii);

"(iii) identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;

"(iv) describe the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the vessel or facility and to mitigate or prevent the discharge, or the substantial threat of a discharge;

"(v) be updated periodically; and

"(vi) be resubmitted for approval of each significant change.

"(D) With respect to any response plan submitted under this paragraph for an onshore facility that, because of its location, could reasonably be expected to cause significant and substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines or the exclusive economic zone, and with respect to each response plan submitted under this paragraph for a tank vessel or offshore facility, the President shall—

"(i) promptly review such response plan;

"(ii) require amendments to any plan that does not meet the requirements of this paragraph;

"(iii) approve any plan that meets the requirements of this paragraph; and

"(iv) review each plan periodically thereafter.

"(E) A tank vessel, offshore facility, or onshore facility required to prepare a response plan under this subsection may not handle, store, or transport oil unless—

"(i) in the case of a tank vessel, offshore facility, or onshore facility for which a response plan is reviewed by

President of U.S.

the President under subparagraph (D), the plan has been approved by the President; and

"(ii) the vessel or facility is operating in compliance with the plan.

"(F) Notwithstanding subparagraph (E), the President may authorize a tank vessel, offshore facility, or onshore facility to operate without a response plan approved under this paragraph, until not later than 2 years after the date of the submission to the President of a plan for the tank vessel or facility, if the owner or operator certifies that the owner or operator has ensured by contract or other means approved by the President the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge.

"(G) The owner or operator of a tank vessel, offshore facility, or onshore facility may not claim as a defense to liability under title I of the Oil Pollution Act of 1990 that the owner or operator was acting in accordance with an approved response plan.

"(H) The Secretary shall maintain, in the Vessel Identification System established under chapter 125 of title 46, United States Code, the dates of approval and review of a response plan under this paragraph for each tank vessel that is a vessel of the United States.

"(6) EQUIPMENT REQUIREMENTS AND INSPECTION.—Not later than 2 years after the date of enactment of this section, the President shall require—

President of I

"(A) periodic inspection of containment booms, skimmers, vessels, and other major equipment used to remove discharges; and

"(B) vessels operating on navigable waters and carrying oil or a hazardous substance in bulk as cargo to carry appropriate removal equipment that employs the best technology economically feasible and that is compatible with the safe operation of the vessel.

"(7) AREA DRILLS.—The President shall periodically conduct drills of removal capability, without prior notice, in areas for which Area Contingency Plans are required under this subsection and under relevant tank vessel and facility response plans. The drills may include participation by Federal, State, and local agencies, the owners and operators of vessels and facilities in the area, and private industry. The President may publish annual reports on these drills, including assessments of the effectiveness of the plans and a list of amendments made to improve plans.

President of I

"(8) UNITED STATES GOVERNMENT NOT LIABLE.—The United States Government is not liable for any damages arising from its actions or omissions relating to any response plan required by this section."

(b) IMPLEMENTATION.—

(1) AREA COMMITTEES AND CONTINGENCY PLANS.—(A) Not later than 6 months after the date of the enactment of this Act, the President shall designate the areas for which Area Committees are established under section 311(j)(4) of the Federal Water Pollution Control Act, as amended by this Act. In designating such areas, the President shall ensure that all navigable waters, adjoining shorelines, and waters of the exclusive economic zone are subject to an Area Contingency Plan under that section.

33 USC 1321
note.
President of I

CLASSES OF RESPONSE ACTION CONTRACTORS

I. Response Group - RAC actually controls the response for some period of time.

A. Alyeska Pipeline Service Company

Alyeska prepared an initial (72 hour) spill response plan and gave it to shippers with which Alyeska contracts for response. The initial response plan was to be incorporated into the shipper's contingency plan as ultimately approved by the state. Alyeska, by contract with the shipper, responds immediately, even without a request by the contingency plan holder. Alyeska remains as the lead responder and controls the response until the spiller takes over or the spill response is federalized. Alyeska only performs this function in Prince William Sound for TAPS traffic to and from the Valdez terminal.

II. Response/Resource Group - Cooperative organizations responding as a resource on behalf of members.

A. Cook Inlet Spill Prevention Response, Inc.

CISPRI is currently a 10-member cooperative providing spill response resources for its members. CISPRI is preparing a technical reference manual for use by its members. The co-op members are contingency plan holders who contract with CISPRI for response services that the spiller or plan holder directs. CISPRI operates in Cook Inlet.

B. Alaska Clean Seas

ACS is a cooperative similar to CISPRI. It currently has 13 members, most of whom are contingency plan holders. ACS developed a manual of services or response strategies that each member could incorporate into a contingency plan, such as procedures for in-situ burning or preparation of an equipment database. ACS provides response services on behalf of its members at the request of a member. ACS works as part of the unified response team which includes ACS employees, independent suppliers' employees, and village response teams. ACS operates in the North Slope.

III. Resource Suppliers - Companies which contract with

primary responder RACs or contingency plan holders to supply equipment and personnel.

- A. VECO
- B. VCRA
- C. Martech

Each of these firms are independent contractors with a RAC or a contingency plan holder to provide additional response resources. Frequently, pre-spill contractual arrangements are made for those supplies and services. For instance, Alyeska and CISPRI contract with VECO for resources. Contracts can also be entered into on the spot during a spill response. These firms neither control the response nor direct contingency plan compliance.

IV. Pinch Hitters - "Minor" players performing specific tasks during response activities.

- A. Contractual Services - These are individuals or groups which have a contractual arrangement in advance or on the spot to perform a discrete task as assigned. The contract can be with any of the other types of RACs or with the contingency plan holder or spiller. For example, Alyeska has contractual arrangements with fishing vessels to deploy boom and conduct oil containment activities during a spill response.
- B. Volunteers - These are individuals or groups who assist on their own initiative or on request by some spill response participant.

"(i) dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the Plan,

"(ii) the waters in which such dispersants, other chemicals, and other spill mitigating devices and substances may be used, and

"(iii) the quantities of such dispersant, other chemicals, or other spill mitigating device or substance which can be used safely in such waters,

which schedule shall provide in the case of any dispersant, chemical, spill mitigating device or substance, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants, other chemicals, and other spill mitigating devices and substances which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters.

"(H) A system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed in accordance with the Oil Pollution Act of 1990, in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred for that removal, from the Oil Spill Liability Trust Fund.

"(I) Establishment of criteria and procedures to ensure immediate and effective Federal identification of, and response to, a discharge, or the threat of a discharge, that results in a substantial threat to the public health or welfare of the United States, as required under subsection (c)(2).

"(J) Establishment of procedures and standards for removing a worst case discharge of oil, and for mitigating or preventing a substantial threat of such a discharge.

"(K) Designation of the Federal official who shall be the Federal On-Scene Coordinator for each area for which an Area Contingency Plan is required to be prepared under subsection (j).

"(L) Establishment of procedures for the coordination of activities of—

"(i) Coast Guard strike teams established under subparagraph (C);

"(ii) Federal On-Scene Coordinators designated under subparagraph (K);

"(iii) District Response Groups established under subsection (j); and

"(iv) Area Committees established under subsection (j).

"(M) A fish and wildlife response plan, developed in consultation with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other interested parties (including State fish and wildlife conservation officials), for the immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife resources and their habitat that are harmed or that may be jeopardized by a discharge.

and fishing,
life.

"(3) REVISIONS AND AMENDMENTS.—The President may, from time to time, as the President deems advisable, revise or otherwise amend the National Contingency Plan.

"(4) ACTIONS IN ACCORDANCE WITH NATIONAL CONTINGENCY PLAN.—After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan."

(b) DEFINITIONS.—Section 311(a) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)) is amended—

(1) in paragraph (8), by inserting "containment and" after "refers to"; and

(2) in paragraph (16) by striking the period at the end and inserting a semicolon;

(3) in paragraph (17)—

(A) by striking "Otherwise" and inserting "otherwise"; and

(B) by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

"(18) 'Area Committee' means an Area Committee established under subsection (j);

"(19) 'Area Contingency Plan' means an Area Contingency Plan prepared under subsection (j);

"(20) 'Coast Guard District Response Group' means a Coast Guard District Response Group established under subsection (j);

"(21) 'Federal On-Scene Coordinator' means a Federal On-Scene Coordinator designated in the National Contingency Plan;

"(22) 'National Contingency Plan' means the National Contingency Plan prepared and published under subsection (d);

"(23) 'National Response Unit' means the National Response Unit established under subsection (j); and

"(24) 'worst case discharge' means—

"(A) in the case of a vessel, a discharge in adverse weather conditions of its entire cargo; and

"(B) in the case of an offshore facility or onshore facility, the largest foreseeable discharge in adverse weather conditions."

(c) REVISION OF NATIONAL CONTINGENCY PLAN.—Not later than one year after the date of the enactment of this Act, the President shall revise and republish the National Contingency Plan prepared under section 311(c)(2) of the Federal Water Pollution Control Act (as in effect immediately before the date of the enactment of this Act) to implement the amendments made by this section and section 4202.

SEC. 4202. NATIONAL PLANNING AND RESPONSE SYSTEM.

(a) IN GENERAL.—Subsection (j) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)) is amended—

(1) by striking "(j)" and inserting the following:

"(j) NATIONAL RESPONSE SYSTEM.—";

(2) by moving paragraph (1) so as to begin immediately below the heading for subsection (j) (as added by paragraph (1) of this subsection);

33 USC 1321
note.

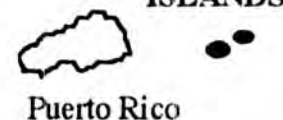
February 11, 1992

Coastal States with Federal Responder Immunity Standard

Alabama	Hawaii	North Carolina
California *	Louisiana	Oregon
Connecticut	Maine	Texas
Delaware	Massachusetts	Virginia
Florida	Mississippi	Virgin Islands
Georgia	New Hampshire	Washington
	New Jersey	

National Legislative Organizations Supporting the Federal Responder Immunity Standard

- National Conference of State Legislatures
- Council of State Governments
- American Legislative Exchange Council



■ Indicates states which have passed responder immunity legislation.

* Federal standard was adopted but only for a maximum of 90 days.

February 10, 1992

Comments Regarding "Oil Spill Response Action Contractors"

A Report by the Citizens' Oversight Council on Oil and Other Hazardous Substances

Alyeska Pipeline Service Company ("Alyeska") is pleased to provide these comments regarding a report recently submitted to the Alaska State Legislature by the Citizens' Oversight Council on Oil and Other Hazardous Substances ("COC"). The report is entitled "Oil Spill Response Action Contractors."

COC has developed seven recommendations. Alyeska's comments follow each one.

RECOMMENDATION #1: *The liability standard for oil spill response action contractors may be limited to gross negligence or intentional misconduct, with certain conditions that ensure a reliable response.*

Comments:

- We strongly agree. Even though responders are not liable for spills, without limited immunity, the financial risks and liability exposures associated with oil spill response would deter cleanup contractors, cooperatives, and others from joining into prompt, aggressive action.
- To date, the Virgin Islands and 18 of the 24 coastal states (75%) have adopted responder immunity laws which are substantially similar to the federal model provided in the Oil Pollution Act of 1990.
- The immunity is limited and subject to several conditions. The response action must be consistent with the National Contingency Plan, or federal or state orders. Responders are liable for personal injuries and wrongful deaths, or if they are grossly negligent or engage in willful misconduct. Importantly, the responsible vessel owner, operator, or charterer is liable for any removal costs or damages that responders are relieved of.

- We also strongly agree that this limited immunity ought to be available throughout the response action, and that it not be confined by an arbitrary time limit.

RECOMMENDATION #2: *Professional response action contractors should be certified by the state.*

RECOMMENDATION #3: *A certification program should contain minimum professional standards for response action contractors and direct DEC to establish the criteria by which it can readily assess a response action contractor's capability to perform as stated in a contingency plan.*

RECOMMENDATION #4: *A certification program should authorize DEC to maximize coastal protection and to enhance regional response capabilities through response action contractor certification.*

Comments:

- For the sake of national uniformity, and to avoid inconsistencies (and possible preemption), the state may wish to examine this proposal in greater detail after ongoing U.S. Coast Guard rulemaking on the same subject is completed. If supplemental state standards appear necessary, they may be considered at that time.
- Additionally, pre-certification of response action contractors should not be an additional condition for one group of responders to qualify for limited liability. We must encourage effective, prompt response efforts no matter who provides any type of care, assistance, or advice during an oil spill response, so long as it is consistent with the nation's comprehensive scheme for oil spill response or government orders.
- In addition to the legal and constitutional issues raised by this proposed disparity, an incongruity is immediately apparent. Volunteers who may need the most supervision during a response for their own safety would meet no prequalification requirement. Likewise, state, municipal, and village responders currently enjoy limited immunity for response action without any certification under a separate statute.
- The state's comprehensive contingency planning process already empowers ADEC to insure that response action contractors demonstrate their obligation and availability to respond to a discharge and discharge exercises,

and the readiness and compatibility of their equipment and other spill response resources. These oil spill response personnel must be trained, and demonstrate through drills and inspections their competency to provide immediate, effective response.

- A certification program may even be less effective as an oversight mechanism than spill exercises. ADEC can assure that a RAC is adequately prepared by comparing its response to the role described for it in a response plan. This can be done best through drills.

RECOMMENDATION #5: *Certified response action contractors must be subject to all orders of the state on-scene coordinator during an actual or threatened spill response.*

RECOMMENDATION #6: *Certified response action contractors should respond, when directed by the state on-scene coordinator, to mystery or orphan spills, except that regional cooperatives will not be required to respond outside their region of operation.*

Comments:

- Under the state and federal comprehensive oil spill prevention and response programs, sufficient controls already exist to assure effective response action without direct government control of a planholder's contractors. Moreover, ADEC is authorized to enter into contracts with private organizations to provide the personnel, equipment, or other services or supplies that may be required to respond to mystery or orphan spills. When private contracting is not feasible, it may establish and maintain the cleanup personnel and equipment which are needed at locations in the state.
- State law requires that tank vessel owners, operators, or charterers hold approved oil discharge prevention and contingency plans in order to do business in Alaska. The planholder must demonstrate the ready availability of sufficient personnel, training, equipment, and other resources to prevent, contain, cleanup, and dispose of spilled oil within the parameters of the state's planning standards.
- To augment its own prevention and response resources, a planholder will necessarily sign agreements with response action contractors. The contractors must be identified and their capabilities described. ADEC may test their proficiency and training during drills and inspections. ADEC will

insure that contractors are contractually obligated to respond as part of its plan approval process.

- A planholder must also demonstrate financial responsibility to assure the adequacy of his response and to pay damages. Possible criminal and civil penalties may also be assessed for an inadequate response.
- A planholder is liable for his negligent acts and omissions in directing a spill response. Likewise, by prematurely demanding that it also control a planholder's contractors, the state will share that liability. It must also be prepared to indemnify or immunize planholders and contractors from liabilities they may face by following state orders. Moreover, during the time that the state issues orders, it should suspend imposition of penalties upon the planholder for failure to implement its plan.
- The United States and the State of Alaska have already been granted the authority to take over and arrange for the removal of spilled oil when circumstances call for it. This is one of the purposes to be served by industry-funded oil spill response plans.
- Under the Oil Pollution Act of 1990, the U.S. Coast Guard by delegation is authorized to direct all federal, state, and private actions to remove an oil discharge. State control of response action contractors promises uncertainty and conflict during spill responses.
- Being generally required to respond to mystery and orphan spills would greatly increase the liabilities and risks to which RACs would be exposed. What responder will be in a position, in advance, as an additional price to be paid for limited immunity, to agree to provide services to state government without also having a specific contract which establishes the type and nature of response, types of hazardous substances, location, equipment, personnel needs, performance expectations, costs and billing arrangements, and indemnification? If a need for them currently exists, nothing prevents the state or federal government from negotiating "stand by" contracts now.
- Indeed, the State Oil and Hazardous Substance Discharge Prevention and Contingency Plan discusses mystery and orphan spills. It provides that whenever a spiller is unknown or a response is inadequate, the state or federal agency having jurisdiction has the authority to "take over the response and recover expenses from the spiller." Para. 411 at 400-14 (May 1991). This is consistent with federal and state law.

- No state requires that response action contractors individually agree, in advance, to accept direct state control and to handle mystery or orphan spills as additional conditions to limited immunity. These conditions will eliminate any hope of general uniformity of liability regimes amongst the various states to better encourage RACs to cross state lines, especially to join in efforts to contain and cleanup major spills.

RECOMMENDATION #7: *The Trans-Alaska Pipeline System ("TAPS") agent should clearly maintain the duty to control and remove pollution within state boundaries related to the transportation of TAPS crude oil.*

Comments:

- This COC recommendation relies upon an erroneous legal opinion. Under federal law, Alyeska and the holders of the grant of right-of-way across Alaska for pipeline construction and operation are not liable for spills from tank vessels. In any event, limited responder immunity is not available for those who are responsible parties.
- Under the comprehensive liability framework created by Congress, vessel owners and operators carrying oil transported through the pipeline are strictly liable, along with the Trans Alaska Liability Fund, for damages, including cleanup costs, resulting from discharges of oil from their vessel.
- None of the seven pipeline companies that own TAPS, or Alyeska which operates it on their behalf, own, operate, or charter tankers; nor do they manage or control them. In addition to the numerous legal and constitutional challenges this recommendation invites, it makes no practical sense: Congress has already imposed liability and financial responsibility for tanker discharges upon owners/operators/charterers; so has the State of Alaska.
- In COC's public meeting on January 31, ADEC testified that there is no confusion regarding who bears this responsibility in Prince William Sound: "we know who the plan holders are, we know who the responsible parties are, we know who the response action contractor is." Moreover, "we have evaluated the capabilities of the response action contractors to respond and evaluated the transition management plan."

- Alyeska has, in fact, accepted a contractual duty to provide prevention and initial response services to planholders. ADEC would not have accepted and approved contingency plans without insuring that Alyeska had accepted that obligation.
- Although it owns royalty oil, the state is not an equity owner of Alyeska's prevention and initial response equipment to appropriate for its use as a regulator. Like any other transportation-related expense, the cost of oil spill preparedness is equitably distributed amongst TAPS shippers.

Sec. 2. Response

A. Contingency Plans

Oil Pollution Act of 1990

National Contingency Plan: The OPA modifies the National Contingency Plan requirements as originally established in the Clean Water Act. See 33 U.S.C. 1321(c). In addition to the Clean Water Act requirements, the National Contingency Plan must now include procedures and standards for removing a "worst case discharge" and for mitigating or preventing a substantial threat of an oil spill. In preparing the revisions, the long- and short-term effects on the environment of spill mitigating devices and substances are to be considered, and those devices and substances with the least effect on the environment are to be selected. Additionally, the revised NCP requires establishment of procedures for coordinating the activities of Coast Guard strike teams, federal on-scene coordinators, district response groups, and area committees. The revised NCP must be republished within one year after passage of the OPA. 4201(b). See also Part III, #1. Note: A typographical error apparently has been made in that there are two subsection (b) in 4201. The new requirements for the NCP are in the first subsection (b).

A "worst case discharge" is defined for vessels as "a discharge in adverse weather conditions of the vessel's entire cargo," and for facilities as "the largest foreseeable discharge in adverse weather conditions." 4201(b). Note: A typographical error apparently has been made in that there are two subsection (b) in 4201. This definition appears in the second subsection (b).

Area Contingency Plans: Area Committees, comprised of presidentially appointed members of Federal, State and local agencies are to be established. Each Area Committee is charged with preparing Area Contingency Plans to plan for the removal of a worst case oil spill from any vessel or facility operating in or near the area covered by the plan. All U.S. waters and adjoining shorelines are to be covered by these plans. 4202(a).

Vessel and facility response plans: Owners and operators of vessels and facilities are required to prepare individual response plans and submit them to the President for review. Under these response plans, owners and operators are required to identify and ensure by contract the availability of private personnel and equipment sufficient to remove a worst case oil spill, and to mitigate or prevent a substantial threat of a spill. 4202(a).

State Contingency Plan Requirements

Florida:

- **Ship Specific Contingency Plan:** Each vessel with a storage capacity of 10,000 gallons or more must have a ship specific spill prevention and control contingency

plan. Each vessel must also have a "spill officer" aboard to train the crew to respond to a spill, and ensure proper equipment maintenance and use. 1990 Fla. Laws Ch. 90-54, sec. 15.

B. Response Units

Oil Pollution Act of 1990

National Response Unit: A National Response Unit is mandated to be established in Elizabeth City, North Carolina. This unit is charged with: (1) maintaining a computerized listing of oil spill removal resources, personnel and equipment worldwide; (2) coordinating the use of private and public personnel and equipment; (3) administering the Coast Guard strike teams and provide technical assistance to them; and (4) reviewing and maintaining on file all area contingency plans. 4202(a).

Coast Guard Strike Teams: These strike teams consist of trained personnel, adequate oil pollution control equipment, and a detailed oil pollution prevention plan, including measures to protect fish and wildlife. These teams are available upon request by any Federal on-scene coordinator. 4201(b).

Coast Guard District Response Groups: Within each of the 10 Coast Guard districts a response group is to be established. Each group consists of Coast Guard personnel and equipment for each port within the district, additional pre-positioned equipment, and district advisory staff. 4202(a).

Oil Spill Response Cooperatives: Non-profit organizations, not more than 49 percent foreign owned, that only use vessels to deploy equipment, supplies and personnel to respond to an oil spill or substantial threat of one, or to train personnel, may be issued certificates of documentation with a coastwise endorsement. 4205.

C. Response Equipment and Personnel

Oil Pollution Act of 1990

The intent of the OPA is to "create a system in which private parties supply the bulk of any equipment and personnel needed for oil spill response in a given area." House Rep. 101-653, at 148. It was recognized that adequate response may require the use of private and public equipment and personnel located throughout the United States as well as the rest of the world. The National Response Unit, discussed above, has the implicit responsibility

to avoid duplication of private and public initiatives. Reference is also made in the conference report (House Rep. 101-653, at 148) that the OPA "contemplated active use and involvement of private response resources" such as the Marine Spill Response Corporation (MSRC), previously known as the Petroleum Industry Response Organization (PIRO). The MSRC is contemplating eventually purchasing and pre-positioning \$325 million worth of equipment in five regional response centers and 20 pre-positioning sites.

Each vessel and facility is required to have sufficient equipment and personnel to respond to a worst case discharge. This requirement can be satisfied either by the owner and operator of the vessel or facility owning the equipment, or ensuring by contract the availability of equipment and personnel.

Periodic inspections and drills: The President is required to conduct periodic inspections of oil spill removal equipment and call unannounced drills to test the removal response capability of the response units. 4202(a).

D. Direct Draw Authority

Oil Pollution Act of 1990

Access to Fund by State Officials: A Governor is not statutorily authorized to directly draw any money from the Federal Fund. Rather, a Governor must request authority from the President, or delegated Federal official, to obligate amounts up to \$250,000 for removal costs consistent with the National Contingency Plan. Regulations are to be developed to "detail the manner in which the cooperative agreements are to be developed." 1012(d). See Part III, #7.

A Review of the Oil Pollution Act of 1990

With Examples of Related State Oil Pollution Legislation



The Coastal States Organization

MARCH 1991

®

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September 1990

THE ROLE OF THE STATES
UNDER THE FEDERAL OIL SPILL LAW

American Petroleum Institute
Office of General Counsel

insurance, surety bonds, guarantees, letters of credit, and self-insurance.

These federal financial responsibility requirements are extremely high and the sanctions for non-compliance are strict and punitive. The States should find that the federal requirements for financial responsibility provide a satisfactory guarantee of compensation for the states, their citizens, and natural resources. The States should aggressively undertake the enforcement prerogatives regarding financial responsibility which are offered the under the new federal law.

IV. GOOD SAMARITAN PROTECTION FOR OIL SPILL RESPONDERS

With the emergence of a new federal oil spill liability law, and recent costs for oil spill damages reaching the multi-billion dollar level, the viability and effectiveness of organizations designed to respond to oil spills is threatened. Such organizations, many of which are non-profit, simply can not afford exposure to the "brave new world" of oil spill liabilities -- and why should they?

The law must recognize the significant differences between the spill response organizations and the original spillers of oil -- allocating their respective liability risks accordingly. Specifically, federal and state laws should extend to spill response cooperatives and contractors the protection from liability -- except in cases of gross negligence or willful misconduct -- which is afforded other emergency entities in our society,

- 10 -

including ambulance services and firefighters. In the case of damages allegedly caused by the negligence of oil spill responders, it is the original spiller of oil, whose conduct necessitates the response, who should pay those damages.

The new federal law therefore contains a provision which extends such limited immunity protection for oil spill response organizations -- but only for the liabilities they face under the federal law. This provision will not succeed if spill responders continue to face duplicate, (and in some case unlimited), liabilities under individual state laws. At present, the majority of existing Good Samaritan state laws applicable to oil spill responders contain a host of impractical and unrealistic condition on the immunity. For example, under many of these state laws, an oil spill responder loses its immunity if it charges any fee for its services. Such conditions on liability exposure only undermine the goal of ensuring emergency response capability. The States should instead legislate for the promotion of the best possible response to spill emergencies by enacting straightforward limited responder immunity provisions such as the new national standard.

V. FEDERAL PRIMACY IN SPILL RESPONSE AND CONTINGENCY PLANNING.

A. Response Chain of Command

A most important lesson learned from recent, publicized spill incidents is that immediate and decisive response to oil spills is essential to a successful containment and cleanup. The new federal law fundamentally amends the Clean Water Act's provisions in this



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

July 7, 1989

MEMORANDUM

TO: Representative Mike Davis

ATTN: Barnaby Dow

FROM: Karla Hart *K Hart*
Legislative Analyst

RE: Oil Tankers: Regulation and a Profile of Tankers Operating in Alaska
Research Request 89.352

You asked for a profile of oil tankers serving Valdez, including their age, size, history of repairs and the number with double bottoms. For purposes of comparison, you requested similar information for Japanese, South Korean and Norwegian tankers. This information is presented following an introduction which provides background on the regulatory and legal basis for standards imposed on oil tankers.

Tanker Regulation and Industry Controls

Cabotage laws are laws designed to reserve to a nation's own ships the coastwise trade between a nation's ports. The chief cabotage law of the United States, known as the Jones Act, provides that merchandise transported between points in the United States must be transported in vessels built in the United States, documented under the laws of the United States, and owned by citizens of the United States--all requirements for U.S. flagging (registry). For the most part, the cabotage laws consider ports in the U.S. territories and possessions to be U.S. ports.¹

Flags of convenience (FOC) shipping, or open registry of vessels, allows ships to fly the flag of the country in which they are registered, with corporate or individual ownership by a national of another country. Such registry has been used by many owners, particularly owners domiciled in developed countries, for the tax, regulatory, and cost advantages attained. Nations which allow open registry have laws limiting requirements regarding disclosure of ownership, earnings, and profits as well as operating information. These laws also permit large flexibility of manning, insurance, classification, and operating

¹Ernst G. Frankel, Regulation and Policies of American Shipping, Auburn House Publishing Company, 1982, p. 59.

Representative Davis
July 7, 1989
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procedures. In 1982, Liberia controlled roughly three-quarters of the FOC tonnage. Tankers are the majority of the FOC ships;² however, due to the Jones Act, few of the tankers operating in Alaska are FOC ships.

Ship classification is an international marine industry means of self-regulation. Classification societies are non-governmental organizations which establish and administer vessel standards for the design, construction, and periodic survey of merchant ships and other marine structures. Classification certifies adherence to established standards, thus representing that a vessel possesses the structural and mechanical fitness required for its intended service. Classification is voluntary, although it may be essential for underwriting or selling a vessel. Classification societies also act on behalf of many governments in certain inspection functions. Major international classification societies, such as the American Bureau of Shipping and Lloyd's Register of Shipping (United Kingdom), offer worldwide representation and have fairly similar standards. There is greater variation among the smaller classification societies and various classification societies have different total loss experiences.³ Additional information on classification is found in the American Bureau of Shipping brochure (Attachment A).

A large number of U.S. government departments have jurisdiction over various aspects of regulation, advocacy, control, and supervision related to the U.S. shipping industry.⁴ Because some overlap in the jurisdiction of these federal agencies has occurred over time, it is sometimes difficult to define the exact responsibility of each particular federal agency.⁵

States are limited in their ability to regulate tankers. In a 1978 U.S. Supreme Court decision, Dixie Lee Ray v. Atlantic Richfield Company, the court found that the Washington State requirement that tankers either satisfy safety design standards prescribed by state statutes or use tug escorts was invalid under the supremacy clause of the federal constitution. Title II of the Ports and Waterways Safety Act (46 USCS Section 391a) mandates federal regulations be issued to set minimum standards for tanker design and to protect the marine environment; thus, states cannot impose stricter design requirements. As we

²Frankel, Regulation and Policies of American Shipping, pp. 74-75.

³Thomas Tucker, vice-president, American Bureau of Shipping, personal communication, June 1989.

⁴Federal agencies with important roles in U.S. maritime transportation include the Department of Commerce (National Oceanic and Atmospheric Administration), Department of Transportation (Office of the Secretary, U.S. Coast Guard and Maritime Administration), Department of Defense, Department of State, Department of Energy, Environmental Protection Agency, Federal Maritime Commission, Interstate Commerce Commission, Federal Trade Commission, and Department of Justice.

⁵Frankel, Regulation and Policies of American Shipping, p. 13.

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discussed, you may wish to have the Division of Legal Services evaluate the extent to which Alaska may impose standards upon tankers if you are considering legislation.

Tankers Participating in the Alaska Trade

A list of the tankers transporting North Slope crude oil is not readily available. Tankers operating in Alaska must file proof of financial responsibility with the Alaska Department of Environmental Conservation (DEC) (AS 46.04.040). As of August 25, 1988, there were 95 tankers with approved proof of financial responsibility through June 30, 1989. Of these, two were liquid natural gas tank vessels (excluded from this memorandum) and an unknown number were used for carrying refined fuel products. The DEC does not collect details on the trade of each vessel; however, roughly two-thirds of the tankers have filed proof of financial responsibility which is limited to the Trans-Alaska Pipeline System trade. On the two occasions I have contacted Alyeska Pipeline Service Company personnel in Valdez (September 1987 and April 1989) they were unable to provide a listing of tankers which pick up crude oil at the marine terminal.

The export ban on Alaska North Slope crude oil effectively limits tankers operating out of Valdez to those of U.S. flag, with the exception of tankers carrying oil to an Amerada Hess refinery on St. Croix in the U.S. Virgin Islands (which is exempted from the Jones Act). Presently, nine Liberian flagged tankers have proof of financial responsibility on file with the DEC.

The rating, size, age, type, hull, flag, classification society, casualties, and ownership details for each of the 93 tankers involved in the Alaska trade are provided in Attachment B. Of these tankers, 18 percent (17) have double bottoms and an additional nine percent (eight) have double bottoms and double sides. Attachment C, a March 5, 1989 Anchorage Daily News article entitled "Rough seas leave mark on vessels laden with oil," provides further information on the condition of tankers operating in Alaska.

Comparison of Tankers

Using published data, the 93 tankers with FY 89 proof of financial responsibility in Alaska are compared in the following table with tankers having Japanese, South Korean and Norwegian owners.⁶ In summary, tankers serving Alaska are slightly smaller and significantly older, with a lower rating and more casualties than the Japanese, South Korean and Norwegian owned

⁶Japan and South Korea were selected because of the potential for exporting Alaska crude oil directly to those nations. Norway was selected because it has ownership of a large fleet of tankers and is a northern seagoing country with offshore oil activities.

tankers. Information on which of these foreign-owned tankers have double bottoms is available through Lloyd's Registry in London, whom I did not contact.

Table 1
 Comparison of Oil Tankers

	Number of Tankers	MDWT	Mean Age	Rating	Tankers With Highest Rating	Mean Number of Casualties/Tanker Total "Important"	
Alaska Trade	93	106	18	2.9	7%	5.8	0.5
Japan Owned	212	121	9	4.0	38%	0.5	0.1
South Korean Owned	16	111	14	3.5	6%	0.1	0.1
Norwegian Owned	152	111	11	3.4	23%	0.2	0.2

Note: MDWT = thousand deadweight tons

Source: Arthur McKenzie, 1989 Guide for the Selection of Tankers, The Tanker Advisory Center, Inc., New York.

Ratings from one (low) to five (high) are assigned to each tanker to suggest the probability that the vessel will perform satisfactorily for a prospective charterer. The assigned ratings are reviewed annually by the Tanker Advisory Center. Important factors in assigning each rating include the vessel's age, flag, classification society, layup date, parent owner, size of the owned tanker fleet, changes in ownership, and the number, type, frequency and severity of reported casualties.⁷

A casualty is any reported event which probably results in an insurance claim, fine or detention by port authorities. Worldwide, about 13 percent (plus or minus two percent) of the tankers each year sustain a reported casualty. Approximately two to three percent of these vessels annually sustain an important casualty, including damage probably rendering a vessel unseaworthy, breakdown requiring a tow, explosion/fire in cargo tanks or pumproom, cargo spill, a death, a fine, or detention by authorities. It has been documented that over eighty-five percent of all marine casualties are caused by human

⁷ Arthur McKenzie, 1989 Guide for the Selection of Tankers, Tanker Advisory Center, Inc., New York.

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error, not by vessel structural or mechanical failures.⁸ During the past two decades, less than 0.5 percent of the oil carriers were, on average, total losses annually.⁹

A comparison of the casualties of tankers serving Alaska with those of other tankers requires caution. The extreme weather conditions encountered by tankers transporting oil from Valdez may be such that Japanese tankers, for example, might suffer significantly higher casualty rates than presently experienced if they too were operating in the Gulf of Alaska.

Additionally, the reporting of casualties may not be consistent for vessels of different flags of registry. The vast majority of tankers in the Alaska trade are of U.S. registry. The tankers of Japanese, South Korean and Norwegian ownership represent a wide variety of flags--including flags of convenience. McKenzie notes that it is not possible to either prove or disprove a bias in the reporting of casualties.¹⁰

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I hope this information is helpful. If you have questions, please call.

Attachments

⁸American Bureau of Shipping, "Classification: Promoting the security of life and property on the seas," undated brochure (1981?), 16 pp.

⁹McKenzie, 1989 Guide for the Selection of Tankers, pp. 2 and 8.

¹⁰McKenzie, 1989 Guide for the Selection of Tankers, p. 3.

ATTACHMENT A

American Bureau of Shipping Brochure

(This attachment becomes illegible when photocopied and may be viewed in the House Research Agency office.)

ATTACHMENT B

Details for Tankers Involved in Alaska Trade

TANKERS WITH ALASKA PROOF OF FINANCIAL RESPONSIBILITY

Casualties

Vessel Name	Rating	MDMT	Age	Hull	Flag	All	Major	Owner/Operator
Admiralty Bay	1	81	18	N	us	13	2	Trinidad Corporation
American Sun	3	81	20	N	us	2	0	Sun Transport Inc.
Antigon Pass	2	176	12	N	us	13	1	Keystone Shipping Company
Arco Alaska	3	188	10	DB	us	9	0	Arco Marine Inc.
Arco Anchorage	3	120	16	N	us	6	1	Arco Marine Inc.
Arco California	4	189	9	DB	us	2	0	Arco Marine Inc.
Arco Fairbanks	3	120	15	N	us	4	0	Arco Marine Inc.
Arco Independence	4	262	12	N	us	4	0	Arco Marine Inc.
Arco Juneau	3	120	15	N	us	8	0	Arco Marine Inc.
Arco Prudhoe Bay	2	70	18	N	us	9	0	Arco Marine Inc.
Arco Sag River	3	70	17	N	us	1	0	Arco Marine Inc.
Arco Spirit	3	262	12	N	us	8	0	Arco Marine Inc.
Arco Texas	3	90	16	N	us	6	1	Arco Marine Inc.
Aspen	1	82	18	N	us	17	4	Trinidad Corporation
Bay Ridge	1	228	11	N	us	8	0	Bay Tankers (owner-Seatrain Lines)
Brooklyn	1	225	15	N	us	12	0	Texaco, Inc.
Brooks Range	3	176	11	N	us	2	0	Interocean Mgmt Corp.
B.T. Alaska	2	182	11	DB	us	5	0	Shell Oil Company (owned Marine Transport Lines)
B.T. San Diego	3	182	11	DB	us	10	0	Shell Oil Company (owned Marine Transport Lines)
Chestnut Hill	1	91	13	DB	us	9	1	Keystone Shipping Company
Chevron Arizona	3	39	12	DB/DS	us	8	0	Chevron Shipping
Chevron California	3	70	17	N	us	4	0	Chevron Shipping
Chevron Colorado	3	39	13	DB/DS	us	7	0	Chevron Shipping
Chevron Louisiana	3	39	12	DB/DS	us	8	2	Chevron Shipping
Chevron Mississippi	3	70	17	N	us	4	1	Chevron Shipping
Chevron Oregon	3	150	19	DB/DS	Ti	3	0	Chevron Shipping
Chevron Washington	4	39	13	DB/DS	us	7	0	Chevron Shipping
Coast Range	4	40	8	DB	us	1	0	West Coast Shipping (owner Union Oil)
Cove Liberty	1	69	35	N	us	16	1	Cove Shipping Inc.
Cove Trader	1	50	30	N	us	26	0	Cove Shipping Inc.
Eastern Lion	4	265	16	N	Ti	1	0	Maritime Overseas Corporation (owned Overseas Shipholding)
Exxon Baltimore	3	51	29	N	us	5	1	Exxon Shipping Co.
Exxon Baton Rouge	3	76	19	N	us	5	0	Exxon Shipping Co.
Exxon Baytown	4	58	5	DB	us	3	0	Exxon Shipping Co.
Exxon Benicia	3	173	10	N	us	8	2	Exxon Shipping Co.
Exxon Boston	3	51	29	N	us	7	0	Exxon Shipping Co.
Exxon Galveston	3	27	19	N	us	2	0	Exxon Shipping Co.
Exxon Houston	2	73	25	N	us	6	1	Exxon Shipping Co.
Exxon Jamestown	3	41	32	N	us	1	0	Exxon Shipping Co.
Exxon Lexington	3	41	31	N	us	4	1	Exxon Shipping Co.
Exxon Long Beach	5	211	2	N	us	0	0	Exxon Shipping Co.
Exxon New Orleans	3	72	24	N	us	4	1	Exxon Shipping Co.
Exxon North Slope	5	173	10	N	us	1	0	Exxon Shipping Co.
Exxon Philadelphia	3	76	19	N	us	8	0	Exxon Shipping Co.
Exxon Princeton	3	43	7	DB	us	2	0	Exxon Shipping Co.
Exxon San Francisco	3	76	20	N	us	9	1	Exxon Shipping Co.
Exxon Valdez	5	211	3	N	us	0	0	Exxon Shipping Co.
Exxon Washington	3	41	32	N	us	1	0	Exxon Shipping Co.
Exxon Yorktown	5	43	6	DB	us	8	0	Exxon Shipping Co.
Glacier Bay	1	81	19	N	us	19	4	Trinidad Corporation
Golden Gate	1	62	19	N	us	18	1	Keystone Shipping Company
Kenei	3	123	10	DB/DS	us	6	0	Keystone Shipping Company
Keystone Canyon	3	173	11	N	us	5	0	Keystone Shipping Company

TANKERS WITH ALASKA PROOF OF FINANCIAL RESPONSIBILITY

Casualties

Vessel Name	Rating	MDWT	Age	Hull	Flag	All	Major	Owner/Operator
Kittanning	1	91	12	DB	us	11	2	Keystone Shipping Company
Lion of California	2	16	35	N	us	12	0	Western Hemisphere (owner Tosco Corp.)
Mobil Arctic	3	125	17	N	us	3	0	Mobil Oil Corp.
Mobil Meridian	3	49	28	N	us	3	0	Mobil Oil Corp.
Mt. Cabrte	1	255	18	N	li	10	1	Amerada Hess Corp.
New York Sun	4	34	9	N	us	2	0	Sun Transport Inc.
Nordic Sun	5	20	8	DB*	li	0	0	Sun Transport Inc.
Northern Lion	4	265	15	N	li	1	0	Maritime Overseas Corporation (owned Overseas Shipholding)
OMI Columbia	2	136	15	N	us	4	2	OMI Corporation
OMI Dynachem	4	51	8	DB	us	1	0	OMI Corporation
Overseas Boston	3	122	15	N	us	2	2	Maritime Overseas Corporation (owned Overseas Shipholding)
Overseas Chicago	4	92	12	DB	us	2	0	Maritime Overseas Corporation (owned Overseas Shipholding)
Overseas Juneau	3	120	16	N	us	2	0	Maritime Overseas Corporation (owned Overseas Shipholding)
Overseas New York	3	90	12	DB	us	6	0	Maritime Overseas Corporation (owned Overseas Shipholding)
Overseas Ohio	4	91	12	DB	us	1	0	Maritime Overseas Corporation (owned Overseas Shipholding)
Overseas Washington	3	91	11	DB	us	2	0	Maritime Overseas Corporation (owned Overseas Shipholding)
Philadelphia Sun	5	34	8	N	us	1	0	Sun Transport Inc.
Prince William Sound	3	124	13	DB/DS	us	5	1	Sun Transport Inc.
Reunion—no info				N				Maritime Overseas Corporation
Saint Lucia	1	255	17	N	li	6	1	Amerada Hess Corp.
Sansinena II	3	70	18	N	us	1	0	West Coast Shipping (owner Union Oil)
Seal Island	2	259	16	N	li	4	0	Amerada Hess Corp.
Sierra Madre	5	40	8	DB	us	1	0	West Coast Shipping (owner Union Oil)
Southern Lion	3	265	14	N	li	1	0	Maritime Overseas Corporation (owned Overseas Shipholding)
Stuyvesant	1	228	12	N	us	16	4	Bay Tankers (owner-Seatrail Lines)
Syosset	3	32	31	N	us	10	0	Mobil Oil Corp.
Texaco California	2	39	35	N	us	8	0	Texaco, Inc.
Texaco Connecticut	1	39	36	N	us	7	3	Texaco, Inc.
Texaco Florida	3	39	33	N	us	8	1	Texaco, Inc.
Texaco Georgia	3	26	25	N	us	1	0	Texaco, Inc.
Texaco Massachusetts	2	27	26	N	us	6	2	Texaco, Inc.
Texaco Minnesota	3	27	46	N	us	3	0	Texaco, Inc.
Texaco Mississippi	3	27	45	N	us	6	1	Texaco, Inc.
Texaco Montana	3	27	24	N	us	3	0	Texaco, Inc.
Texaco New York	3	39	36	N	us	6	1	Texaco, Inc.
Texaco Rhode Island	3	27	25	N	us	5	1	Texaco, Inc.
Texas Sun	2	53	29	N	us	11	0	Sun Transport Inc.
Thompson Pass	3	173	11	N	us	5	0	Interocean Mgmt Corp.
Tonsina	3	123	11	DB/DS	us	3	0	Keystone Shipping Company
Tropic Sun	2	35	32	N	us	6	0	Sun Transport Inc.
Western Lion	4	265	15	N	li	0	0	Maritime Overseas Corporation (owned Overseas Shipholding)
Western Sun (no info)				N				Sun Transport Inc.

MEAN 2.891 106.10 18.0 5.869 0.52

RATING: 5 High; 4 Very Good; 3 Good; 2 Fair; 1 Low

MDWT=thousand deadweight tons CLASSIFICATION: All 93 vessels are classified by the American Bureau of Shipping.

HULLS: DB=double bottom only, DB/DS=double bottom and double skin, N=neither double bottom or double skin.

*Nordic Sun—partial, double bottom in some tanks.

Sources: Listing of vessels with approved proof of financial responsibility, Alaska Department of Environmental Conservation
 Ratings, Vessel Size, Age, Type and Flag, 1989 Guide for the Selection of Tankers, Tanker Advisory Center, Inc.
 Hulls, American Bureau of Shipping, May 1989.

1989

GUIDE FOR THE SELECTION OF TANKERS

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Arthur Mc Kenzie
Director

INTRODUCTION

The purpose of this annual publication, now in its seventh year, is to give tanker charterers, cargo owners and others involved with tankers up-to-date information to assist in the selection of tank vessels of 10,000 deadweight tons and over. The user should select tankers with higher ratings to avoid casualties and total losses. The book is in two sections. The first part lists the vessels in alphabetical order. The second section lists owners in alphabetical order with their tankers listed in descending order of ranking.

Ratings The assigned rating suggests the probabilities that the tanker selected for charter will perform satisfactorily for the charterer. Tank vessels with higher ratings are expected to perform better for the charterer than other vessels with lower ratings over a period of time. Some of the more important factors considered in determining the rating are casualties, age, name changes, owner, classification society, flag etc. They are described as follows:

Casualties It is assumed that the greater the number of reported casualties, the greater risk the vessel poses for a charterer. Table 1 shows the ratings versus casualties from 1986 to 1988.

Table 1. Ratings versus Casualties Reported by Lloyd's of London 1986 to 1988
(excludes hostilities)

Ratings				Casualties											
										Total Losses					
				# (b)			% (b/a)			# (c)			% (c/a)		
	1988	1987	1986	1988	1987	1986	1988	1987	1986	88	87	86	1988	1987	1986
high-5	373	397	423	33	27	38	8.8	6.8	9.0	0	0	0	.00	.00	.00
very good-4	667	660	649	66	72	71	9.9	10.9	10.9	0	0	0	.00	.00	.00
good-3	1,009	964	946	128	96	103	12.7	10.0	10.9	2	0	1	.20	.00	.11
fair-2	743	739	773	102	88	105	13.7	11.9	13.6	1	2	3	.13	.27	.39
low-1	359	370	389	127	125	134	35.4	33.8	34.4	0	3	4	.00	.81	1.03
overall	3,151	3,130	3,180	456	408	451	14.5	13.0	14.2	3	5	8	.10	.16	.25

Casualties (continued) Casualties sustained by a vessel when under a different name are all included. Reported casualties to integrated tug barges include both tug and barge casualties. A casualty is any reported event that probably resulted in an insurance claim, a fine or detention by port authorities. About 13% (plus or minus 2%) of the tankers each year sustain a reported casualty. Approximately 2-3% of the vessels sustain an important casualty each year. And over a twenty year period an average of less than 0.5% of the oil carriers are total losses annually. The type and frequency of casualties are taken into consideration. A higher rating is considered for vessels rated 1, after they have operated 9-10 years with no reported casualties. Casualties due to hostilities are not included.

U.S. Coast Guard Casualty Reports U.S. Coast Guard regulations require all U.S. flag tankers wherever they operate, and all other tankers operating in U.S. waters, to report groundings, loss of propulsion or steering, fire, flooding, failure of life saving equipment, loss of life, or any casualty resulting in damage in excess of \$25,000. U.S. Coast Guard reports of casualties, not reported by Lloyd's of London, have been included for the years 1981 through 1987. However, the U.S. Coast Guard reports of casualties are not included in the statistics shown in Table 1.

Age Another one of the factors considered is that as vessels age they tend to become more susceptible to casualties and total losses. When considering only age, vessels 9-11 years of age or under, or 5-6 years of age or under for government owned vessels, are considered to be lower risk vessels. Those tankers of 15-17 years of age or over are considered higher risk units. No special consideration is given to a vessel that has been rebuilt.

Prior Names And Date Changed Name changes quite frequently signify changes in ownership and the new owner often has a less favorable record than the original or previous owner. Insurance underwriters of hull and machinery are reported considering requiring surveys of vessels when ownership changes because they note that casualties often occur shortly after changes in ownership.

Classification Society There are differences in the tanker total loss experience of classification societies. When a vessel changes its classification society for one with a definitely poorer total loss experience it is considered to be an unfavorable indication.

Owner And Location The parent, managing owner or agent is given considerable weight as an important fact about a tanker. Owners with large tanker fleets and with good casualty experience tend to be better risks than owners with very small tanker fleets. If the parent owner was not known at the time of publication the assigned rating for the vessel tends to reflect this, and quite often is lower than that for a vessel with a parent owner with a good record.

Flag Of Registry There are differences in the casualty frequency of flags of registry. Some authorities consider that differences in reporting of casualties skew the data unfairly. And there seems to be less reporting of casualties to government owned versus privately owned tank vessels. Also, some privately owned British and USA flag tankers seem to have a higher incidence of reported casualties than do other flags. This may be due to a bias in reporting. However, it is not possible to either prove or disprove such a bias. Of course USA flag tankers and other tankers operating in USA waters will have U.S. Coast Guard reports of casualties. Only important U.S. Coast Guard casualties are considered in establishing a tanker's rating. Vessels registered in a nation with a total loss ratio significantly above or below the average have this taken into consideration in the determination of their rating.

Government Owned Vessels Vessels reported as owned 51% or more by governments are so indicated. Casualties to many government owned vessels apparently are not reported as fully or as completely as for most tankers privately owned. The highest rating usually given a government owned tanker therefore, is four (4-very good), and the lowest rating in most instances is two (2-fair). If the actual record dictates an even lower rating however, then such a rating is assigned.

Layup The year and month of layup is given immediately below the vessel's name. Most ratings for vessels in layup for several months or more are no higher than three (3-good). Some of the possible reasons for this are that routine maintenance associated with operations often is suspended and therefore the condition of the vessel in layup may be less favourable than if the same vessel remained in operation; after 2-3 years or even longer in layup the condition of the vessel quite frequently declines even further; or often that the vessel selected for layup is the least desirable, from a charterer's viewpoint, of similar units in the owner's fleet. After two or three trips following return to full operations, the vessel usually is restored to approximately the same condition as upon entering layup, provided the layup period was not too long.

Size And Type No differentiation in value is made based on size or type of vessel. It is felt that the available data does not clearly identify significant differences in performance or risk based solely on these factors.

The Rater Arthur McKenzie, Director of the Tanker Advisory Center, Inc. has had 54 years experience in the tanker industry, 11 of them serving on tankers. He attained the rank of Chief Mate and earned his Masters License before coming ashore to work with one of the major U.S. oil companies. He was Senior Marine Advisor during his last several years with the oil company. He established the Tanker Advisory Center in 1974. He also teaches a 30 hour course, Petroleum Tankship Operations, 6 or 7 times a year, under the auspices of The World Trade Institute which is part of the Port Authority of New York and New Jersey.

Sources The following list in alphabetical order by publisher includes most of the publications that were consulted in the preparation of this book.

H. Clarkson and Company	The Tanker Register
Lloyd's of London Press	Lloyd's Maritime Directory
Lloyd's of London Press	Lloyd's Shipping Index
Lloyd's of London Press	Lloyd's Weekly Casualty Reports
The Institute of London Underwriters	Casualty Returns
Twin Coast Newspapers	The Journal of Commerce
U.S. Coast Guard	Casualty Reports
U.S. Military Sealift Command	Period Chartered Tankers

Acknowledgments To those owners and charterers who have provided information to improve the accuracy of these records, a grateful acknowledgement is made.

EXPLANATION OF THE TERMS AND ABBREVIATIONS USED

R for Ratings The assigned rating suggests the probabilities that the tanker selected for charter will perform satisfactorily for the charterer.

5 High; 4 Very Good; 3 Good; 2 Fair; 1 Low

The assigned rating is reviewed annually and whenever a significant change occurs. The rating considers the vessel's age, flag, classification society, layup date, the number, type, frequency and severity of reported casualties; the parent owner, size of the owned tanker fleet, changes in ownership and any other factors considered important.

Name The name of tankers, integrated tug barges and combination carriers fitted out to carry oil cargoes of 10,000 deadweight tons and over as of 1 January 1989 are shown in upper case letters. The former names, original name last and year (and month starting with 1985) of the change of name are shown in lower case letters. If the vessel was in layup as of 1 January 1989 the year and month of entering layup is shown immediately after the name.

Owner And Location The names of the parent, managing owner or agent are shown in lower case letters without punctuation. The usual designations such as Co., Ltd., Corp., A/S., S.A., etc. generally have been omitted. Well known companies like the major oil companies have had their names abbreviated to the commonly used expressions. Government owned companies are so indicated. The country where the parent owner is located is shown using the same abbreviations used for the flag state. If the name of the owner is omitted it indicates the parent owner was not known at the time of publication. A slash immediately after the owner's name indicates the omission of the remainder of the name.

Fleet Average The fleet average is the arithmetical average of the ratings assigned to the vessels in the fleet.

Deadweight The deadweight is rounded off to the nearest thousand tons, for vessels of 10,000 deadweight tons and over.

Age The age of the vessel is given as of the year of publication.

ATTACHMENT C

"Rough seas leave mark on vessels laden with oil,"
Anchorage Daily News, March 5, 1989

VALDEZ TANKER FLEET HAS TAKEN A BEATING



The oil tanker Exxon Long Beach sails through the Valdez Narrows for Prince William Sound after loading at the port facility in Valdez. Anchorage Daily News/Paul Sauer



Anchorage Daily News Map

Rough seas leave mark on vessels laden with oil

By PATTI EPLER

Daily News reporter

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A decade of sailing the world's roughest seas has taken its toll on the giant tankers that carry millions of gallons of North Slope crude oil from Valdez to the Lower 48.

The Valdez fleet now includes some of the world's worst tankers, according to one ranking, and a rising frequency of spills and hull cracks is causing concern about how safe Alaska waters are from a devastating oil spill.

Two January oil spills in Port Valdez have sharpened focus on the issue of the tanker fleet's soundness and prompted shipping industry scrutiny of the vessels.

Records and reports obtained under the Freedom of Information Act, a search of state files and interviews with shippers and government officials reveals:

- An increasing number of structural failures — mainly hull cracks — has prompted the Coast Guard and the American Bureau of Shipping to put the Alaska fleet under closer review. Coast Guard records show the number of hull cracks in tankers has doubled since 1984.

- About 20 percent of the fleet is rated undependable by a former tanker officer who provides the only rating service for potential charterers.

Please see Page A-3, TANKERS



A tugboat trails the tanker Exxon Long Beach through the Valdez Narrows, about three-quarters of mile wide at its narrowest. The tug is required to escort the tanker from power.

TANKERS: Wear of rough seas shows in the cracks of steel hulls

Continued from Page A-1

Tanker owners and operators have paid only token fees for all sorts of problems or general shoddiness. The Coast Guard, which has the main authority over tankers, hasn't fined a tanker more than \$1,000 in at least four years. And the state Department of Environmental Conservation has issued more than 100 notices of violation to tankers in the past five years but only once has tried to recover money for some of them.

At least tankers have a higher rate of structural failure than any other class of U.S. commercial ship, mainly due to the rough weather they encounter.

The Gulf of Alaska is a particularly bad place for the tanker. The weather is as bad as it gets, with waves up to 100 feet high. Even the 100,000-ton tankers, which are built to withstand 100-foot waves, have trouble in the Gulf. The weather is as bad as it gets, with waves up to 100 feet high. Even the 100,000-ton tankers, which are built to withstand 100-foot waves, have trouble in the Gulf.

If you bend a steel beam, it never goes back to its original shape. It's going to have a little bit of a permanent bend. That's the way it is with the steel in the hull of a ship. The steel is bent by the waves, and it never goes back to its original shape. It's going to have a little bit of a permanent bend. That's the way it is with the steel in the hull of a ship.

Tankers have made more than 17,000 voyages up and down the West Coast since the Trans-Alaska Pipeline began operating in 1977, creating the so-called TAPS trade. Despite early fears of contamination of spills, the shippers' environmental record has been very good. Two major spills happened when tankers ran aground — one off the coast of Washington in 1980 and one last week near Kodiak — and one in the Gulf of Alaska from hull cracks, both involving the same tanker, the *Seaview*.

Since 1977, there have been about 40 oil spills in Port Valdez, nearly all less than a barrel in size, according to the company and state records.

Over time, the worst ships are being scrapped from the fleet. Some, in Alaska, no production demand and produce carry more oil from the West Coast to the east, fewer than the older tankers.

But with up to 100 tankers

How many times can you flex a piece of steel before whatever imperfections are in it come to fail?

— Coast Guard Lt. Cmdr. Tom Purcell



U.S. Coast Guard Capt. Steve McGill says that even the Valdez tanker fleet is still in good shape.

being built, state and federal officials and some tanker owners are concerned about stress on remaining tankers could result in more major spills.

"Overall, I think the fleet is in very good condition," says Cmdr. Steve McGill, head of the Coast Guard's Valdez office. "Whether or not another 10 years from now it'll be a real problem, we don't know."

Now, the New York-based Tanker Advisory Center gives about 20 percent of the Valdez tanker fleet a "very good" rating, and another 10 percent rates only fair. More than 30 percent are rated very poor.

Arthur McKenzie, a former tanker officer who runs the service to advise parents that charterers of a tanker's likelihood to have problems, generally considers the Alaska tankers to be in good shape.

Still, about 10 of the 80 tankers that regularly call at Port Valdez have earned the lowest rating based mainly on their age, ownership and the number of violations — collisions, groundings, machinery and structural problems — they've had.

According to the ship ratings guide, which assigns information on 2,000 tankers worldwide, one regular visitor to Port Valdez — the *Cove Leader*, which up to about 2,000 gallons of fuel into the port every two years — had more violations on its record than all but one other tanker. Two other *Cove* ships that frequent the Valdez trade also had higher numbers of violations than most other ships in the guide.

Last April, the Coast Guard decided to issue the ship a certificate of structural problems in the U.S. when being commercial fleet

much the same as the Federal Aviation Administration is trying to pinpoint a pattern of problems with the nation's airlines. The Coast Guard examined the records of all ships, including 743 freighters and 300 tankers, and reviewed roughly reports from 1984 through 1986.

Purcell, who headed the study and his investigators found a strong trend in the number of cracks being reported in tankers plying the North Pacific. "While TAPS tankers make up only 12 percent of the entire fleet, they accounted for 52 percent of all the structural failures during 1984 through 1986," the report said.

The *Seaview* tankers were reported to have more cracks than any other ship. They had three times as many structural failures as ships more than 20 years old, the age generally considered old by the Coast Guard. Most of the

Alaska tankers were built in the past 20 years.

The first intention of that report is to strengthen the TAPS trade as an extreme service that really requires a higher degree of attention," says Purcell.

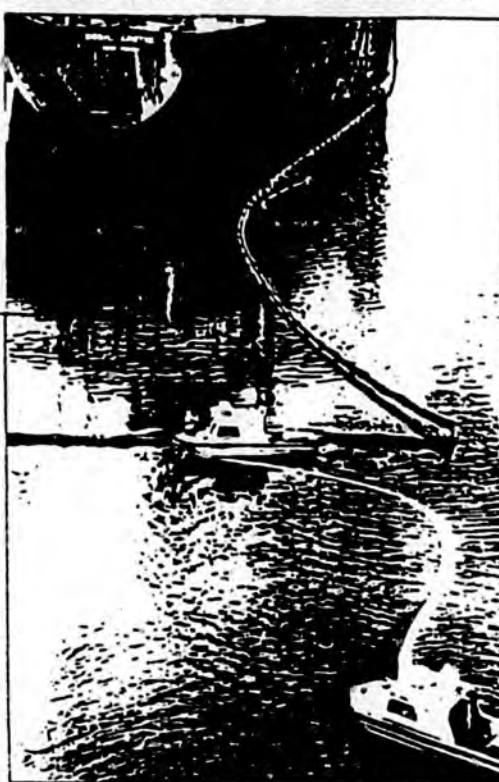
As a result of the study, Coast Guard headquarters has told all officers to give "special consideration" to the TAPS tankers. When a dry dock, in ships are to be given an especially thorough structural inspection and checked for internal fractures that could spread to the hull. Requests to stay longer in dry dock by tanker operators could signal a problem.

In January two tankers calling at Port Valdez sprung leaks from hull cracks within a two-week period. People began asking if the tanker line was getting old, and the American Bureau of Shipping decided to investigate.

"In this case, we need to take it really thoroughly," says Tom T. Lee, vice president of the New Jersey-based organization that oversees design and construction standards for the U.S. shipping industry. "We determined it was a problem unique to the Alaska service. The Bureau has started its West Coast surveys and inspectors to be on the watch for stress problems with the fleet."

Bureau inspectors read the two ships, the *Thompson Post* and the *Cove Leader*, reversing original dry dock and perfecting repairs. They must not reconstruct them, he says.

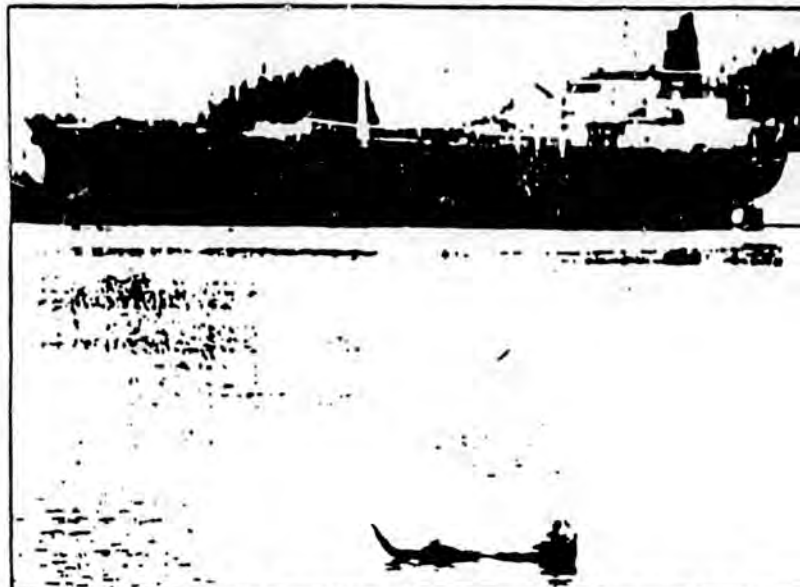
Later, the Bureau will survey other ships and stress on TAPS tankers from that subsequent Gulf of Alaska storms. Purcell says Page A-12



Crews on two small boats clean up oil spilled into Valdez harbor while the tanker *Seaview* loads oil. Alaska officials said the oil may have been left over from a January spill.



Three huge beams load an Arco tanker at the rate of 85,000 barrels of oil an hour at the Alyeska Port Facility in Valdez.



A sea otter floats in Valdez Harbor. In background an oil tanker sits in port.

TANKERS: Fleet shows the wear

Continued from Page A-8

cane-force winds are common, and the Navy has measured seas up to 40 feet high, says Gary Hufford, chief regional scientist for the National Weather Service.

Geographic and oceanographic conditions also combine to produce long, rolling swells, 12 feet high in winter, eight feet in summer. "That's a phenomenal height," Hufford says.

Across this environment sails the oil tanker, unable to venture too far off course to avoid the weather. The tankers "are taking all those big waves right on the beam," notes Hufford. "They're always getting pounded from the side."

Tanker operators describe a process called "hogging and sagging" to explain what happens to the long, heavy tankers when a wave passes under. As the wave lifts the ship, bow and stern "hog" — go down in the water. When the wave passes, the middle "sags" as the bow and stern come back up.

Tankers are designed to be flexed over and over again without failing, but the repetition of stress or concentration of stresses in one area seems to be causing cracks to appear more frequently than anticipated, much as in the wire coat hanger analogy, according to tanker operators, the Coast Guard and others.

"The trouble with any trade route that is basically north to south," says Roger Gale, BP Oil Co.'s manager of marine operations, "is how do you dodge something

that is crossing over you? You either have to stop and wait until it passes or go like hell. And most of the ships don't have that kind of speed."

The key to lessening stress on a tanker is the skill of the ship's master in steering through the rough seas. "The real issue here is do the people on board the ship know when to slow down a little bit, change the course a little bit," says Gale. "It's amazing how a few degrees change in course to shift the wind can make the ship ride a little bit easier."

About 75 tankers a month call at Alyeska's pipeline terminal in Port Valdez. The two largest — the ARCO Independence and the ARCO Spirit — are as long as an aircraft carrier and twice as heavy when loaded. At 262,000 deadweight tons each — the sum of cargo and fuel — those two are medium-sized in terms of today's supertankers; the biggest now runs more than 500,000 tons.

Each of the two ARCO ships can carry 2 million barrels, or 84 million gallons, of crude oil. The 21 cargo tanks on each ship are so big that the crew sometimes paddles around in rafts to inspect the tanks.

The Coast Guard requires tankers to be dry-docked and inspected about every two years. A Coast Guard inspector as well as an American Bureau of Shipping surveyor examines each tanker while it's out of the water.

The big tanker operators

— Arco, Exxon Corp and BP — say catching small cracks before they become big ones is the best way to prevent oil spills. The companies spend millions of dollars a year on inspection and maintenance, and have staffs of marine engineers and inspectors to keep their fleets in good shape.

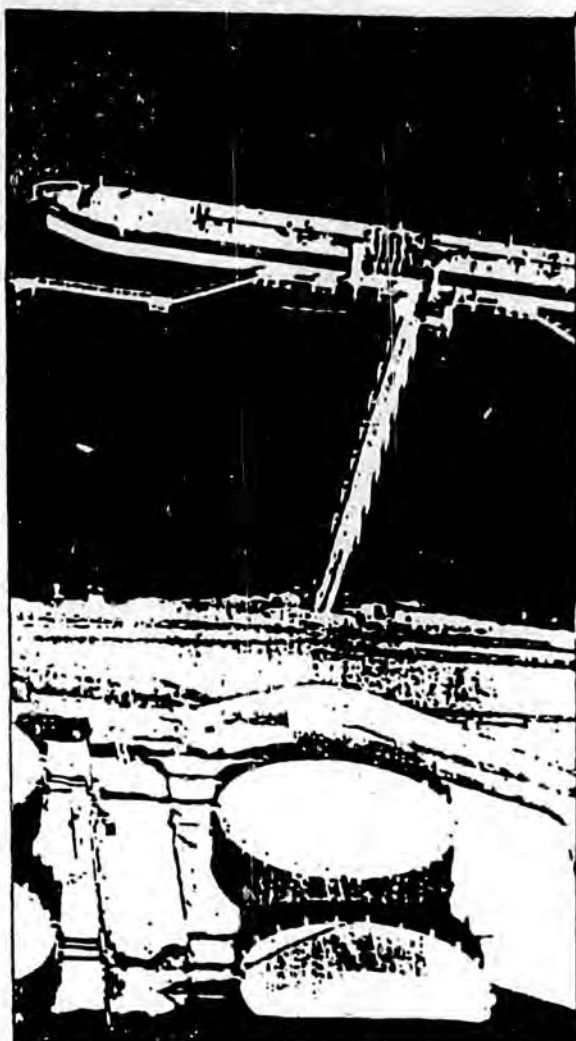
BP is Alaska's largest oil producer and its biggest shipper. Arco and Exxon each own about 10 tankers that sail to Valdez; BP, which is prohibited from owning ships under the Jones Act because it's a British company, charters 22 tankers that move its Alaska crude to the West Coast and Panama.

BP keeps abreast of its rented fleet through its port captains, former tanker officers who check the ships at most ports they enter. A staff of marine superintendents and engineers inspect the tankers about once a year to look for cracks and pits and other potential problems, according to Gale and Fred Garibaldi, vice president of transportation for BP Oil.

They point out that no oil company wants to see its oil spilled into the ocean — the loss of the cargo as well as cleanup costs run into the millions of dollars before it's settled.

Several independent tanker companies own ships regularly hired under short-term or one-time charters for the Valdez trade. And some operators and of

Please see Page A-11,
TANKERS



A tanker finishes loading North Slope crude stored at Alyeska.



Dan Lawn, District Office Supervisor for the Department of Env

is hard on the hulls

Continued from Page A-10

Officials are concerned that the smaller companies, with less money to spend on expensive inspection and maintenance programs, may need more of a push from regulators like the Coast Guard to maintain sound ships.

A check of state Department of Environmental Conservation records shows the state issued more than 150 "notices of violation" to tanker operators in the past five years for oil spills caused by general sloppiness in operations as well as hull fractures. But in that time, the state has only once — in August 1984 — followed through with its threat to seek monetary penalties for oil spills. That case involved a 2,500-gallon spill from the ARCO Anchorage and the state collected its costs of \$3,495.

Usually, DEC sends the notice to the tanker operator, waits for an explanation of why the spill occurred, then suspends the case, threatening to reopen cases should similar incidents occur.

Although similar incidents involving the same tanker have occurred, according to DEC's records, the DEC has never reopened a case.

For instance, the Thompson Pass, which in January was responsible for the largest oil spill in Port Valdez history, had received nine notices of violation from DEC prior to the most recent spill. Four of those were for hull cracks — the same problem that occurred in January and allowed 70,000 gallons of crude oil to spill. In 1981, according to a letter in DEC's files, the Coast Guard was especially concerned because similar fractures were found in all six sister ships to the Thompson Pass.

DEC records show the state used to collect at least its costs for investigating an oil spill, but hasn't routinely attempted to do even that since the early 1980s.

Don Lawa, head of the DEC's Valdez office, says he doesn't have the staff, money or time to pursue cases

against companies when most spills are so small. He thinks the tanker companies pay attention to the notices and are bothered by them, even though the state takes no follow-up action.

Larry Dietrick, the DEC's director of environmental quality, says even though state law allows for hundreds of thousands of dollars in penalties, the DEC's oil spill regulations have limited fines to a "dollars-per-barrel" penalty rate, with \$63 per barrel about the most the state can assess. So, he says, the state wouldn't have been able to collect much money from the tanker spills, unless it could prove negligence or some serious disregard for the environment.

The DEC had not been aware of the recent Coast Guard report on hull cracks in the TAPS tankers until the Coast Guard supplied it to the Daily News.

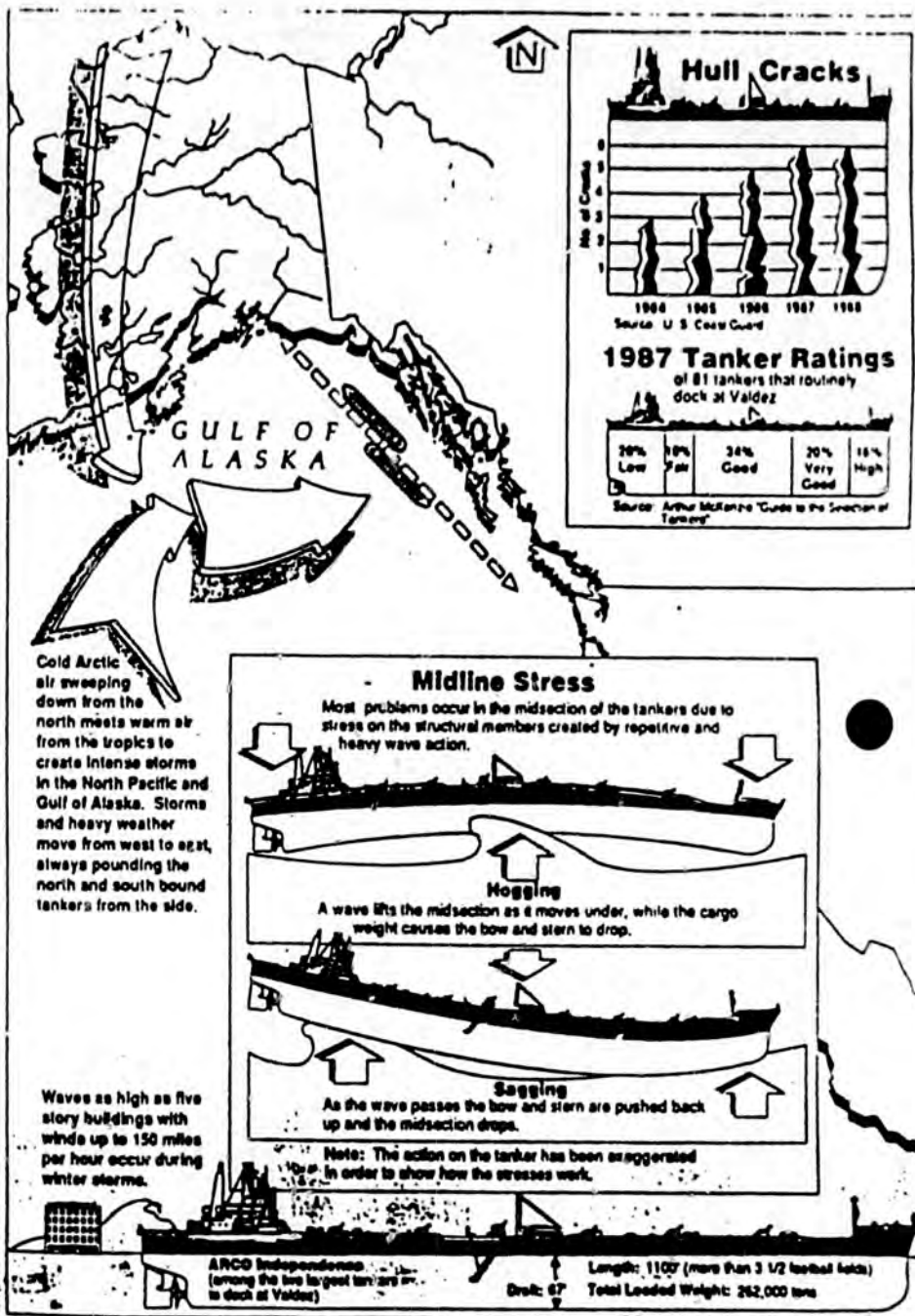
Dietrick says the DEC will review the report and likely pay more attention to tankers that sustain hull cracks. However, no increase in staff or funding is planned for the Valdez office, he says.

The Coast Guard is required by law to assess a fine for an oil spill. Coast Guard records show that for the past four years the fines have averaged only a few hundred dollars per incident, and none has been more than \$1,000.

In fact, tanker operators pay as big a penalty for hydraulic fluid being washed overboard in a heavy rain as they do for a hull crack. Coast Guard officials say they are limited to a \$5,000 penalty under the federal Water Pollution Control Act.

Cmdr. Craig Eisenbeiss, a Coast Guard hearing officer who spent four years as head of the Valdez office, says structural problems historically may have been viewed as something beyond the control of the operator.

McCall, the Coast Guard's current Valdez commander, notes that companies pay a heavy price to clean up spills, a penalty in itself.



Anchorage Daily News Don St.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

October 2, 1987

MEMORANDUM

TO:

ATTN:

FROM: Karla Hart 
Legislative Analyst

RE: Double Hulls on Oil Tankers: Cost of Construction
Research Request 88.039

You requested an historical perspective on legislation requiring double hulls on oil tankers operating in Alaska waters (especially Cook Inlet), and you had questions regarding the cost difference in double hull versus single hull tanker construction.

Historical Perspective

Of overriding significance in any discussion of State legislation requiring design standards on oil tankers is the 1978 Supreme Court decision, Dixy Lee Ray v. Atlantic Richfield Company. The Supreme Court found that the Washington State requirement that tankers either satisfy safety design standards prescribed by State statutes or use tug escorts was invalid under the supremacy clause of the Federal Constitution. Title II of the Ports and Waterways Safety Act (46 USCS Section 391a), mandates federal regulations be issued to fix minimum standards for tanker design and to protect the marine environment; thus, states cannot impose stricter design requirements.

During the 1976 consideration of Alaska Senate Bill 406 relating to marine transportation of crude oil, amendments were presented which would have required tankers to have double hulls. Not much discussion of the double hull issue exists in the committee records on file at the Legislative Library, and that which does exist addresses the economics of double hulls rather than the performance. The double hull requirement did not appear in the final legislation, Chapter 266, SLA 1976.

At the national level, regulations requiring double hulls or bottoms were considered during the 1970s but never adopted.¹ Mr. Perinsky, Office of Costs, National Maritime Administration, believes the main reasons for not requiring either were economics and the adoption of regulations requiring other safety features in oil tankers.

Tankers Presently Operating in Alaska

Alyeska Pipeline terminal personnel in Valdez estimated that there are over one hundred tankers licensed to call in Valdez. Not all make regular visits. Approximately 75 tankers per month turn around in Valdez. Of those, Chuck O'Donnell, Marine Manager of Alyeska terminal, estimates that 25 percent are double bottomed. I was unable to locate a source that monitored or recorded which tanker vessels operating in Alaska had double bottoms or hulls.

According to staff at Exxon and Chevron, tankers which have double hulls or bottoms are not used exclusively for crude oil transportation. Exxon has a world wide fleet of 80 tankers. Two of these ships have double bottoms and both are used on the east coast to transport refined products. Mr. Paoli, Marine Engineering, Exxon Company International, also estimated that SOHIO had perhaps four double bottomed ships used to transport crude oil. Mr. Hilliard, Chevron Public Affairs office, said Chevron's 70,000 dead weight tons (DWT) tankers which call frequently in Valdez have single hulls. However, their 39,000 DWT double hull (double bottom with protectively located ballast tanks providing protection to the sides) tankers are also used to transport crude oil in Alaska, including Cook Inlet.

Construction Costs of Double versus Single Hull Tankers

You asked if retrofitting a double hull onto a single hull tanker was possible and, if so, what the cost would be. Mr. Cherrix, Chief of the Office of Naval Architecture, National Maritime Administration responded that yes, retrofitting a double hull was probably possible, although, he questioned the feasibility. Mr. Perinsky said that his office had never studied the cost of a retrofit. During the 1970s when the topic was raised, the cost was considered too high to be a serious alternative to other pollution controlling options. Neither source was aware of a double hull retrofit ever taking place.

¹The terms double bottom and double hull are not interchangeable. A double bottom tanker does not have protective spaces on the sides, only the bottom. A double hull is essentially two hulls with protective space continuing up the sides of the tanker.

October 2, 1987
Page 3

Mr. Perinsky said there has been very little tanker construction in the United States in recent years. He was able to provide rough figures for the additional cost of double hull tanker construction from the first quarter of 1977.²

35,000 DWT	\$38 million single hull + \$6 million double hull
56,000 DWT	\$47 million single hull + \$9 million double hull
92,000 DWT	\$59 million single hull + \$6 million double hull
265,000 DWT	\$117 million single hull + \$36 million double hull

He stressed that these are rough estimates based on construction taking place at various shipyards in the United States at that time. Variations in cost reflect differences in construction and shipyards. For purposes of comparison, he was aware of a 40,000 DWT single hull tanker being constructed in the United States this year at a cost of approximately \$68 million. The added cost of a double hull in 1977 was 10-31 percent above the single hull construction costs.

* * *

I hope this information is helpful. If you have additional questions, please call.

²Mr. Perinsky used the term double hull in discussing the costs of construction. Based on later conversations with Exxon and Chevron, I believe these may be estimates for double bottoms rather than double hulls.

Alyeska pipeline

SERVICE COMPANY

1835 SOUTH BRAGAW STREET, ANCHORAGE, ALASKA 99512, TELEPHONE (907) 278-1611, TELEX 090-25

July 23, 1991

Ms. Michelle Brown
Citizens Oversight Council on Oil and
Other Hazardous Substances
3111 C Street
Anchorage, AK 99503

Dear Michelle:

Here is the copy of the agreement between Alyeska Pipeline Service Company and BP America for oil response services which you requested. I have included the agreement, its attachments and subsequent amendments.

Please let me know if there is any other information we can provide to the Council.

Sincerely,



Michael K. Abbott

cc: Janice Adair, ADEC
Tom Mullen, BP America

AGREEMENT FOR OIL SPILL RESPONSE SERVICES

AGREEMENT FOR OIL SPILL RESPONSE SERVICES, dated October 30th, 1990, between Alyeska Pipeline Service Company, a Delaware corporation with its principal place of business at 1835 South Bragaw Street, Anchorage, Alaska 99512 ("Alyeska"), agent for its Owner Companies (defined in Section 1.11), and BP America, Inc., a Delaware corporation with its principal place of business at 200 Public Square Cleveland, Ohio 44114 ("Contracting Vessel"), owner, operator or charterer of the tank vessels listed in Exhibit A.

W I T N E S S E T H:

WHEREAS, Alaska law requires each tank vessel loading oil at the Valdez Marine Terminal ("Terminal") to have an Oil Discharge Contingency Plan approved by the Alaska Department of Environmental Conservation;

WHEREAS, Alyeska has developed a Prince William Sound Tanker Spill Prevention and Response Plan and sections of a Valdez Terminal Spill Prevention and Response Plan hereinafter collectively referred to as ("Tanker Plan"), which can be incorporated into Contracting Vessel's Oil Discharge Contingency Plan;

WHEREAS, Contracting Vessel recognizes that it must have access to sufficient resources to contain, clean up, and mitigate

a potential oil spill, which may affect the Prince William Sound, from a tank vessel owned, operated or chartered by Contracting Vessel;

WHEREAS, Alyeska, as operator of the Terminal, is willing to provide Spill Prevention Services and act as an oil spill response contractor on behalf of Contracting Vessel in accordance with the Tanker Plan, to the extent that it is incorporated into Contracting Vessel's Oil Discharge Contingency Plan, and as limited by the terms of this Agreement, to respond to any oil spill from a Tanker that may affect Prince William Sound; and

WHEREAS, the Services of Alyeska provided hereunder shall be made available to Contracting Vessel upon an expense reimbursement basis and in accordance with the terms set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants set forth below, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

As used in this Agreement, the following terms shall have the following respective meanings:

1.1 "ADEC" means the Alaska Department of Environmental Conservation.

1.2 "Agreement" means this Agreement for Oil Spill Response Services.

1.3 "Alyeska Vessel" means a vessel owned, operated or chartered by Alyeska.

1.4 "Contracting Vessel" means the party to this Agreement that is the owner, operator, or charterer of the tank vessels listed in Exhibit A.

1.5 "Core Equipment" means equipment that regulatory agencies require Alyeska to have available in order to continue, or to resume, normal operations at the Terminal after an Oil Spill;

1.6 "Core Personnel" means personnel that regulatory agencies require Alyeska to have available in order to continue, or to resume, normal operations at the Terminal after an Oil Spill.

1.7 "Financial Responsibility" means an insurance policy, certificate of financial responsibility, certificate of self-insurance, letter of credit, surety bond, guaranty, or combination thereof, in the aggregate minimum amount provided in Section 6.2, obtained by Contracting Vessel that is satisfactory to Alyeska and sufficient to cover Contracting Vessel's obligations to Alyeska and to reimburse and indemnify the Indemnified Parties under this Agreement.

1.8 "ODCP" means the Oil Discharge Contingency Plan required by Alaska Statute Section 46.04.030(c) and approved by ADEC.

1.9 "Oil Spill" means an oil discharge (crude oil, natural gas liquids, oily ballast water or bunker fuel) from the Tanker

that originates in PWS or originates outside PWS and progresses or threatens to progress into PWS.

1.10 "Oil Spill Response Services" means services provided to Contracting Vessel by Alyeska to contain, clean up, and mitigate Oil Spills as provided in the Tanker Plan.

1.11 "Owner Companies" means Amerada Hess Pipeline Corporation, ARCO Pipe Line Company, BP Pipelines (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company.

1.12 "Prince William Sound" or "PWS" means the area described in Title 18 Alaska Administrative Code Section 75.600(6) and state waters outside and adjacent to the entrance to Prince William Sound located between (i) a line drawn due south from Point Whitt on the Alaska mainland at position 60°26.7 N, 145°52.7 W to the three-mile limit for state waters and (ii) a line drawn due south from a point on the western end of Montague Island at position 59°50.2 N, 147°54.4 W to the three-mile limit for state waters, and is the same as the definition of Plan Area in the Tanker Plan.

1.13 "Response Equipment" means the Alyeska Vessels, booms, skimmers, pumps and other equipment set forth in the Tanker Plan to be available for Oil Spill Response Services.

1.14 "Response Personnel" means the Alyeska personnel who participate in the Oil Spill Response Services.

1.15 "Services" means those services specifically allocated to Alyeska under the Tanker Plan for (i) Spill Prevention

Services and (ii) Oil Spill Response Services to the extent incorporated into Contracting Vessel's ODCP.

1.16 "Spill Prevention Services" means services provided to Contracting Vessel by Alyeska in connection with the Tanker's transit to and from the Terminal through Prince William Sound as provided in the Tanker Plan.

1.17 "Tanker" means a tank vessel listed in Exhibit A.

1.18 "Tanker Plan" means (i) the Prince William Sound Tanker Spill Prevention and Response Plan as conditionally approved by ADEC and accepted by Alyeska on or about November 1, 1990, which may from time to time be amended and (ii) those sections of the Oil Spill Contingency Plan - Valdez Terminal dated January 1987 describing oil spill response services for vessels in the vicinity of the Terminal which may be replaced, or from time to time be amended.

1.19 "Terminal" means the Valdez Marine Terminal.

1.20 "USCG" means the United States Coast Guard.

1.21 "Valdez Emergency Operations Center" means the emergency center at a location to be determined from time to time by Alyeska.

The Tanker Plan, and each Exhibit referred to in and attached to this Agreement, are incorporated herein and shall be deemed to be part of this Agreement. If there is a conflict between this Agreement, the Tanker Plan and the Exhibits, the terms of this Agreement shall govern.

ARTICLE II

SERVICES TO BE PROVIDED BY ALYESKA

2.1 Alyeska shall provide the services to Contracting Vessel.

2.2 Alyeska shall maintain Response Equipment at the Terminal, or elsewhere in the area of Prince William Sound, on a twenty four (24) hour a day, seven (7) day a week, basis capable of being dispatched with Response Personnel to provide Oil Spill Response Services as provided herein.

2.3 When Alyeska discovers or is advised that an Oil Spill has occurred, it shall promptly (i) notify Contracting Vessel of the Oil Spill and (ii) provide the initial response to the Oil Spill employing Response Equipment and Response Personnel in accordance with the Tanker Plan.

2.4 Alyeska shall provide the initial Oil Spill Response Services for an Oil Spill. Unless otherwise directed by Contracting Vessel or USCG, Alyeska shall manage and control the response to an Oil Spill of a total volume not to exceed one thousand (1000) barrels that can, in the sole judgment of Alyeska, clearly be contained and cleaned up, in accordance with the Tanker Plan, using the Response Equipment and Response Personnel without the employment of additional equipment or personnel. Alyeska shall, as promptly as practicable after it has undertaken the initial response, (i) notify Contracting Vessel that Alyeska will manage and control the Oil Spill response to its conclusion or (ii) request Contracting Vessel to