

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE
2097 SCOMM 78: SENATE SPEC. COMM. ON OIL & GAS, 1991-1992 8672

165

Amendment 3
Page 2

IN WITNESS WHEREOF, Alyeska and Contracting Vessel have
executed this Amendment as of November 16, 1990.

ALYESKA PIPELINE SERVICE COMPANY

CONTRACTING VESSEL

RNS By: Shirley L. Kulash

By: _____

Title: V.P. Operations

Title: _____

AMENDMENT NO. 4
TO THE
AGREEMENT FOR OIL SPILL RESPONSE

The Agreement for Oil Spill Response Services ("Agreement") dated November 1, 1990, between Alyeska Pipeline Service Company, a Delaware corporation with its principal place of business at 1835 South Bragaw Street, Anchorage, Alaska 99512 ("Alyeska") and BP America Inc., a Delaware corporation and its wholly owned subsidiary, The Standard Oil Company, an Ohio corporation ("Standard") with their principal place of business at 200 Public Square, Cleveland, Ohio 44114 ("BP") as Contracting Vessel for the tank vessels listed in Exhibit A to the Agreement is hereby amended by this Amendment effective November 30, 1990.

Alyeska, BP and Standard agree that Exhibit A to the Agreement is hereby amended by adding the following vessel to those named in Exhibit A:

OVERSEAS ALASKA

This amendment is made pursuant to section 11.7 of the Agreement. Except as stated herein, this amendment does not change the agreement in any other way.

IN WITNESS WHEREOF, Alyeska, BP and Standard executed this as of November 30, 1990.

Alyeska Pipeline Service Company

By: [Signature]

Title: W. P. Operations

Contracting Vessel

BP America Inc.

By: [Signature]

Title: President and CEO

The Standard Oil Company

By: [Signature]

Title: Chairman and CEO

AMENDMENT NO. 5
TO THE
AGREEMENT FOR OIL SPILL RESPONSE

The Agreement for Oil Spill Response Services ("Agreement") dated November 1, 1990, between Alyeska Pipeline Service Company, a Delaware corporation with its principal place of business at 1835 South Bragaw Street, Anchorage, Alaska 99512 ("Alyeska") and BP America Inc., a Delaware corporation and its wholly owned subsidiary, The Standard Oil Company, an Ohio corporation ("Standard") with their principal place of business at 200 Public Square, Cleveland, Ohio 44114 ("BP") as Contracting Vessel for the tank vessels listed in Exhibit A to the Agreement is hereby amended by this Amendment effective December 12, 1990.

Alyeska, BP and Standard agree that Exhibit A to the Agreement is hereby amended by changing the owner/operator for the vessel PRINCE WILLIAM SOUND from Sun Transport to Keystone Shipping Company.

This amendment is made pursuant to section 11.7 of the Agreement. Except as stated herein, this amendment does not change the agreement in any other way.

IN WITNESS WHEREOF, Alyeska, BP and Standard executed this as of December 12, 1990.

Alyeska Pipeline Service Company

By: [Signature] T.B. Hamilton
Title: V.P. Operations 12-13-90

Contracting Vessel

BP America Inc.

By: [Signature]
Title: President and CEO

The Standard Oil Company

By: [Signature]
Title: Chairman and CEO

webb2049.agr

1 holders and lessees of the right-of-way agreement for the Trans Alaska Pipeline System, or their
2 common operating agent, (1) must be fair, reasonable, and nondiscriminatory; and (2) with
3 respect to any financial responsibility requirement in excess of \$10,000,000, (A) may not exceed
4 the potential cost of containment and cleanup that the operating agent may reasonably be
5 expected to incur under its contract with the owner, operator, or charterer of the tank vessel
6 before the transfer of cleanup and containment management and control to the responsible party; ^{*Insert see below}
7 in establishing the financial responsibility requirement, the common operating agent shall assume
8 that transfer of management and control will occur at the earliest practicable time following a
9 discharge or a threat of discharge; and (B) must vary among each tank vessel in proportion to
10 the volume of oil carried by each tank vessel ^{and frequency of voyages by the tank vessel} per voyage from the marine terminal serving the
11 Trans Alaska Pipeline System; ~~for purposes of this subparagraph, the volume of oil carried by~~
12 ~~the vessel must be reduced by the percentage of spill reduction credits granted that vessel under~~
13 ~~regulations adopted by the department.~~

14 (i) The superior court ~~and, with respect to intrastate voyages, the Alaska Public Utilities~~
15 ~~Commission, under AS 42.05.361 - 42.05.431, have concurrent jurisdiction to review and enjoin~~ ^{has}
16 a financial responsibility or insurance provision described in this section at the request of a tank
17 vessel owner, operator, or lessee. Except as provided in this subsection, nothing in this section
18 affects the jurisdiction of the Alaska Public Utilities Commission.

19 ~~(j) If an injunction is sought in a court under (i) of this section for a violation of (h) of~~
20 ~~this section, the court shall grant a temporary restraining order or preliminary injunction if the~~
21 ~~tank vessel owner, operator, or lessee demonstrates that the financial responsibility or insurance~~
22 ~~provision probably violates (h) of this section, even if other requirements for a temporary~~
23 ~~restraining order or preliminary injunction are not met. However, the court may require security~~
24 ~~before issuing an injunction or temporary restraining order under this subsection.~~

25 * Sec. 11. AS 46.04.030(e) is amended to read:

26 (e) The department may attach reasonable terms and conditions to its approval or
27 modification of a contingency plan that the department determines are necessary to ensure that
28 the applicant for a contingency plan has access to sufficient resources to protect environmentally
29 sensitive areas and to contain, clean up, and mitigate potential oil discharges from the facility or
30 vessel as provided in (k) of this section, and to ensure that the applicant complies with the

31 contingency plan. If a contingency plan submitted to the department for approval relies on

^{*and potential reimbursement of and indemnity to the common operating agent for claims, liabilities, and all other costs and obligations as required by the contract"}

Response Services Agreement

1.13 "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 Whittard on the Alaska mainland at position $60^{\circ}26.7$ N, $145^{\circ}52.7$ W to the three-mile limit for state waters

9/91

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and (ii) a line drawn due south from a point on the western end of Montague Island at position $59^{\circ}50.2$ N, $147^{\circ}54.4$ W to the three-mile limit for state waters, ~~and is the same as the definition of Plan Area in the Tanker Plan.~~

mike williams
265-8544-w

148° 147° 146° 145° 144° 143° 142° 141°

CAUTION THIS CHART IS NOT TO
BE USED FOR NAVIGATIONAL PURPOSES

MSO VALDES AREA OF RESPONSIBILITY

The State of Alaska that falls
within the following boundary line:

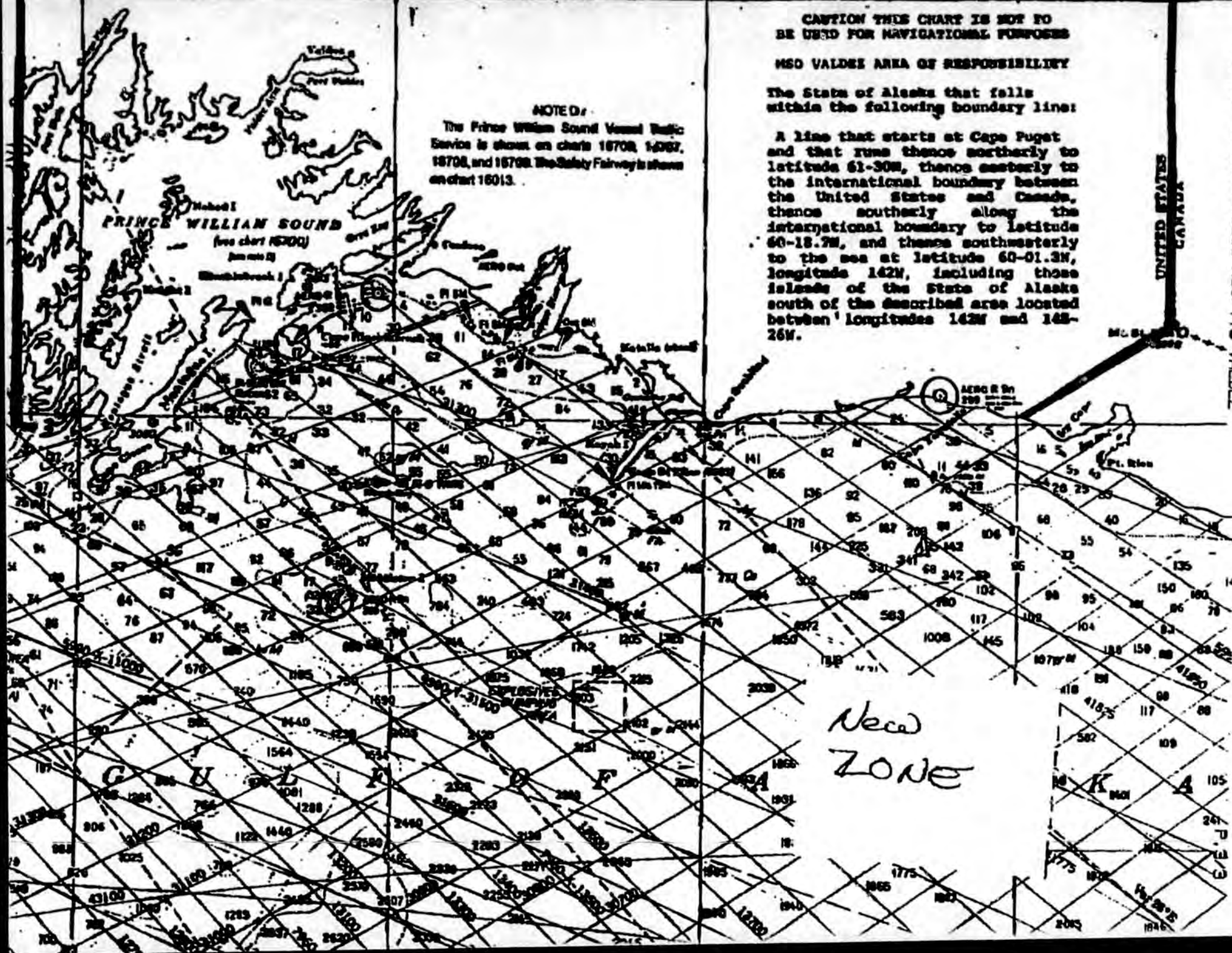
A line that starts at Cape Puget
and that runs thence northerly to
latitude 61-30N, thence easterly to
the international boundary between
the United States and Canada,
thence southerly along the
international boundary to latitude
60-18.7N, and thence southwesterly
to the sea at latitude 60-01.3N,
longitude 142W, including those
islands of the State of Alaska
south of the described area located
between longitudes 142W and 142-
26W.

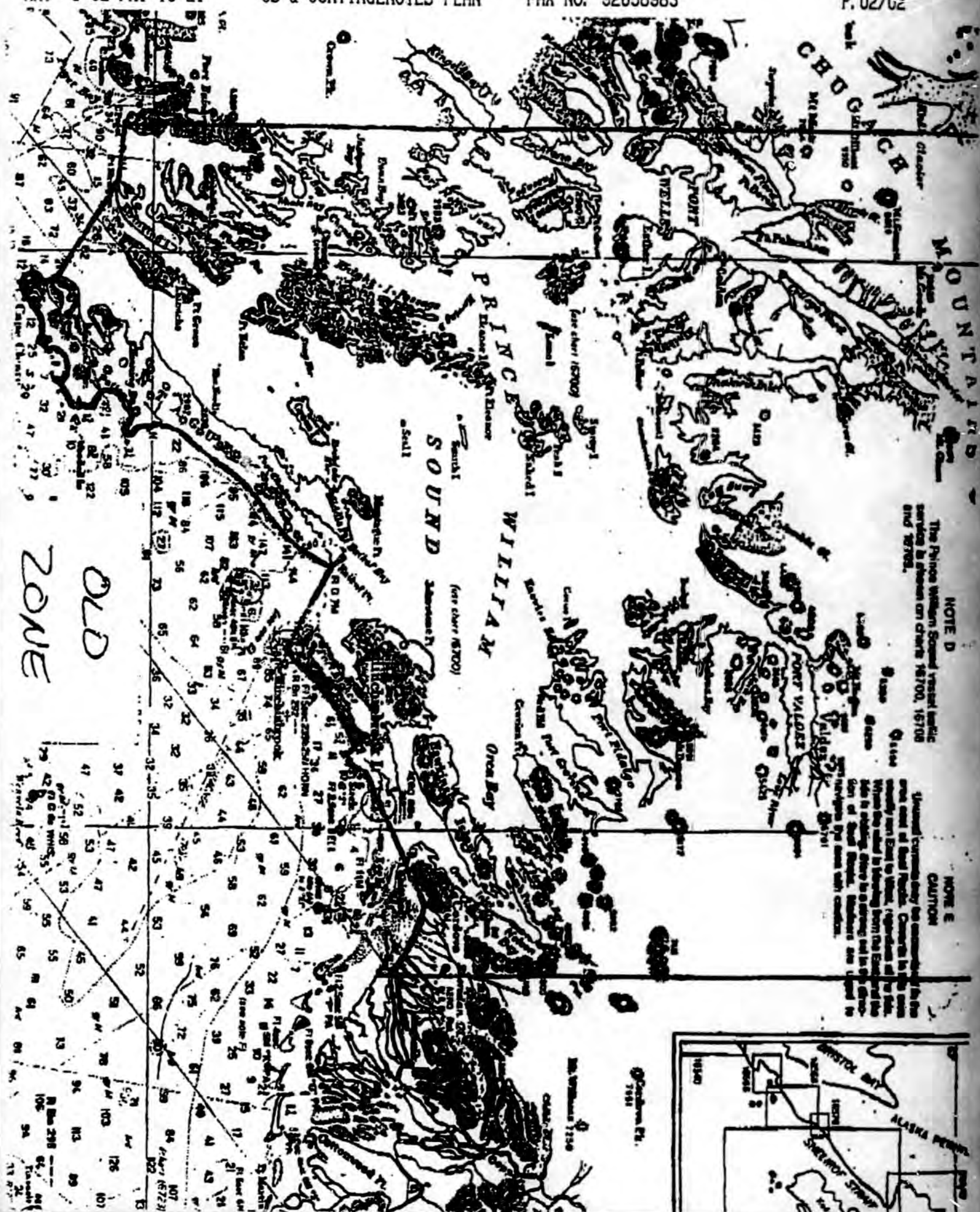
NOTED:

The Prince William Sound Vessel Traffic
Service is shown on charts 18708, 14387,
18708, and 18708. The Safety Fairway is shown
on chart 18013.

UNITED STATES
CANADA

MAY 08 '92 09110 USCG MSO/MS VALDES





1 is further amended by adding at the end thereof the fol-
 2 lowing:

3 "SEC. 32. ALASKA OCS SUBSISTENCE REVIEW.—

4 Prior to issuing any five-year program under section 18
 5 of this Act, conducting any lease sale, or approving any
 6 plan or permit for exploration, development, or production
 7 activities in the Alaska region authorized by this Act, the
 8 Secretary shall comply with section 810 of the Alaska Na-
 9 tional Interest Lands Conservation Act (16 U.S.C. 3120).
 10 At the lease sale stage the Secretary shall fully consider
 11 the effects of exploration, development, and production
 12 upon subsistence uses."

13 **Subtitle B—Trans-Alaska Pipeline**

14 **SEC. 2711. RESPONSIBILITY OF RIGHT-OF-WAY HOLDER**

15 Title II of the Trans-Alaska Pipeline Authorization
 16 Act (43 U.S.C. 1651 et seq.) is amended by adding at
 17 the end thereof the following:

18 "RESPONSIBILITY OF RIGHT-OF-WAY HOLDER

19 "SEC. 208. In addition to the existing duties to re-
 20 spond to, contain, and clean up oil spills within the State
 21 of Alaska, including Prince William Sound, under section
 22 204(b) of this Act and other laws and requirements, the
 23 holder of the right-of-way shall file an Oil Spill Contin-
 24 gency Plan for Prince William Sound with the Secretary
 25 of the Interior and other appropriate authorities."

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Conservation Act ("ANILCA") prior to issuing any five-year program under section 18 of the OCSLA, conducting any lease sale, or approving any plan or permit for exploration, development, or production activities in the Alaska region. In a 1987 decision, Amoco Production Co. v. Village of Gambell, 480 U.S. 531 (1987), the Supreme Court ruled that ANILCA did not apply to OCS leasing. Accordingly, section 2702 is necessary since the Department of the Interior is not compelled to comply with the subsistence review requirements of ANILCA, and yet has greatly expanded OCS leasing activities in Alaska. Nearly one-half of the total acres to be leased under the current five-year plan are in Alaska waters.

In section 810 of ANILCA, Congress required all Federal agencies, prior to undertaking actions that could affect subsistence activities, to publicly review the proposed Federal actions to determine whether they would significantly restrict subsistence uses and to take steps to minimize adverse impacts upon subsistence uses and resources.

To protect the health, sustenance, traditional local economies and culture of Alaska Natives and other residents of rural Alaska, Congress included title VIII in ANILCA. Section 804 of title VIII established a priority for subsistence use of fish stocks in all waters in Alaska and wildlife populations on Federal public lands in Alaska. In extending the application of section 810 of ANILCA to OCSLA leasing in section 2702, the Committee reaffirms its strong commitment to the protections of subsistence resources and uses set forth in Title VIII of ANILCA.

Section 2702 specifically requires the Secretary to comprehensively consider the effects of exploration, development, and production upon subsistence resources and uses at the lease sale stage. The existence of later governmental reviews and approvals under the OCSLA and other applicable laws shall not affect the Secretary's duties to undertake comprehensive consideration at the lease sale stage. The Committee notes the significance of the lease sale decision and the major commitment it entails by both government and industry. To the extent that the reasoning in Secretary of the Interior v. California, 464 U.S. 312 (1984), Tribal Village of Akutan v. Hodel, 869 F. 2d 1185 (1989) and Village of False Pass v. Clark, 733 F.2d 605 (9th Cir. 1984) is inconsistent with the Committee's recognition of the significance of the lease sale stage, it is rejected.

Subtitle B--Trans-Alaska Pipeline

Section 2711 amends the 1973 Trans-Alaska Pipeline

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Authorization Act ("TAPAA") by adding a new section 208 which requires Alyeska Pipeline Service Company ("Alyeska"), in addition to existing duties to respond to, contain and clean up oil spills within the State of Alaska, to file an Oil Spill Contingency Plan for Prince William Sound with the Secretary of the Interior. The Committee notes that, notwithstanding the Secretary's role in oil spill matters under section 204(b) of TAPAA, Alyeska (designated agent for British Petroleum, Exxon, Arco and four other companies which possess the pipeline right-of-way), has not been required by the Secretary to submit an oil spill cleanup plan for review.

Since the Exxon Valdez oil spill in 1989, Alyeska has taken a revisionist history position that it is a "voluntary response contractor" and not obligated to respond to any spill of oil transported by the Trans-Alaska Pipeline once it is loaded on tankers in Valdez. Alyeska's current position contrasts vividly with its past commitments, including the Oil Spill Contingency Plan for Prince William Sound (January 1987) in effect at the time of Exxon Valdez disaster.

The Committee rejects Alyeska's position in the strongest possible terms as contrary to existing law and agreements and irresponsible in light of Alyeska's past oil spill contingency plans and public assurances. Congress and the Administration have consistently intended that Alyeska - the entity on site with oil spill response equipment - has a binding, legally enforceable duty to respond to and clean up oil spills.

Section 204(b) of TAPPA, as amended by section 8101 of the Oil Pollution Act of 1990 (P.L. 101-380), requires the "control and total removal" of any pollutant within the State of Alaska by the holder of the right-of-way and at the holder's expense. This statutory duty is mirrored in provisions of the Department of the Interior's Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline with the holders. Once oil carried by the Trans-Alaska pipeline is loaded on a vessel at Valdez, the liability regime of the Oil Pollution Act applies. However, nothing in that Act diminished Alyeska's longstanding duty to respond to and clean up oil spills in Prince William Sound and elsewhere within the boundaries of the State of Alaska.

Section 2712 amends TAPPA to establish a new section 209 which requires that no less than 80 percent of any amounts received by the United States in settlement of claims arising from the Exxon Valdez oil spill litigation shall be used to acquire land or otherwise protect fish and wildlife habitat in Prince William Sound and Gulf of Alaska areas impacted by the

COMPREHENSIVE NATIONAL ENERGY POLICY ACT

MAY 5, 1992.—Ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant
Marine and Fisheries,

submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 776]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 776) to provide for improved energy efficiency, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments to the bill as reported by the Committee on Energy and Commerce are as follows:

Page 153, lines 7 through 9, amend the section head of section 205 to read as follows:

SEC. 205. COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL
POLICY ACT OF 1969 AND OTHER ENVIRONMENTAL
LAWS.

Page 156, after line 12, insert the following new subsection:

(c) NEPA COMPLIANCE.—Unless explicitly superseded or waived by this Act, the Federal Energy Regulatory Commission shall comply with the National Environmental Policy Act of 1969 in implementing section 7 of the Natu-

(f) **INAPPLICABILITY TO MEDICAL DEVICES.**—Subsections (a) through (c) shall not apply with respect to plutonium in any form contained in a medical device designed for individual human application.

(g) **INAPPLICABILITY TO MILITARY USES.**—Subsections (a) through (c) shall not apply to plutonium in the form of nuclear weapons or to other shipments of plutonium determined by the Department of Energy to be directly connected with the United States national security or defense programs.

(h) **PAYMENT OF COSTS.**—All costs incurred by the Nuclear Regulatory Commission associated with the testing program required by this section, and administrative costs related thereto, shall be reimbursed to the Nuclear Regulatory Commission by any foreign country receiving plutonium shipped through the United States in containers specified by the Commission.

(i) **DEFINITION.**—The term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and any other territory or possession of the United States.

SEC. 2102. OIL POLLUTION AMENDMENTS.

(a) **FEDERAL WATER POLLUTION CONTROL ACT.**—Section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)) is amended by adding at the end the following:

"(12) **WITHHOLDING CLEARANCE.**—The Secretary of the Treasury, at the request of the Administrator or the Secretary of the department in which the Coast Guard is operating, shall withhold or revoke—

"(A) the clearance required by section 4197 of the Revised Statutes of the United States;

"(B) a permit to proceed required under section 4367 of the Revised Statutes of the United States; and

"(C) a permit to depart required under section 443 of the Tariff Act of 1930;

as applicable, for a vessel that is subject to, or the owner, operator, or person in charge of which is subject to, a penalty under paragraph (6) or (7). Clearance or a permit withheld or revoked under this paragraph may be granted upon the filing of a bond or other surety satisfactory to the Administrator or the Secretary."

(b) **OIL POLLUTION ACT.**—Section 1002 of the Oil Pollution Act of 1990 (Public Law 101-380; 104 Stat. 503) is amended by adding the following new subsection:

"(e) The costs and damages described in subsection (b) shall constitute a maritime lien on the vessel that may be recovered in an action in rem in the district court of the

United States for any district within which a vessel may be found."

SEC. 2103. EXXON VALDEZ SETTLEMENT FUND HABITAT ACQUISITION.

(a) **LIMITATION OF EFFECT.**—Nothing in this Act shall affect—

(1) the expenditure or use of sums received by the United States as a result of the settlement of the EXXON VALDEZ litigation, as described in section 207 of Public Law 102-229; or

(2) the development and implementation of a restoration plan and budget pursuant to the Memorandum of Agreement and Consent Decree entered into by the United States and the State of Alaska, as approved by the United States District Court for the District of Alaska on October 8, 1991.

(b) **AUTHORITY TO ACQUIRE HABITAT.**—The Federal Trustees identified in the Agreement and Consent Decree described in subsection (a) of this section are authorized and encouraged to purchase from willing sellers land or interests in land determined by the Federal Trustees to be important habitat for the conservation of fish and wildlife resources in the State of Alaska.

SEC. 2104. RESPONSIBILITY OF RIGHT-OF-WAY HOLDER.

Title II of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) is amended by adding the following new section:

"RESPONSIBILITY OF RIGHT-OF-WAY HOLDER

"SEC. 208. In addition to the existing duties to respond to, contain, and clean up oil spills within the State of Alaska, including Prince William Sound, under section 204(b) of this Act and other laws and requirements, the holder of the right-of-way shall submit an oil spill response plan for Prince William Sound to the Secretary of Transportation for approval under section 4202 of the Oil Pollution Act of 1990."

BACKGROUND, NEED, AND PURPOSE OF AMENDMENTS

As reported by the Committee on Energy and Commerce, the purpose of H.R. 776 is to enact a comprehensive national energy policy that gradually and steadily increases U.S. energy security in cost-effective and environmentally beneficial ways.

The Committee on Merchant Marine and Fisheries received a sequential referral of H.R. 776 for consideration of those provisions within titles II, XVI, and XVII that fall within the jurisdiction of the Committee pursuant to rule X of the House rules. The amendments to H.R. 776 reported by the Committee on Merchant Marine and Fisheries cover a broad range of issues consistent with the purpose of the Committee on Energy and Commerce bill and within the jurisdiction of the Committee on Merchant Marine and Fisheries.

Section 2711 of the amendment to H.R. 776 reported by the Interior Committee amends the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) to require Alyeska Pipeline Service Company, the holder of the right-of-way for the Trans-Alaska pipeline, to file an oil spill contingency plan with the Secretary of the Interior for oil spills into Prince William Sound, Alaska. Section 2104 of the amendment reported by the Merchant Marine and Fisheries Committee requires the Alyeska Pipeline Service Company to file an oil spill response plan with the Secretary of Transportation for approval under section 4202 of the Oil Pollution Act of 1990 (33 U.S.C. 1321(j)).

The Oil Pollution Act of 1990 applies to all oil spills from vessels or facilities into the navigable waters or adjoining shorelines or the exclusive economic zone of the United States. Section 4202 of the Oil Pollution Act established a national oil spill planning and response system. Under that section, owners or operators of tank vessels or facilities are required to submit oil spill contingency plans for approval by the U.S. Coast Guard. The Coast Guard is required to promptly review the plans, require amendments to any plan that does not meet approval, approve plans that are acceptable, and periodically review plans to ensure that they continue to provide the oil spill cleanup capability necessary under the circumstances. Section 2104 of the Committee amendment requires the Alyeska oil spill response plan to be submitted and approved under this established plan review system. The Coast Guard, not the Interior Department, has the expertise to ensure that the appropriate level of oil spill preparedness is maintained in Prince William Sound, Alaska.

COMMITTEE ACTION

H.R. 776 was introduced by Congressmen Sharp and Dingell (and others) on February 4, 1991, and reported, with an amendment, by the Committee on Energy and Commerce on March 30, 1992. Titles II, XVI, and XVII were sequentially referred to the Committee on Merchant Marine and Fisheries for a period ending not later than May 1, 1992. On April 30, 1992, the Committee met to consider and mark up H.R. 4722 and H.R. 776.

During the Committee's consideration of H.R. 776, Mr. Studds offered (for himself and Chairman Jones) an amendment to title II clarifying the applicability of NEPA to the natural gas pipeline permitting process under the Natural Gas Act and the Natural Gas Policy Act of 1978. The amendment was approved by voice vote.

The Committee considered no amendments to section 1701, but Mrs. Unsoeld and Mr. Studds engaged in a colloquy regarding recent efforts by FERC to promulgate a very restrictive definition of the term "fishways" under the Federal Power Act. The Committee supported the provision as reported by the Energy and Commerce Committee with the understanding that it overturns the FERC action and reasserts the exclusive authority of the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to prescribe needed fishways.

Mr. Jones offered an amendment adding the text of H.R. 4124, the "Marine and Coastal Environment and Global Climate Protection Act of 1992," as amended and ordered reported earlier in the markup, as title XX. The amendment was approved by a 28-16 roll call vote.

Other amendments were offered and included in an additional title, Miscellaneous Merchant Marine and Fisheries Provisions (Title XXI). Chairman Jones, on behalf of the Committee leadership, offered an amendment adding section 2101 addressing the shipment of plutonium on vessels and testing requirements for the containers that hold the radioactive material. The Chairman offered the amendment to protect the Committee's jurisdiction over the subject of international maritime law and the maritime shipment of hazardous cargoes. The Committee agreed to the amendment by voice vote. A similar amendment to H.R. 776 was adopted in the Committee on Interior and Insular Affairs.

Mr. Jones offered an amendment adding section 2102, which restores authority to Customs, at the request of the Coast Guard and the Environmental Protection Agency, to detain a vessel when the vessel owner has failed to pay administrative and civil penalties under the Clean Water Act. The provision also amends the Oil Pollution Act of 1990 to establish *in rem* jurisdiction over a vessel for removal costs and damages for which the vessel's owner, operator, or person in charge is liable under the Act. The amendment was adopted by voice vote.

Mr. Young offered an amendment adding section 2103 to authorize and encourage expenditures of Exxon Valdez settlement funds received by the United States for acquisition of land or interests in land determined by the Federal Trustees to be important fish and wildlife habitat. The amendment was adopted by voice vote.

Mr. Young also offered an amendment adding section 2104 to require the Alyeska Pipeline Service Company, as agent for the right-of-way holders for the Trans-Alaska Pipeline, to submit an oil spill response plan to the Secretary of Transportation for approval under the Oil Pollution Act of 1990. The amendment was adopted by voice vote.

Mr. Studds offered an amendment (added to Title XVII) that authorizes the U.S. Army Corps of Engineers to construct, operate and maintain a small vertical axis hydro-turbine on Cape Cod Canal in southeastern Massachusetts. The Committee adopted the amendment by voice vote.

Mr. Anderson of California moved that the Committee order H.R. 776, the Comprehensive National Energy Policy Act, as amended, reported to the House. The motion was approved by voice vote.

SECTION-BY-SECTION ANALYSIS

Title II—Natural Gas Pipeline

Sec. 205. Compliance with the National Environmental Policy Act and other environmental laws

The Committee amended the title of section 205 of H.R. 776 and added a subsection (c) at the end of the section. The new subsection

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
BP Oil Shipping Co., USA	Prince William Sound	Keystone Shipping	Shipco 667	Keystone Shipping	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping*
BP Oil Shipping Co., USA	OMI Columbia	OMI Corp.	OMI Challenger Transport Co.	OMI Challenger Transport Co.	Ocean Mgt., Inc.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Alaska	Maritime Overseas Corp.	Intercontinental Bulk Tank Corp.	Intercontinental Bulk Tank Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Boston	Maritime Overseas Corp.	Cambridge Tankers, Inc.	Cambridge Tankers, Inc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Chicago	Maritime Overseas Corp.	First Shipmor Assoc.	First Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Juneau	Maritime Overseas Corp.	Juneau Tanker Corp.	Juneau Tanker Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas New York	Maritime Overseas Corp.	Third Shipmor Assoc.	Third Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Ohio	Maritime Overseas Corp.	Second Shipmor Assoc.	Second Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Keystone Canyon	Keystone Shipping Co.	Shipco 2296, Inc.	Keystone Shipping	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	Thompson Pass	Interocean Mgt. Corp.	Shipco 2298, Inc.	Interocean Mgt. Corp.	Interocean Mgt. Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Tonsina	Keystone Shipping Co.	Shipco 668, Inc.	Keystone Shipping Co.	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	BT Alaska	Marine Transport Line, Inc.	Bankers Trust Company	Marine Transport Line, Inc.	Marine Transport Line, Inc.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	BT San Diego (no longer calling)	Marine Transport Line, Inc.	Bankers Trust Company	Marine Transport Line, Inc.	Marine Transport Line, Inc.	Alyeska	BP Oil Shipping Co., USA

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE CONTRACT	SECONDARY RESPONSE
N/A	ARCO Alaska	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Anchorage	Arco Marine Inc.	Northern Trust Co.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO California	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Fairbanks	Arco Marine Inc.	Bank of America National Trust Savings Assn.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Independence	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Juneau	Arco Marine Inc.	Bankers Trust Co.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
Arco Marine Inc.	M/V Overseas Philadelphia	Maritime Overseas Corp.	Philadelphia Tanker Corp.	Philadelphia Tanker Corp.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Sag River	Arco Marine Inc.	Oil Tankers Leasing Corp.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Spirit	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Texas	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
BP Oil Shipping Co., USA	Prince William Sound	Keystone Shipping	Shipco 667	Keystone Shipping	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping*
BP Oil Shipping Co., USA	OMI Columbia	OMI Corp.	OMI Challenger Transport Co.	OMI Challenger Transport Co.	Ocean Mgt., Inc.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Alaska	Maritime Overseas Corp.	Intercontinental Bulk tank Corp.	Intercontinental Bulk tank Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Boston	Maritime Overseas Corp.	Cambridge Tankers, Inc.	Cambridge Tankers, Inc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Chicago	Maritime Overseas Corp.	First Shipmor Assoc.	First Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Juneau	Maritime Overseas Corp.	Juneau Tanker Corp.	Juneau Tanker Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas New York	Maritime Overseas Corp.	Third Shipmor Assoc.	Third Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Ohio	Maritime Overseas Corp.	Second Shipmor Assoc.	Second Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Keystone Canyon	Keystone Shipping Co.	Shipco 2296, Inc.	Keystone Shipping	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	Thompson Pass	Interocean Mgt. Corp.	Shipco 2298, Inc.	Interocean Mgt. Corp.	Interocean Mgt. Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Tonsina	Keystone Shipping Co.	Shipco 668, Inc.	Keystone Shipping Co.	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	BT Alaska	Marine Transport Line, Inc.	Bankers Trust Company	Marine Transport Line, Inc.	Marine Transport Line, Inc.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	BT San Diego (no longer calling)	Marine Transport Line, Inc.	Bankers Trust Company	Marine Transport Line, Inc.	Marine Transport Line, Inc.	Alyeska	BP Oil Shipping Co., USA

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
BP Oil Shipping Co., USA	Brooks Range	Interocean Mgt. Corp.	Shipco 2297, Inc.	Interocean Mgt. Corp.	Interocean Mgt. Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Aspen	Trinidad Corp.	653 Leasing Co.	Trinidad Corp.	Trinidad Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Atigun Pass	Keystone Shipping Co.	Shipco. 6695, Inc.	Keystone Shipping Co.	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	Glacier Bay	Trinidad Corp.	GNP Barge & Tanker Co.	Trinidad Corp.	Trinidad Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Kenai	Keystone Shipping Co.	Connecticut National Bank	Keystone Shipping Co.	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	Overseas Arctic	Maritime Overseas Corp.	Overseas Bulktank Corp.	Overseas Bulktank Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Admiralty Bay	Trinidad Corp.	652 Leasing Co.	Trinidad Corp.	Trinidad Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	American Trader	Penn-Attransco Corporation	Penn-Attransco Corporation	Penn-Attransco Corporation	Penn-Attransco Corporation	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Chesapeake Trader (no longer calling in Alaska)	Penn-Attransco Corporation	Attransco, Inc.	Penn-Attransco Corporation	Penn-Attransco Corporation	Alyeska	BP Oil Shipping Co., USA

* Keystone Shipping provided COC with this information; however, BP said they alone, would provide secondary response.

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE CONTRACT	SECONDARY RESPONSE
N/A	ARCO Alaska	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Anchorage	Arco Marine Inc.	Northern Trust Co.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO California	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Fairbanks	Arco Marine Inc.	Bank of America National Trust Savings Assn.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Independence	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Juneau	Arco Marine Inc.	Bankers Trust Co.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
Arco Marine Inc.	M/V Overseas Philadelphia	Maritime Overseas Corp.	Philadelphia Tanker Corp.	Philadelphia Tanker Corp.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Sag River	Arco Marine Inc.	Oil Tankers Leasing Corp.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Spirit	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.
N/A	ARCO Texas	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Arco Marine Inc.	Alyeska	Arco Marine Inc.

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
N/A	EXXON San Francisco	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON Baton Rouge	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON North Slope	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON New Orleans	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON Long Beach	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON Benicia	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON Baytown	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.
N/A	EXXON Philadelphia	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	EXXON Shipping Co.	Alyeska	EXXON Shipping Co.

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
Amerada Hess Corporation	Southern Lion	Maritime Overseas Corp.	Interocean Tanker Corp.	Interocean Tanker Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Northern Lion	Maritime Overseas Corp.	Second United Shipping Corp.	Second United Shipping Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Western Lion	Maritime Overseas Corp.	First United Shipping Corp.	First United Shipping Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Eastern Lion	Maritime Overseas Corp.	Third United Shipping Corp.	Third United Shipping Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Mt. Cabrite	Atlantis Agency Corporation	Serpentsea Corporation	Amerada Hess Corporation	Atlantis Agency Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Saint Lucia	Atlantis Agency Corporation	Swansea Corporation	Amerada Hess Corporation	Atlantis Agency Corp.	Alyeska	BP Oil Shipping Co., USA
Amerada Hess Corporation	Seal Island	Atlantis Agency Corporation	Seal Island Shipping Corporation	Amerada Hess Corporation	Atlantis Agency Corp.	Alyeska	BP Oil Shipping Co., USA

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
Chevron USA	Chevron Washington	Chevron USA	First Interstate Bank of CA	Chevron USA	Chevron Shipping Co.	Alyeska	Chevron Shipping for Chevron USA
Chevron USA	Chevron Oregon	Chevron USA	First Interstate Bank of CA	Chevron USA	Chevron Shipping Co.	Alyeska	Chevron Shipping for Chevron USA
Chevron USA	Chevron Mississippi	Chevron USA	First Interstate Bank of CA	Chevron USA	Chevron Shipping Co.	Alyeska	Chevron Shipping for Chevron USA
Chevron USA	Chevron Louisiana	Chevron USA	Connecticut National Bank	Chevron USA	Chevron Shipping Co.	Alyeska	Chevron Shipping for Chevron USA
Chevron USA	Chevron California	Chevron USA	First Interstate Bank of CA	Chevron USA	Chevron Shipping Co.	Alyeska	Chevron Shipping for Chevron USA

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
Tesoro Alaska Petroleum Company	Overseas Washington	Maritime Overseas Corp.	Fourth Shipmor Assoc.	Fourth Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	Tesoro Alaska Petroleum Company

U.S. Department
of Transportation

United States
Coast Guard



Commander
Seventeenth
Coast Guard District

P.O. Box 25517
Juneau, AK
99802-5517
Staff Symbol: dcs
(907)463-2025

16450
March 20, 1992

Mr. M.F.G. Williams
Vice-President
Environment and Contingencies
Alyeska Pipeline
1335 South Bragaw Street
Anchorage, AK 99512

Dear Mr. Williams:

This is in response to your letter of 2 March 1992 to Admiral Ciancaglini which proposed formalizing relationships with the Coast Guard under various spill response scenarios. As Admiral Ciancaglini is out of the state, I am responding on his behalf.

We are generally amenable to your proposed relationships with the Coast Guard and your intentions to respond to spills in Prince William Sound from other than TAPS sources. While we are receptive to meeting with you on these subjects, we think these matters are more appropriately addressed with the Federal On Scene Coordinator and Captain of the Port for Prince William Sound, Commander Ed Thompson.

We see no need to formalize Coast Guard/Alyeska relationships or the transition of response roles for federalized spills through a Memorandum of Understanding. Present federal law clearly outlines the Coast Guard's duties in taking over spill responses. Furthermore, our interpretation of the Trans Alaska Pipeline Act (TAPA) indicates Alyeska is responsible for all TAPS related spills in Prince William Sound. Therefore the transition scenario you mentioned should never develop.

In the remote event a transition of spill response operations from Alyeska to the Coast Guard should be necessary, the joint exercises and close liaison which presently exist should serve us well. However, we urge Alyeska to enter into a Basic Ordering Agreement (BOA) with the Coast Guard to outline the cost and terms of your services. I've attached a BOA submission package for your review and completion. By establishing a BOA, your concerns with reimbursement will be addressed in advance, thus avoiding financial complications during an Alyeska/Coast Guard spill response transition.

We are also pleased to see your willingness to provide spill response assistance to non-TAPS related spills in Prince William

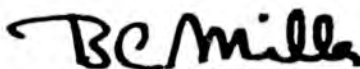
16450
March 20, 1992

Sound and appreciate the need for you to limit your involvement so as not to interfere with your TAPS response obligations. Should we request your services in a federal response a pre-existing BOA would, again, serve this end well. As you suggest, in some cases binding contracts with response action contractors will be required of other potential spillers who transport petroleum products. This will be mandated by regulations that develop from the Oil Pollution Act of 1990 (OPA-90). In addition, we are in the process of increasing the number of BOA's we have with response action contractors to provide other commercial response alternatives.

We feel the integrated approach towards pollution response efforts developed in Alyeska/USCG/State/RCAC drills and exercises have provided good communications with all parties at the local level. I prefer to take advantage of these relationships and have the aforementioned issues worked out with our representatives in Valdez who have a first hand knowledge of the problems, gaps and solutions.

In closing, I applaud your efforts to "fine tune" our pollution response options and am confident that this will come to fruition through expanded liaison with the local Captain of the Port's staff. This approach towards addressing these issues, however, does not preclude our discussing these matters further should you desire.

Sincerely,



B. C. MILLER

Captain, U. S. Coast Guard
Commander, Seventeenth Coast Guard District
Acting

Encl: (1) Basic Ordering Agreement Submission Package

Copy: CDR Ed Thompson, CO, MSO Valdez

March 2, 1992

Letter No. 92-9411-G

David E. Ciancaglini
Rear Admiral
U.S. Coast Guard
P.O. Box 25517
Juneau, Alaska 99802

Re: Coast Guard Directed Oil Spill Responses
in Prince William Sound

Dear Admiral Ciancaglini:

Alyeska Pipeline Service Company ("Alyeska") is an oil spill response action contractor for spills from TAPS trade tankers in Prince William Sound. To provide this service, Alyeska has entered into Oil Spill Response Services Agreements with five companies that either own, charter or operate tank vessels that call at Valdez. Those companies, which we refer to as Contracting Vessels, are ARCO Marine, Inc., BP Oil Shipping Company, U.S.A., Chevron U.S.A., Inc., Exxon Shipping Company, and Tesoro Alaska Petroleum Company. Exhibit A of each Agreement lists the tank vessels covered by the Agreement.

In the Agreements, Alyeska promises to manage the initial response to an oil spill for as long as 72 hours following a spill, in accordance with the Prince William Sound Tanker Spill Prevention and Response Plan. The Contracting Vessels agree to assume management of the spill response within 72 hours after notification by Alyeska. Under this arrangement, Alyeska will continue to assist the Contracting Vessel's on water response until the Alyeska resources are not needed or can be replaced. For small spills, under 1,000 barrels, Alyeska may elect to complete the entire response on behalf of the contracting vessel.

We believe that each of these companies is prepared to respond to a spill from the vessels it utilizes in Prince William Sound. The Alaska Department of Environmental Conservation has arrived at the same conclusion and has approved the contingency plans for the tank vessels covered by these Agreements. Alyeska has held major response drills with ARCO, BP, Exxon Shipping and Chevron and plan a similar exercise with Tesoro. Moreover, the Agreements and the PWS Plan anticipate that if the Contracting Vessel or other acceptable representative of the responsible party does not assume management of the spill

Name
March 2, 1992
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response as required, Alyeska will ask the Coast Guard to federalize the response and assist in whatever way is appropriate, at the direction of the Federal On Scene Coordinator.

Based on discussions with Commander Ed Thompson, Captain of the Port in Valdez, there is an understanding between Alyeska and the Coast Guard that Alyeska will assist the Coast Guard if a spill response is federalized. We believe that it would be useful to have a formal procedure in place to guide transition from Alyeska management of spill response to federal control in the event such transition becomes necessary. Preparation for this contingency might be enhanced if there is a contract or Memorandum of Understanding between Alyeska and the Coast Guard describing the Coast Guard's expectations of Alyeska and establishing a management and reimbursement procedure.

It is our understanding that the Oil Pollution Act of 1990 and the National Contingency Plan (NCP) provide the Coast Guard with the authority and mission to direct a spill response when the responsible party does not take proper removal action or is unknown and the spill poses a substantial threat to the public health or welfare. 33 U.S.C. 1321(c) and National Contingency Plan 300.300. Section 300 of the NCP and Subpart H also describe how the Coast Guard can use private resources to fulfill this responsibility.

I would like to meet with you to discuss these issues and if you agree, begin the process of developing a procedure and an agreement tailored to meet the unique circumstances found in Prince William Sound.

There are two other issues we should address. Alyeska will respond to a discovery of crude oil on the waters of Prince William Sound even if the origin is not known. Under those circumstances, if the spiller is not quickly identified, we believe the response should be federalized.

Concerned citizens have asked about Alyeska's role in responding to phantom spills of refined petroleum products in Prince William Sound. In the past, Alyeska has responded voluntarily to such spills at the request of the Coast Guard, without seeking compensation. We will continue to be available to voluntarily assist the Coast Guard under these circumstances, with no actual duty to respond. These limitations are necessary because our resources cannot be dedicated to any effort other than our primary responsibilities to the TAPS trade vessels. We would be willing to discuss Alyeska's role in assisting the Coast

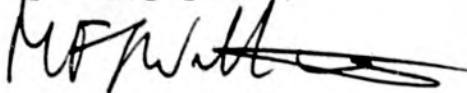
Name
March 2, 1992
Page 3

Letter No. 92-9411-G

Guard's response to phantom spills. In the case of potential spills from cruise ships, fishing support vessels or fuel barges, Alyeska should only have a voluntary support role to assist the primary plan of the spiller. The responsible parties and the Coast Guard should enter into binding contracts with other Response Action Contractors to provide response capability for these types of spills.

I will contact you soon to discuss these issues.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'M.F.G. Williams', with a long horizontal flourish extending to the right.

M.F.G. Williams
Vice-President
Environment & Contingencies

cc: Representative Bill Hudson
Senator Sam Cotten

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United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, DC 20510-6025

JAMES H. ENGLISH, STAFF DIRECTOR
J. KEITH KENNEDY, MINORITY STAFF DIRECTOR

February 3, 1992

The Honorable Bill Hudson
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Bill:

Thanks for the copy of your letter to Commandant Kime and your suggestion that the Coast Guard Auxiliary be expanded to include marine oil spill response. Certainly the work done by the commercial fishermen during the *Exxon Valdez* oil spill proved to be invaluable in preventing that disaster from reaching even greater heights.

I have contacted the Coast Guard to inquire as to their response to you on this concept. You may also be interested to know that I helped draft provisions that were included in the Oil Pollution Act of 1990 (OPA) to help address the concern that you are raising.

Under section 4202 of the OPA (33 U.S.C. 1321(j)) tank vessels will not be able to operate off the coast of the United States or call on U.S. ports after August 18, 1993, without having onboard a vessel response plan approved by the Coast Guard. In order to approve a vessel response plan, the Coast Guard must determine that the vessel operator has, or has enforceable contracts for, sufficient personnel and equipment to respond to the maximum extent practicable to the loss of the vessel's entire cargo in adverse weather conditions. In addition, the Coast Guard must ensure that the region has available to it sufficient personnel and equipment to effectively supplement the vessel owner's resources to in fact handle the loss of the vessel's entire cargo.

If you have any questions concerning the provisions of the OPA, please contact Earl Comstock of my staff at (202) 224-3004.

With best wishes,

Cordially,


TED STEVENS

**BAKER
&
HOSTETLER
McCUTCHEN BLACK**
COUNSELLORS AT LAW

800 WILMERE BOULEVARD • LOS ANGELES, CALIFORNIA 90017 • (213) 624-2400
FAX (213) 675-1740 • TELEX RASY LOK 898281 MACPAG ISA

April 27, 1992

VIA FACSIMILE TRANSMITTAL

Mr. Paul M. Richards
Government Relations Manager
Alyeska Pipeline Service Co.
240 Main Street, Suite 600
Juneau, Alaska 99512

Re: Oil Spill Response in Prince William Sound

Dear Mr. Richards:

This is in response to your request for a legal analysis of the of the requirements of the Trans-Alaska Pipeline Authorization Act ("TAPS Act") and the Oil Pollution Act of 1990 ("OPA 90") as they apply to Alyeska Pipeline Service Company ("Alyeska") to clarify Alyeska's responsibility for oil spill response in the waters of Prince William Sound. We understand that you plan to discuss this analysis with representatives of the Alaska legislature.

FACTS

Our analysis is based on the following factual background:

Alyeska, as the operator of the Valdez Marine Terminal ("Terminal") for the Trans-Alaska Pipeline System ("TAPS"), is responsible for loading tank vessels that lift Alaska North Slope ("ANS") crude oil and transit Prince William Sound. Alyeska acts as the agent of the TAPS owners. The TAPS Owners are the holders of the permit for the pipeline right-of-way. Alyeska and the TAPS owners do not own, operate or charter the tank vessels that transit Prince William Sound. Some of the vessels are owned by affiliates of the TAPS owners. Others, for example, are operated by Chevron U.S.A., Inc. or chartered by Tesoro Alaska Petroleum Company who have access to the common carrier pipeline but have no interest in the system.

Under federal and Alaska laws, the tank vessel owners and operators must have access to sufficient resources to contain, clean up, and mitigate a potential oil spill from

Mr. Paul M. Richards
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a tank vessel that may affect Prince William Sound. Alyeska, at present, is the only private entity in Prince William Sound that has sufficient resources to provide initial oil spill response on a 24 hour-a-day basis. Accordingly, Alyeska, as operator of the Terminal, has agreed to provide initial oil spill response services and vessel escort services through Prince William Sound to tank vessels lifting crude oil from its Terminal.

To provide this service, Alyeska has entered into Agreements for Oil Spill Response Services ("Spill Response Agreement(s)") with five companies that either own, charter or operate tank vessels that lift crude oil at its Terminal. Those companies, which are referred to as Contracting Vessels, are ARCO Marine, Inc., BP Oil Shipping Company, U.S.A., Chevron U.S.A., Inc., Exxon Shipping Company, and Tesoro Alaska Petroleum Company. Exhibit A of each Spill Response Agreement lists the vessels covered by that agreement.

In the Spill Response Agreements, Alyeska agrees to manage the initial response to an oil spill for as long as 72 hours following a spill, in accordance with the Alaska Department of Environmental Conservation ("ADEC"), approved Prince William Sound Tanker Spill Prevention and Response Plan ("Alyeska Plan"). Each tank vessel that utilizes Alyeska as an initial response contractor incorporates the Alyeska Plan into the vessel's contingency plan. The Alyeska Plan describes the equipment and personnel (including organization and training) that will be available to Alyeska and its procedures for spill prevention and for initial response on behalf of vessels contracting for its services in case of a spill.

In the Spill Response Agreements, the Contracting Vessels, reaffirm their covered vessel's responsibility for oil spill clean up, and agree to assume management of the spill response within 72 hours after notification by Alyeska. Under this arrangement, an orderly process is provided for the transition from Alyeska's response personnel and equipment to the Contracting Vessel's response organization and equipment. For small spills, under 1,000 barrels, Alyeska may elect to complete the entire response on behalf of the Contracting Vessel. ADEC, recognizing the tank vessels' responsibility for oil spill clean up, has approved the contingency plans for each tank vessel covered by the Spill Response Agreements. These vessel contingency plans describe how Alyeska's initial response will be followed by a Contracting Vessel's response. To verify the efficiency of the arrangement, Alyeska has held

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major response drills with ARCO Marine, Inc., BP Oil Shipping Company, U.S.A., Exxon Shipping Company and Chevron U.S.A., Inc. Alyeska plans a similar exercise with Tesoro Alaska Petroleum Company.

CONCLUSION

The clear meaning of the TAPS Act, OPA 90, the legislative history of those Acts, related statutes addressing oil spill clean up responsibility, the right-of-way agreements and the course of conduct of the interested parties over the years since the enactment of the TAPS Act, including the Coast Guard, ADEC, and the tanker interests lifting oil at Alyeska's Terminal, document without contradiction that Alyeska's responsibility for oil spill clean up under the TAPS Act and OPA 90 is limited to its land based activities. Alyeska would be required to clean up a spill from the pipeline or the Terminal that affected the waters of Prince William Sound. However, Alyeska is not responsible for spills from a tank vessel except for its contractual obligations under its Spill Response Agreement with Contracting Vessels. We conclude the owners and operators of tank vessels lifting oil at the terminal are solely responsible for the clean up of spills from tank vessels affecting Prince William Sound.

LEGAL ANALYSIS

UNDER THE PROVISIONS OF THE TAPS ACT AND OPA 90, ALYESKA IS NOT RESPONSIBLE FOR SPILLS WHICH OCCUR AFTER ANS CRUDE OIL IS LOADED ABOARD A VESSEL.

The TAPS Act was enacted in 1973 to permit the construction of the Alaskan Pipeline System by amending existing law concerning federal rights-of-way and provide a mechanism for clean up and damage liability resulting from spills of oil transported through the Pipeline System and then in tank vessels to the lower 48 states. The purpose of the Act was to ensure "the early development and delivery of oil and gas from Alaska's North Slope to domestic markets."
43 U.S.C. § 1651(a).

Section 204 of the Act (43 U.S.C. § 1653) contained the clean up and damage liability provisions. Subsection 204(a) imposed strict liability for damages on the holders of the right-of-way for spills along the route of the pipeline and from the terminal facilities. Subsection 204(b) required the holder of the right-of-way to clean up spills in any area

Mr. Paul M. Richards
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that was polluted by operations of the holder. Subsection 204(c) created the Trans-Alaska Pipeline Liability Fund (the "Fund") which, along with the owners and operators of vessels that loaded oil from the terminal facilities, would be solely responsible for clean up costs and damage liability for spills of ANS crude oil from the tank vessel.

OPA 90 transferred the rules contained in the TAPS Act (Section 204(c)) to Section 311 of the Clean Water Act (46 U.S.C. § 1321). The rules provide the exclusive liability of the tank vessel owner/operator for damage liability and removal costs for spills from tank vessels in Prince William Sound. Tank vessel owner/operator clean up costs and damage liability is also now covered under the new Chapter 40 - Oil Pollution - of Title 33 United States Code (33 U.S.C. §2701, et. seq.) Significantly the allocation of responsibility between the vessel owner/operator and the facility owner/operator remains unchanged.

In taking provisions concerning tank vessel owner/operator responsibility for clean up and damage liability out of the TAPS Act, Congress left in place Subsection 204(c), to cover discharges from vessels with respect to "claims arising from incidents occurring before August 18, 1990. The Oil Pollution Act of 1990 [33 U.S.C.A. §2701, et seq.] shall apply to any incident, or any claims arising from an incident, occurring on or after August 18, 1990." (43 U.S.C. §1653(c)(14)).

The Conference Committee which drafted the final version of OPA 90, specifically addressed the breadth of the responsibility of the holder of the right-of-way for the clean up of ANS crude oil and stated its intent to "clarify that section 204(b) (43 U.S.C. § 1653(b)) of the TAPS Act applies to responsibility for clean up caused by activities which are related to TAPS including operation of the terminal." (1990 U.S. Code Cong. & Admin. News 850). Section 204(b), as amended, provides:

(b) Control and removal of pollutants at expense of right-of-way holder

If any area in the State of Alaska within or without the right-of-way or permit area granted under this chapter is polluted by any activities related to the Trans-Alaska Pipeline System, including operation of the terminal, conducted by or

Mr. Paul M. Richards
April 27, 1992
Page 5

on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal or State officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder.

(43 U.S.C. § 1653 (b)) (emphasis added).

The underlined words were added by the 1990 amendment. The Conference Committee emphasized that the amendment was to clarify that Alyeska's responsibility for oil spills ends with the loading of the tank vessel:

Liability standards under sections 204(a) and (b) of the TAPS Act, as amended, will apply until TAPS oil is loaded aboard a vessel. TAPS Act liability shall apply if oil is spilled during the loading process at the terminal. Any subsequent discharge from the vessel shall be governed by the liability regime established by the Oil Pollution Act of 1990.

(1990 U.S. Code Cong. & Admin. News 850).

There is no provision in OPA 90 which extends the responsibility of Alyeska for oil spill clean up and damage liability beyond its Terminal. In fact Subchapter I of OPA 90 - Oil Pollution Liability and Compensation (33 U.S.C. §§ 2701-2719) does not even apply to Alyeska. OPA 90 Section 1002 (33 U.S.C. § 2702) specifies the parties who are responsible for oil spill clean up:

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(a) IN GENERAL.-Notwithstanding any other provision or rule of law, and subject to the provisions of this Chapter, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in subsection (b) that result from such incident.

(Emphasis added).

"Responsible party" with respect to a vessel is defined in OPA 90 Subsection 1001(32) (33 U.S.C. § 2701) as "any person owning, operating, or demise chartering the vessel." Liabilities for discharges from facilities and responsibility for oil spill clean up costs are covered under this subchapter. However, because Alyeska's facility is subject to the requirements of Section 204 of the TAPS Act, it is specifically excluded by Section 1002 of OPA 90 (33 U.S.C. § 2702) from the OPA 90 clean up and damage liability provisions. Section 1002 provides in relevant part:

(C) EXCLUDED DISCHARGES.-This subchapter does not apply to any discharge-

* * *

(3) from an onshore facility which is subject to the Trans-Alaska Pipeline Authorization Act (43 U.S.C. § 1651, et seq.).

The Conference Committee, commenting on this exclusion, notes that liability (which includes responsibility for clean up) for discharges from facilities subject to the TAPS Act (including the Alyeska Terminal) are covered under that Act while liability for vessel discharges (which includes responsibility for clean up) are covered under Subchapter I of OPA 90:

Subsection (c) excludes from coverage under this substitute any discharge of oil that (1) is authorized by law, (2) emanates from a public vessel, or

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(3) is discharged from onshore facilities subject to the Trans-Alaska Pipeline Authorization Act which are covered by the liability regime under section 204 of that Act. Liability for discharges from vessels once the oil is loaded is covered under the Conference Substitute.

(1990 U.S. Code Cong. & Admin. News 781) (emphasis added).

Subchapter II of OPA 90 - Prince William Sound Provisions (33 U.S.C. §§ 2731-2753), which does not concern clean up and damage liability for oil spills but rather specific response requirements involving Prince William Sound, sets forth in Section 5005 (33 U.S.C. § 2735) equipment and personnel requirements under tank vessel and facility response plans to handle "a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater." "Worst case" is defined in Section 5005 as:

(2) the term "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 a facility, the largest foreseeable discharge in adverse weather conditions.

The Coast Guard recently published its advanced notice of proposed rule making relating to facility response plans and required response equipment. (57 Fed. Reg. 8708 (March 11, 1992)). The Coast Guard makes it clear, in commenting on the requirements of OPA 90 Section 5005, that oil spill response can be met in a variety of ways in Prince William Sound:

2. Facilities Permitted Under the Trans-Alaska Pipeline Authorization Act

Section 5005 of OPA 90 is a free standing provision establishing additional oil spill removal requirements for a tank vessel transiting Prince William Sound or a facility permitted under the Trans-

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Alaska Pipeline Authorization Act. The statute does not impose any direct requirements on a vessel or facility or specify which is responsible for the additional equipment, personnel, and training. It does specify that the response plan for each facility or tank vessel shall "provide for" the additional requirements. The Coast Guard does not interpret this section as requiring each individual vessel to independently provide prepositioned equipment and personnel. The Coast Guard's position is that these requirements can be met by a consortium of vessel owners, by a facility, or by independent organizations. This section also requires two practice exercises per year for the additional equipment and personnel in the Prince William Sound area, not to each vessel transiting Prince William Sound. The Coast Guard does intend, however, that the practice exercises involve the participation of facilities and one or more vessels to ensure a realistic exercise.

(57 Fed. Reg. 8711 (March 11, 1992))
(Emphasis added).

Only one conclusion can be reached from the plain wording of the TAPS Act and OPA 90, documented by the interpretations placed on those statutes by the legislative histories and by the Coast Guard - Alyeska, while agreeing by contract to provide tank vessel initial oil spill response, has no other obligation to provide oil spill clean up in Prince William Sound.

We understand Alyeska has exceeded the above drills suggested by the Coast Guard and maintains equipment and personnel on ready alert 24 hours a day to provide rapid initial response to oil spills from tank vessels in Prince William Sound. We conclude Alyeska's obligations for tank vessel spill response are defined by Alyeska's Spill Response Agreement with the tank vessel interests and its Prince William Sound Tanker Spill Prevention & Response Plan approved by ADEC.

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A REVIEW OF THE LEGISLATIVE HISTORY OF THE
TAPS ACT CONFIRMS THAT THE HOLDER OF THE
PIPELINE RIGHT-OF-WAY WAS NEVER INTENDED
TO BE RESPONSIBLE FOR TANK VESSEL SPILL
CLEAN UP.

The legislative history of the TAPS Act confirms that even before the enactment of OPA 90, Congress intended to distinguish between clean up responsibility and damage liability for spills which occurred during transportation through the pipeline and the terminal facilities and clean up responsibility and damage liability for spills from vessels engaged in transporting the oil through the marine leg of its journey to the lower 48 states.

During the debates on the TAPS Act, Congress contemplated including within the Act provisions which would have made the holder of the right-of-way liable for spills from vessels transporting Alaskan oil to ports in the lower 48 states. The House passed a version of the TAPS Act, then known as H.R. 9130, which contained the precursor of what became the liability provisions of Section 204 of the TAPS Act (43 U.S.C. § 1653). Under Section 207(a) of H.R. 9130, the holder of the right-of-way was to be strictly responsible for "damages caused by the holder's activities conducted at any point along the route of the proposed trans-Alaska pipeline." 119 Cong. Rec. 27681 (August 2, 1973). Under Section 207(b) of H.R. 9130, the holder of the right-of-way was also to be liable for spills from certain vessels carrying Alaskan oil. Id. The Senate version had no such provision.

Due to these and other conflicts between the House and Senate versions, the bill was sent to a Conference Committee that wrote the final version of the Act. The Committee adopted modified liability provisions, accepting some aspects of the House and Senate proposals and rejecting others. Specifically, it accepted the idea of the holder of the right-of-way being responsible for clean up responsibility and damage liability occurring due to its activities along the route of or in the area of the pipeline. However, the Committee rejected the idea of continuing to impose clean up responsibility and damage liability on the right-of-way holders after the oil was loaded onto a vessel. Instead, only the owner or operator of the vessel, and the TAPS Fund created by the Act, would be responsible for such spills. This resulted in the three part liability scheme eventually codified in Section 204 of the TAPS Act:

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Subsection (a) imposes on the holder of the right-of-way or permit strict liability without regard to fault . . . for damages or injury in connection with or resulting from activities along or in the vicinity of the pipeline right-of-way. . . .

Subsection (b) imposes on the holder of a right-of-way or permit liability for the full cost of control and removal of the pollutant of any area that is polluted by operations of the holder.

Subsection (c) imposes on the owner or operator of a vessel that is loaded with any oil from the trans-Alaska pipeline strict liability without regard to fault for damages sustained by any person as the result of discharges of oil from such vessel.

Conference Report No. 93-924,
93rd Cong. 1st Sess., reprinted in
1973 U.S. Code Cong. & Admin. News
2525-26.

It is apparent that the Congressional purpose was to create separate responsibility for clean up and damages that applied to transportation of ANS crude oil through TAPS and then through Prince William Sound. The Act created strict liability for the right-of-way holders for the oil in the pipeline facilities for clean up and damage liability resulting from its "operations" and from activities "along or in the vicinity of the pipeline right-of-way." Once the oil was loaded in the tank vessel responsibility for clean up and damage liability was passed to the vessel owners and the Fund. Thus the owners and operators of the tank vessels were responsible for the transportation of ANS crude oil through Prince William Sound and beyond.

In reporting the Conference Committee's TAPS Act amendments to the House, Congressman Udall, one of the Committee members, explained how its language accomplished this allocation:

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I am, however, encouraged by several improvements in the legislation that came out of the conference. First, we wrote a strong liability provision for the Alaskan pipeline and the marine leg from Valdez to other U.S. ports. Section 204 of the report provides that the Alaskan pipeline permit holder shall be strictly liable without regard to fault for all damages that result from a pipeline related incident along the right-of-way. This includes damages to Alaskan Natives for any losses they might sustain by disruptions in their subsistence economy that are caused by the pipeline. It will apply, for example, if the pipeline disturbs a caribou migration or if an oil spill in a river ruins a salmon run. The conferees set a limit of \$50 million for liability of the pipeline permit holder to any third party for any one incident.

For the marine leg, from Valdez to ports in the lower 48 States, the conferees agreed that there should be strict liability for any spills. The first \$14 million for clean up and damages is to be assessed against the ship owner and the rest -- up to \$100 million per incident -- is to be paid out of a fund which will be created by a 5 cents-per-barrel levy on all oil transported through the pipeline.

Comments of Rep. Udall, 119 Cong.Rec.
36606 (November 12, 1973) (emphasis added).

In the Senate, the Chairman of the Conference Committee, Senator Jackson, reiterated these remarks:

Subsection (a) imposes on the holder of the right-of-way or permit strict liability without regard to fault, . . . for damages or injury in connection with or resulting from activities along or in the vicinity of the pipeline right-of-way. . . .

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Subsection (b) imposes on the holder of a right-of-way or permit liability for the full cost of control and removal of the pollutant of any area that is polluted by operations of the holder.

Subsection (c) imposes on the owner or operator of a vessel that is loaded with any oil from the trans-Alaska pipeline strict liability without regard to fault for damages sustained by any person as the result of discharges of oil from such vessel.

Comments of Sen. Jackson,
119 Cong. Rec. 36809 (November 13,
1973).

Nowhere in the legislative history describing the final outcome of the legislation enacted by Congress is there any suggestion or intimation that responsibility for clean up or damage liability under these sections would overlap. The holder of the right-of-way is to be responsible until the oil is loaded onto a vessel, the vessel owner and the Fund are to be strictly liable thereafter for clean up and damage liability. If Congress had intended the holder of the pipeline right-of-way to be responsible for discharges from vessels, then Section 204(c) which, prior to OPA 90, specifically dealt with oil spilled from vessels would have said so.

IN CHARGING THE VESSEL OWNER WITH
LIABILITY FOR CLEAN UP OF ITS OWN SPILLS,
THE TAPS ACT AND OPA 90 ARE FOLLOWING THE
POLICY AND PRACTICE SET FORTH IN OTHER
ENVIRONMENTAL STATUTES.

In allocating responsibility for clean up and damage liability between the tank vessel owners and onshore facility owners in this fashion, the TAPS Act is simply following the policy manifested in virtually every other federal environmental protection statute. Under these statutes, the party who has control of the source of the discharge of the offending substance is responsible for clean up and damage liability. Section 1321 of the Clean Water Act, for example, provides that only the person who is the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility "from which oil or a hazardous substance is

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discharged" is liable for civil penalties and clean up costs (33 U.S.C. §§ 1321(b)(7)(A), (c)(5)(A)). The owner of the onshore facility is not liable for discharges from a vessel just because it was loaded at the facility.

Under CERCLA, the owners and operators of vessels and facilities are likewise liable only to the extent theirs is the vessel or facility "from which there is a release, or a threatened release which causes the occurrence of response costs, of a hazardous substance." 42 U.S.C. § 9607(a).

Similarly, under the Refuse Act (33 U.S.C. § 407) which makes it unlawful to "throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind" any refuse into the navigable waters of the United States, it has been held that only the party that is the actual source of the discharge can be at fault. See, United States v. Outboard Marine Corporation, 549 F.Supp. 1032, 1035 (N.D. Ill. 1982) ("[T]he Government has been unable to produce any case in the 80-year history of the Refuse Act in which one other than the actual discharger was held liable for causing or suffering the discharge.")

Alaska statutes have followed this same pattern of directing strict liability toward the party that owned the discharged material or had it in its control. Section 46.03.822 provides:

[T]he following persons are strictly liable, jointly and severally for damages . . . resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

- (1) the owner of, and the person having control over, the hazardous substance at the time of the release or threatened release . . .
- (2) the owner and the operator of a vessel or facility, from which there is a release, or a threatened release

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Significantly there is no suggestion in this statute that the owners and operator of the Trans-Alaska Pipeline System will be liable for spills from a tank vessel transporting ANS crude oil.

THERE IS NO PROVISION IN THE STATE OR
FEDERAL RIGHT-OF-WAY AGREEMENTS THAT
REQUIRES ALYESKA TO CONTAIN AND CLEAN UP
TANK VESSEL CRUDE OIL SPILLS WITHIN STATE
WATERS IN PRINCE WILLIAM SOUND.

We understand that the State of Alaska, in the Exxon Valdez litigation, has taken the position that under the provisions of the Right-Of-Way Lease for TAPS between the State of Alaska and the TAPS owners ("Lease"), Alyeska is required to contain and clean up ANS crude oil spills in Prince William Sound. The State's position requires the conclusion that the Lease runs contrary to the TAPS Act that allocates oil spill responsibility to the right-of-way holder for on shore spills and to the tank vessel owner/operator for vessel spills. That argument is also inconsistent with Alaska statutes that placed liability for response costs on "a person owning or having control over a hazardous substance which enters in or upon the waters . . . of the state" (Alaska Stat. § 46.03.822 (1974)).

Placing responsibility on Alyeska for tank vessel spills under the Lease would require Alyeska to undertake oil spill response for spills from tank vessels over which Alyeska has no operational or other control. If the signatories to the Lease had intended such a substantial departure from the federal and state statutory requirements, the Lease should have allocated such responsibility to Alyeska in concise terms.

We find no provision in the Lease that requires Alyeska to respond to tank vessel spills in Prince William Sound. Both the Lease and the Federal Agreement and Grant of Right-of-Way For TAPS ("Federal ROW") impose obligations on the holders only with respect to spills from the Trans-Alaska Pipeline System and the Terminal facilities. Section 22(a) of the Lease, for example, provides that the "Lessees shall. . . abate . . . as completely as practicable, using the best practicable technology available, any . . . event or condition . . . that arises out of, or could affect adversely, the . . . operation . . . of all or any part of the Pipeline" Guided by the standard legal test for interpreting an agreement, we believe an oil spill in Prince

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William Sound does not "arise out of" the operation of the Trans-Alaska Pipeline, nor does it "affect adversely" the operation of the Pipeline within the meaning of this provision.

The Federal ROW, consistent with the TAPS Act, allocates liability to the right-of-way holder's operations. Section 13A of the Federal ROW requires the permittees to rehabilitate any natural resource "if the immediate cause of the damage or destruction arises out of, is connected with, or results from, the . . . operation . . . of all or any part of the Pipeline System" We expect the court will conclude that a vessel spill in Prince William Sound does not arise out of, is not connected with, and does not result from the operation of the Pipeline System within the intended meaning of this provision.

The best evidence of the interpretation to be given to the state and federal agreements is provided by the course of conduct of ADEC, the Coast Guard, Alyeska, and the tank vessel interests in working under these agreements for the past fifteen years.

THE INTERESTED PARTIES, BY THEIR COURSE OF
CONDUCT HAVE DEMONSTRATED THEIR UNDER-
STANDING OF THE LIMITS OF ALYESKA'S
RESPONSIBILITY.

The course of conduct of ADEC, the Coast Guard and the tank vessel interests extending back into the early 1970's document that Alyeska has no responsibility imposed by statute to clean up discharges from tank vessels. The following are by way of examples of the many instances that document that Alyeska has no obligation under federal or state laws to respond to spills from tank vessels in Prince William Sound:

(1) The federal and state governments wanted an acceptable contingency plan for the response to oil spills from tank vessels transiting Prince William Sound to be in place prior to pipeline start-up. However, since at that time no decision had been made as to what marine transporters would participate in lifting oil at the Terminal it was not practical for each tank vessel interest to prepare its own plan. Alyeska therefore agreed to and did prepare and implement a contingency plan for the response to tank vessel spills. Both the state and federal governments accepted the Alyeska contingency plan for Prince William Sound and

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authorized start-up of the pipeline. (Alyeska Environmental Library).

(2) Notwithstanding Alyeska's contingency plan, the tank vessel owners and operators recognized that they, not Alyeska, were required by federal and state laws to clean up tank vessel oil spills. Accordingly, Alyeska and the tank vessel interests understood that, in the event of a major oil spill from a tank vessel in Prince William Sound, Alyeska would provide the initial response and the owner or operator of the tank vessel would take over the response effort after the tank vessel personnel arrived on scene. (Dec. 21, 1987 ltr. from Standard Oil to Alyeska).

(3) In 1982, for example, Exxon Company U.S.A. submitted to ADEC for approval an Oil Discharge Contingency Plan for vessels owned and operated by Exxon Company U.S.A. within Alaska waters. The Exxon Contingency Plan recognized Exxon's responsibility to take over spill management stating that "in the event of a major spill by an Exxon owned and operated vessel, it is anticipated that the Exxon Company, U.S.A. Oil Spill Response Team, as described [therein], would be activated to manage the spill response." (Mar. 5, 1982 ltr. from Exxon to ADEC enclosing Oil Discharge Plan - Alaska Vessels).

(4) Following the response to a 1984 oil spill into Port Valdez from a tank vessel, the issue of responsibility for oil spill response was discussed during an initial spill critique response session attended by ADEC, the Coast Guard, the tank vessel owner/operator, and Alyeska. Alyeska advised that it would provide the initial response to any spill from a tank vessel in Port Valdez or Prince William Sound and agreed to continue until relieved by either the tank vessel owner, operator, or the government. (Aug. 26, 1984 Alyeska Memorandum).

(5) In 1986, during the review process prior to approval of the 1987 Alyeska contingency plan for Prince William Sound, Alyeska stated in writing to ADEC that Alyeska would function as a spill clean up contractor to an owner that preferred to assume responsibility after Alyeska's initial response. Alyeska noted that this would permit the majority of Alyeska's personnel to return to pipeline operation. (July 16, 1986 ltr. from Alyeska to ADEC).

(6) In 1987, after receipt of an inquiry from ADEC, about Exxon Shipping Company's oil spill response capabilities

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for Prince William Sound, Exxon sent an overview of its oil spill response program to ADEC. This overview described the response teams within Exxon Shipping Company and Exxon Company U.S.A. that -- depending on the spill size -- would manage the response to spills from Exxon's owned or chartered tank vessels in trade with the Alyeska Terminal. The overview also described Exxon's ability to mobilize additional response equipment, as needed, from other stockpiles in Alaska, the United States, and the world. (Oct. 7, 1987 ltr. from Exxon to ADEC).

(7) In 1988, Alyeska and ARCO Marine, Inc. held an oil spill drill for the express purpose of practicing the transfer of spill response management from Alyeska to the tank vessel owner/operator. Both ADEC and the Coast Guard attended the drill during which the transfer occurred with the permission of the Coast Guard officer acting as federal On-Scene Coordinator. (May 1988 ARCO/Alyeska Report).

(8) In 1989, after Alyeska provided initial oil spill response for the EXXON VALDEZ oil spill, Exxon Shipping Company, with the approval of the federal and state governments, took over the response effort in accordance with the understanding between Exxon and Alyeska. (Alyeska Environmental Library).

(9) November 1, 1990, ADEC approved the form of Spill Response Agreement entered into between Alyeska and Contracting Vessels. That Agreement sets forth in detail Alyeska's agreement to provide initial oil spill response services up to 72 hours of giving notice to the Contracting Vessel to take over the spill response. The Agreement specifically provides the mechanism for the orderly transition of the clean up activities. The Coast Guard in Valdez accepted this arrangement. ADEC and the Coast Guard have participated in plan development through the state/federal/Alyeska/tank vessel coordinated Prince William Sound Steering Committee. (Alaska Environmental Library).

(10) Between November 1990 and March 1992, there have been four major oil spill exercises in Prince William Sound. In each of these drills, Alyeska, after performing the initial oil spill response, turned the responsibility over to the Contracting Vessel in accordance with Alyeska's Oil Spill Agreement. For example, on September 10 and 11, 1991, at Valdez, approximately 235 persons participated in a drill involving ARCO Marine, Inc. Transition of control for the oil spill response activities took place beginning mid-morning

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September 11, 1990, as authorized by the Alyeska and ARCO Incident Commanders. On March 3 and 4, 1992, again at Valdez, approximately 400 people participated in an oil spill drill involving Chevron U.S.A., Inc. Alyeska provided initial response under its Oil Spill Agreement with Chevron. Transition to Chevron control of the oil response occurred on the second day of the drill as authorized by Alyeska and Chevron Incident Commanders (Alyeska Environmental Library).

(11) In March 1992, the Coast Guard went on record that, with respect to facility response plans and required response equipment for Prince William Sound, the federal requirements can be met not by Alyeska, but by a consortium of vessel owners, by a facility, or by independent organizations (57 Fed. Reg. 8708 (March 11, 1992)). The present procedures worked between Alyeska and the Contracting Vessels are consistent with what the Coast Guard envisions will be required.

The documentary evidence stretching back to the enactment of the TAPS Act has one constant principle -- the tank vessel owner and operator -- not Alyeska -- is responsible for the clean up of tank vessel spills in Prince William Sound. To conclude that Alyeska is required to clean up oil spills from tank vessels in which it has no interest would raise obvious federal constitutional issues. Placing such a burden on Alyeska would be confiscatory since a Contracting Vessel may not have the financial ability to indemnify Alyeska for the clean up of a major spill. In the words of Senator Stevens of Alaska, when commenting on a similar proposed expansion of liability for the pipeline interests during the debates leading to the enactment of the TAPS Act:

By the very terms of amendment 348 this liability is imposed on only one pipeline, the trans-Alaska pipeline. Not only is this unique to the pipeline industry but no other common carrier, whether pipeline, airline, or railway, has ever been required to insure the Federal Government for damages suffered by reason of an act of God or intervening act of a third party merely because the damage is somehow connected with the carrier's operations. The basis for this discrimination is unclear. To impose such liability, in addition to a commensurate liability to

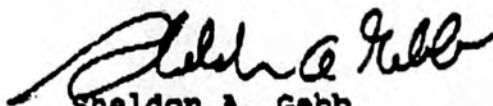
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third parties, upon the trans-Alaska
pipeline is unwarranted and in derogation
of the public good.

Comments of Sen. Stevens, 119 Cong.
Rec. 24297 (July 17, 1973).

If you have any questions about our legal analysis
we are, of course, available to discuss any matters in such
detail as you desire, at your convenience.

Very truly yours,



Sheldon A. Gabb
of BAKER & HOSTETLER, McCUTCHEN BLACK

cc: Robert I. Shoaf
L.D. Wood

*Delivered to Al Hastings
@ approximately 4 pm.*

Alyeska pipeline

SERVICE COMPANY

240 MAIN STREET, SUITE 600, JUNEAU, ALASKA 99801 (907) 463-4664 FAX 463-4660

May 12, 1992

O.E. Burden, Vice President
Marketing and Government Relations
Tesoro Petroleum
P.O. Box 190272
Anchorage, Alaska 99501

Dear Mr. Burden:

CSSSHB 540 Judiciary, which was passed by the House of Representatives last Friday, meets the expectations of Alyeska Pipeline Service Company and its owners for a satisfactory bill providing for limited responder immunity in Alaska, except for those provisions in Sec. 10, which seek to add AS 46.04.020 (h), (i) and (j). These provisions deal with the financial responsibility requirement which applies to vessel owners/operators contracting with Alyeska for initial response to vessel spills. Alyeska believes that these provisions, as written, are inherently discriminatory, unduly restrictive and unconstitutional.

Alyeska fully intends to establish its financial responsibility requirement at a level which is reasonable, given its expected level of risk under any new statute. If CSSSHB 540 becomes Alaska law with the financial responsibility provisions modified, such that they are reasonable to Alyeska, Alyeska and its owners would be willing to significantly lower its financial responsibility requirement for contracting vessels.

Any new financial responsibility requirement would be applied on a nondiscriminatory basis to all contracting vessels. In Tesoro's case, our expectation is that the new requirement would be on the order of one-half of the current CGL insurance level required, provided satisfactory P & L insurance coverage is maintained and so long as vessels chartered by Tesoro and covered by the Oil Spill Response Services Agreement demonstrate a safe operating record.

Sincerely,

ALYESKA PIPELINE SERVICE COMPANY


By: Paul M. Richards, Manager
Government Relations

CORPORATE OFFICES

1835 SOUTH BRAGAW STREET, ANCHORAGE, ALASKA 99512 (907) 278-1611

May 3, 1992

The Honorable Sam Cotten, Chairman
Senate Oil and Gas Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Re: Tank Vessel Oil Spill Response

Dear Chairman Cotten:

You asked me recently to provide more of the historical and legal background to further explain provisions which have been made by Congress and Alaska for oil spill response from discharges by tank vessels operating in Prince William Sound. I am pleased to do so. Attached is an April 27, 1992, legal memorandum which discusses this matter at some length.

In short, under the provisions of the Trans Alaska Pipeline Authorization Act, the Oil Pollution Act of 1990, and the TAPS right of way agreements, and in light of the course of conduct of the interested parties over the years, Alyeska is not responsible for spills from tank vessels carrying Alaska North Slope crude oil in Prince William Sound except for its binding contractual obligations under Spill Response Agreements with owners, operators, and charterers of tank vessels that lift oil at the marine terminal.

As you know, Alyeska, at present, is the only private entity in Prince William Sound that has sufficient resources to provide initial oil spill response on a 24 hour-a-day basis. Accordingly, Alyeska has agreed to provide initial oil spill response services and vessel escort services through Prince William Sound to tank vessels lifting crude oil from its terminal. In the spill response agreements, the owners, operators, or charterers of these vessels reaffirm their responsibility for oil spill clean up, and agree to assume management of the spill response within 72 hours after notification by Alyeska.

Current legislation based upon the premise that Alyeska shares a concurrent obligation under the law with tank vessel owners and operators to provide for oil spill response to discharges from these vessels is fundamentally flawed. If enacted into law, it will invite controversy and confusion, and may ultimately shift costs and liabilities related to oil

spill response from owners and operators of tank vessels to owners of ANS crude oil. Instead, every effort should be made to reinforce OPA '90 and HB 567 provisions which place these costs and liabilities directly upon tank vessel owner/operators.

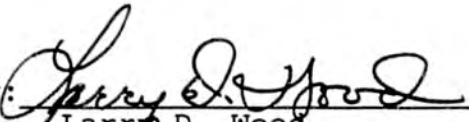
Although you have made it very clear to me that you continue to rely upon the strength of the state's case, and that opposing views carry little weight, my hope is that you will agree that this additional memorandum raises important and legitimate questions. In the final analysis, the issue will be resolved in federal court, and we believe that there is no need to renew it in this legislation. In the meantime, in accord with mandates by Congress, Alaska, and regulatory agencies, vessel owners and operators have already made provision for oil spill response in Prince William Sound.

Please call me at 265-8356 if you have related questions or comments.

Sincerely yours,

ALYESKA PIPELINE SERVICE COMPANY

By:



Larry D. Wood

Senior Attorney - External Affairs

cc: The Honorable Bill Hudson, Chairman
House Special Committee on Oil & Gas

The Honorable Charlie Cole, Attorney General

L010



Oil Reform Alliance



5/9/92

TESTIMONY OF RIKI OTT

ON CSSSHB 540

BEFORE SENATE SPECIAL COMMITTEE ON OIL & GAS

The version of HB 540 which passed the House by a vote of 26 to 14 is Alyeska's Cadillac. Should Alyeska be allowed to drive their Cadillac through this committee and the rest of the Senate with the same ease which they drove it through the House, the list of hit-and-run victims will include tens of thousands of fishermen, Tesoro and other small independent oil companies, state and federal lawsuits over the Exxon Valdez spill, and our natural resources after the next major oil spill.

The politics involved with gutting the Judiciary CS for HB 540 on the House floor were disgusting. It was obvious to even the most naive public observers that the process was completely rigged by dozens of Alyeska lobbyists and lawyers before the vote.

The ORA wishes to return three provisions to the bill that 26 members of the House, lead by Representative Hudson, gutted. In addition, we wish to include a fourth provision which was discussed in House committees. Without all four of these provisions, we cannot support this legislation.

1. PROFESSIONAL RESPONSE CONTRACTORS AND RESPONDERS WITH A STATUTORY DUTY TO RESPOND MUST BE HELD TO A STANDARD OF SIMPLE NEGLIGENCE.

In 1987, the parties responsible for the Glacier Bay oil spill in Cook Inlet refused to initiate cleanup for several days, believing they would get the oil when it hit the beaches. Leaving the oil in the water resulted in over \$40 million in damages to Cook Inlet fishermen and very probable long-term damages to the fisheries resources.

In 1989, Alyeska, the party responsible for responding to TAPS oil spills, failed to respond immediately because their cleanup barge with all its equipment lay buried under four feet of snow.

In both 1987 and 1989 during these spills, the state had a strict liability standard, yet spill response failed even under this standard of care. In 1989 after the Exxon Valdez spill, the liability standard for response contractors was lowered to simple negligence. How can we seriously consider further reducing the standard?

It is true that the majority of other coastal states have reduced their standard from simple to gross negligence. But these other states have not had our history of failed or completely inadequate response to major spills. Alaska should know better.

Simple negligence is already a compromise between the public and the oil interests: it is the middle ground between strict liability (responsibility without fault which was the state standard until 1989) and gross negligence (which stops just short of intentional misconduct).

Liability exposure cannot be reduced without trade-offs. The liability goes somewhere, it does not just disappear. Proponents of HB 540 have consistently argued that the liability for increased damages would go to the spiller, but it is obvious that this is simply not true. If it was, Alyeska would not have relieved Tesoro of the \$1 billion direct action bond. Alyeska's owner companies are exposed to liability through their common operating agent Alyeska.

A standard of gross negligence effectively immunizes Alyeska and the owner companies because, as BP, Arco, Exxon and the others know, gross negligence is next to impossible to prove in court. This is why Alyeska reduced the direct action bonding requirement; because gross negligence reduced their exposure to lawsuits.

And who would be bringing the lawsuits? The fishermen, the Natives, the property owners -- the spill victims, the injured public. Allowing a standard of gross negligence for ANY amount of time, shifts the liability for additional damages from professional spill responders CLEARLY, SQUARELY, AND DEFINITELY to the natural resources and the public.

THE ORA CANNOT SUPPORT THIS BILL IF IT CONTAINS A STANDARD ANY LOWER THAN SIMPLE NEGLIGENCE.

2. HB 540 MUST CONTAIN STRONG ANTI-TRUST LANGUAGE THAT PROTECTS THE SMALL INDEPENDENT OIL COMPANIES FROM THE HUGE TRANSNATIONALS.

Last year, and again this year, Tesoro has come to the legislature and pleaded that unless they get liability relief in the form of gross negligence, they will be put out of business by Alyeska's direct action bonding requirement.

Tesoro is not telling the whole story. Tesoro has 100 problems and "solving" one in the manner Tesoro has proposed leaves the other 99. We are supportive of Tesoro's bonding predicament, but we cannot support gross negligence as the bailout option.

Instead we support requiring that a charge or contractual provision imposed by Alyeska must be fair, reasonable, and nondiscriminatory and must be subject to review by the Alaska Public Utilities Commission and/or the superior court.

From both Tesoro's and Alyeska's actions in the Capitol hallways, it is clear that the continuous war between Big and Little Oil is being used as blackmail at the expense of the natural resources. This is intolerable.

It is completely unacceptable to settle this issue by bailing out Tesoro at the expense of the public and the natural resources when there is a perfectly viable alternative. The ORA supports anti-trust language in this bill as a condition of its passage.

3. REGISTERED CONTRACTORS LISTED IN CONTINGENCY PLANS MUST HAVE A STATUTORY DUTY TO RESPOND TO SPILLS IN WHICH THE SPILLER IS INSOLVENT OR UNKNOWN.

The State of Alaska should have authority which parallels the Coast Guard's authority to command contractors to response to mystery spills and spills in which the spiller declares bankruptcy. Under existing law, if these types of spills are not federalized, the state is unable to insure response and the public is exposed to damages.

For example, the Coast Guard federalized the barge spill at the Shumagin Islands by ordering Cook Inlet contractors (the closest) to respond. Had this spill not been federalized, there most likely would have been no response as in the small spill in Cook Inlet this last week.

The House Judiciary Committee included language in its CS (pg. 10, lines 23-31, pg. 11, line 1) that a response contractor, as a condition of registration, agrees to respond to oil spills "in which the responsible party is unknown or insolvent".

Without this language returned, the ORA cannot support this bill.

4. ALYESKA MUST HAVE A STATUTORY DUTY TO RESPOND TO TAPS SPILLS IN THE STATE OF ALASKA INCLUDING OUR WATERS.

This provision, while important, should be viewed as completely separate and independent of the other issues.

We have watched the debate over Alyeska's duty to respond to TAPS spills in utter disbelief. On one hand, Congress is drafting language in the energy bill to require that Alyeska submits an oil spill contingency plan for Prince William Sound to carry out their federally-mandated duty to respond to TAPS oil spills in any area in the State of Alaska as stated in the Oil Pollution Act of 1990. On the other hand, Representative Hudson and twenty some other representatives, are working to undermine our federal protections by requiring that Alyeska only have a contractual obligation with shippers instead of a duty to respond.

A contractual duty is not an acceptable guarantee of response for the people of Prince William Sound, Cook Inlet, Kodiak, and the Kenai Peninsula.

Alyeska's history of defiance for federal and state laws and regulators has led to countless oversight hearings and investigations: faulty pipeline construction, intimidation of workers and inspectors, worker safety, ballast water, invasion of privacy, manipulation of science and the regulatory process, response to the Exxon Valdez oil spill. The list goes on and on and on from as early as 1976 to the present.

Alyeska is notorious for breaking and bending laws to suit their needs. They would no qualms about cancelling contracts for insolvent spillers and leaving the public stranded with damages.

Limiting Alyeska's obligations to private contractual arrangements makes absolutely no sense for other reasons as well. Alyeska never owns the TAPS oil. They don't own it when its in the pipeline and they don't own it when its on board the tankers. Yet Alyeska has only agreed to respond to TAPS spills from the pipeline. Why?

Because when it's in the pipeline, it's clear that its everybody's oil. But when it's in the tankers, it is split out into the separate TAPS owner companies and other buyers. This only splits out who PAYS for the response. The DUTY TO RESPOND still remains with all the owners through Alyeska as their common agent as a condition of Congress and commitment by the owners to authorize the trans-Alaska pipeline right-of-way nearly 20 years ago.

The issue of who pays for the response should not be confused with who is required to respond. The issue of who pays for the response should be left up to the owner companies to settle amongst themselves. The issue of who is required to respond was settled nearly 20 years ago. State law should clearly state the language in existing federal laws that Alyeska shall immediately contain and cleanup TAPS oil spills in any area in the State of Alaska.

To require any less undermines the state and federal lawsuits over exactly this issue; it undermines the state's ability to regulate its most powerful industry; and it undermines the state's ability to protect its own people and natural resources.

Our faith in this legislature and the Administration's intent to protect the public interest as mandated in Section 203(e) of the Trans-Alaska Pipeline Authorization Act has already been greatly eroded simply by the debate to diminish Alyeska's duty to respond to TAPS spills.

Having a lesser standard than the federal government is completely unacceptable to us and, should such legislation pass this body, it should be vetoed by the Governor.

In summary, we are asking that four critical provisions be included in HB 540 as a condition of its passage. Each provision can be used to let the air out of one tire of Alyeska's Cadillac. Unless, all four tires are flat, this legislation should die in this committee.



Oil Reform Alliance



May 6, 1992

Congressman George Miller, Chairman
Committee on Interior & Insular Affairs
1324 Longworth Bldg.
Washington, D.C. 20515

Dear Congressman Miller:

The Oil Reform Alliance is a coalition of Alaska commercial fishing and environmental groups that formed after the Exxon Valdez oil spill to organize and educate the public on oil industry activities which could negatively impact communities and natural resources.

We are very concerned with Alyeska's recent allegations that it is a "volunteer" with no legal duty to clean up TAPS (Trans-Alaska Pipeline System) tanker spills. Having only a "volunteer" response organization in Prince William Sound exposes the public and the natural resources to tremendous and completely unacceptable risk from exposure to oil spills.

This is certainly not what Congress intended when they authorized construction of the trans-Alaska pipeline; nor is it what the oil industry promised while lobbying Congress in 1973. Alyeska promised it would accept full responsibility on behalf of its parent companies to control and cleanup TAPS oil spills.

Congress' intent to hold Alyeska to these promises was embodied in Section 204(b) of the 1973 Trans-Alaska Pipeline Authorization Act which places in statute Alyeska's duty to respond to TAPS spills in "any area." In the Oil Pollution Act of 1990, Congress restated and clarified its intent by amending Section 204(b) with statutory duty that Alyeska clean up TAPS spills in the State of Alaska. The State of Alaska includes state waters. Your committee and the Merchant Marine & Fisheries Committee have both proposed language in the Energy Bill which additionally requires Alyeska hold an approved oil spill response plan for Prince William Sound.

Congress, at least, seems clear on their intent to hold Alyeska to its original promises and statutory duty to clean up TAPS spills in the State of Alaska.

May 6, 1992 - 3:05 p.m.

Mike Conway from DEC returned your call.

Spill in Cook Inlet.

Report from Steelhead Platform via the Coast Guard there was a black oil spill out in the inlet. It was in the middle ground shoal area about mid-inlet. DEC had an overflight with the Coast Guard and saw a small amount of black oil, estimated to be one to two barrels. It was in a 3-mile long slick which was breaking up rapidly. It was mostly a rainbow slick with a little bit of black oil. Aren't sure by looking at it what oil was -- could have been crude oil or bilge oil. Breaking up so fast no chance to get samples. Been working with Coast Guard on it. Overflight at 5:00 p.m. tonight to make sure nothing more out there and take another look.

It's a small insignificant spill. District office in Kenai working with Coast Guard.

Orphan spill or mystery spill -- no known responsible party.

Janet

HORST & FRISCH

INCORPORATED

1133 CONNECTICUT AVENUE NW, SUITE 900

WASHINGTON, DC 20036

TELEPHONE 202/296-4005 FAX 202/296-4008

May 5, 1992

Senator Sam Cotton
Chairman
Senate Committee on Oil and Gas
Alaska State Legislature
Juneau, Alaska 99801-1182

Dear Senator Cotton:

This letter responds to your letter of April 24, 1992 about the profit earned by Alyeska and/or the TAPS owners as the result of the oil spill related capital and operating expenditures made by Alyeska. This response, which the Department of Law authorized me to prepare, elaborates on the information previously furnished to you in my letter dated November 5, 1991, which became part of a report prepared by the Citizens' Oversight Council on Oil and Other Hazardous Substances.

To begin, Alyeska incurs capital and operating expenditures on behalf of the seven TAPS owners. The TAPS owners reimburse Alyeska for their pro rata shares of the expenses Alyeska incurs on their behalf. Alyeska does not mark up those expenses to include a profit.

As for the TAPS owners, a distinction must be made between capital expenses and current operating expenses. Current operating expenses, including those relating to oil spills or oil spill prevention, are passed on dollar-for-dollar, without any profit markup, in TAPS tariffs and thus reduce the wellhead value of ANS oil and the State royalties and taxes based on that wellhead value.

Capital expenses, including those relating to oil spills or oil spill prevention, are added to the TAPS owners' rate base. Capital costs are then recovered through TAPS tariffs over the remaining life of the TAPS by the depreciation charge. In addition, to the extent the capital cost has yet to be recovered and so remains in the TAPS rate base, the TAPS owners are entitled to earn a rate of return on their invested capital.

The calculation of the TAPS owners' rate of return is governed by the TAPS Settlement Agreement between the State and the TAPS owners, which was approved by the Federal Energy Regulatory Commission and the Alaska Public Utilities Commission. The total rate of return consists of three elements: (1) a "real" (i.e., net of inflation) rate of return of 6.4 percent per annum, plus (2) the current inflation rate in the Consumer Price Index, plus (3) an allowance to provide for State and Federal income tax on the first

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**



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Congress, at least, seems clear on their intent to hold Alyeska to its original promises and statutory duty to clean up TAPS spills in the State of Alaska.

Congress granted Alyeska and its parent companies the privilege to use public land and take public resources as long as the oil companies operated in good faith and the public interest was protected as stated in Section 203(e) of the Trans-Alaska Pipeline Authorization Act:

"The Secretary of the Interior and the other federal officers and agencies are authorized at any time when necessary to protect the public interest, pursuant to the authority of this section and in accordance with its provisions, to amend or modify and right-of-way, permit, lease, or other authorization issued under this title."

By not acknowledging their statutory duty to respond to TAPS spills in the State of Alaska, including all its waters, the TAPS oil companies have violated federal law and failed to protect the public interest.

We ask that your committee immediately take steps to inform Alyeska of their statutory duties to clean up TAPS oil spills in the State of Alaska, including all state waters, and to notify the TAPS owner companies that Alyeska, as their common operating agent, has placed the owners in violation of the TAPS Act.

In order to protect the public interest, Alyeska must be held responsible for cleaning up TAPS oil spills in the State of Alaska.

We appreciate your consideration of our concerns.

Sincerely,

D. Riki Ott

Riki Ott, Ph.D.
President

May 6, 1992 - 3:05 p.m.

Mike Conway from DEC returned your call.

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Report from Steelhead Platform via the Coast Guard there was a black oil spill out in the inlet. It was in the middle ground shoal area about mid-inlet. DEC had an overflight with the Coast Guard and saw a small amount of black oil, estimated to be one to two barrels. It was in a 3-mile long slick which was breaking up rapidly. It was mostly a rainbow slick with a little bit of black oil. Aren't sure by looking at it what oil was -- could have been crude oil or bilge oil. Breaking up so fast no chance to get samples. Been working with Coast Guard on it. Overflight at 5:00 p.m. tonight to make sure nothing more out there and take another look.

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Senate Committee on Oil and Gas
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two elements. Moreover, the second, current inflation element and the associated State and Federal income tax, is itself capitalized and amortized over the remaining life of the investment. This treatment of the inflation element of the rate of return is often referred to as a "trended original cost" or "TOC" method.

To show you the practical consequences of these calculations, I have attached a bar chart showing how the composition of the total TAPS revenues over the remaining life of the TAPS would be affected if the TAPS owners make the operating and capital expenses for 1989-1997 projected in my November 5, 1991 letter. Note that while we have not sought to project any oil spill related expenses beyond 1997, the capital expenses incurred before that date will continue to have an effect after that date.

Making no adjustment for the time value of money, the cumulative effect from 1989-2011 of the 1989-1997 outlays would be as follows:

	Cumulative Amount <u>1989-2011</u> (Million \$)
<u>Expenditures</u>	
Operating Expense	\$161.1
Initial Investment	<u>447.2</u>
Total Expenditures	\$608.3
<u>TAPS Revenue Effect:</u>	
Operating Expense	\$161.1
Depreciation	447.2
After-Tax Margin @ 6.4%	140.3
Inflation Write-Up	84.5
Income Tax Allowance	<u>151.2</u>
Total Revenue Effect	\$984.3

From an accounting perspective, the After-Tax Margin, Inflation Write-Up and Income Tax Allowance, which together total \$376.0 million, represent the cumulative before-tax operating profit to the TAPS owners resulting from the \$447.2 cumulative capital outlays. From a regulatory perspective, these three elements represent the "cost of capital" invested by the TAPS owners.

I hope this letter is responsive to your inquiry. If not, or if you have any further questions, please let me know.

Sincerely,

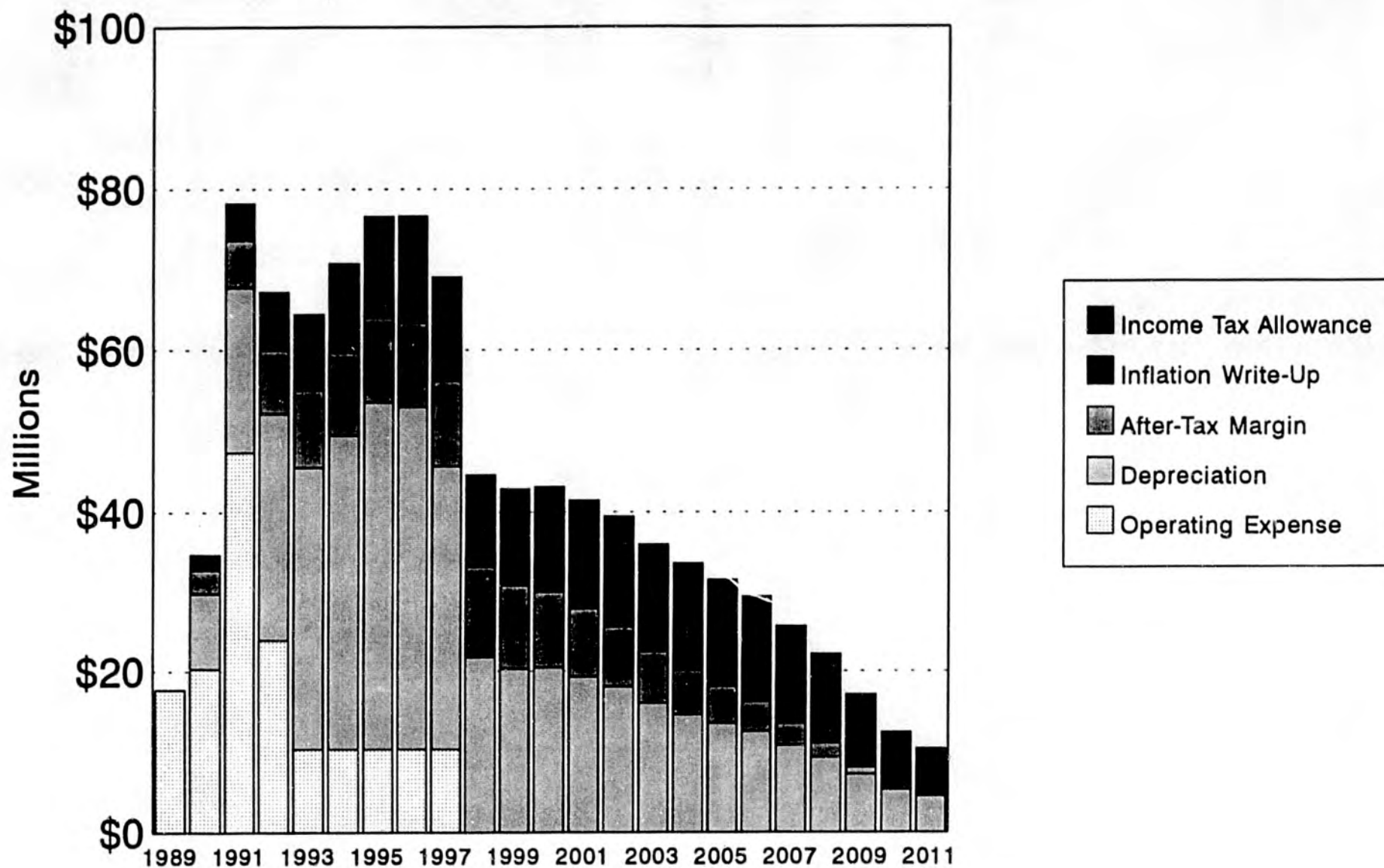
Thomas Horst

Thomas Horst

Attachment

EFFECT OF OIL SPILL EXPENDITURES ON TAPS REVENUES

Oil Spill Expenditures Estimated from 1989 through 1997



COOK INLET REGIONAL CITIZENS ADVISORY COUNCIL, INC.

11355 Frontage Rd, Suite 223, Kanai, Alaska 99611

(907)283-7222

Fax (907) 283-6102

FAX COVER SHEET

DATE: April 2, 1992

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Senator Sam Casten

FIRM: _____

CITY: _____

TELEPHONE NUMBER: _____ FAX NUMBER: 465-4979

FROM: Cook Inlet RCAC

DESCRIPTION OF MATERIAL: Letter of March 31, 1992

from Sen Casten to Representative Hudson

TOTAL NUMBER OF PAGES (INCLUDING COVER LETTER): 4

COMMENTS: _____

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 283-7222 AS SOON
AS POSSIBLE.



"The mission of the Council is to ensure the safe operation of the oil terminals, tankers, and facilities in Cook Inlet so that environmental impacts associated with the oil industry are minimized."

March 31, 1992

The Honorable Bill Hudson
Alaska State Legislature
P.O. Pouch V
Juneau, AK 99811

Dear Representative Hudson:

The entire board of directors of the Cook Inlet Regional Citizens Advisory Council (Cook Inlet RCAC) has received your letter of March 25, 1992. I have been asked by the Council to be the person to present our position to the legislature concerning contingency planning and the liabilities of contractual responders.

Cook Inlet RCAC believes the centerpiece of both state and federal laws relies on the contingency plan holders ability to mount a rapid and effective response to an oil spill.

To be approved, a contingency plan must cover all foreseeable events that may cause an oil discharge. If a contingency plan is based on contracted response that provides for exceptions to respond, then Cook Inlet RCAC feels the plan is incomplete and should not be approved.

Contractors entering into agreements with contingency plan holders are indemnified from liability contractually. In most cases, response action contractors (RACs) are indemnified by the contingency plan holder from acts that are strictly liable and for acts of simple negligence. In no case, are RACs indemnified from acts of gross negligence or criminal activity. The report prepared for Cook Inlet RCAC by Douglas Mertz and Thomas Koester dated December 6, 1991, contains information concerning the existing indemnification language found in contracts between RACs and the major carriers and transporters of oil in Alaska.

Cook Inlet Regional Citizens Advisory Council

11355 Frontage Rd. • Suite 228 • Kenai, Alaska 99611 • (907) 283-7222 • FAX (907) 283-6102

Page Two

The Honorable Bill Hudson

March 31, 1992

The Citizen's Oversight Council report omitted any inspection of contractual indemnification as a method of limiting RAC liability. Federal law protects RACs from liability and encourages indemnification agreements (Section 1010, OPA 90).

Cook Inlet RCAC agrees RACs should not, under state law, be held strictly liable for their actions. A simple negligence standard would best assure a rapid and thorough response to an oil spill. A standard of operating just below gross negligence is unacceptable and, in our view, a large step back from the laws that existed in March 1989. The liability standard will establish the degree of care the contracted RAC will exercise over the maintenance and care of its equipment and its preparations to launch a response at short notice.

In summation of this point, Cook Inlet RCAC would say a contractual responder should face a standard of liability that compels the response described in the contingency plan.

The next issue concerns the so-called "vessels of opportunity". These vessels are ones which are engaged in other maritime activities such as commercial fishing or fish tendering, passenger or cargo transportation, and offshore supply. These vessels may, by happenstance, be the best situated to mount the initial response or response support measures.

The owners and operators of such vessels may be willing to assist, but reluctant to assist because of the absence of an indemnification agreement that would limit their liability. Cook Inlet RCAC supports statutory language that supplements the existing "Good Samaritan Statute". Such language would allow the operators of non-contracted vessels to voluntarily respond or assist a contingency plan holder or one of their contracted RACs, without incurring the liability for actions taken as a volunteer.

Page Three

The Honorable Bill Hudson

March 31, 1992

Cook Inlet RCAC was organized as a demonstration project under provisions of OPA '90. While our obligations for environmental monitoring and industry oversight may be region specific, other obligations transcend those regional boundaries. Our involvement in helping craft Tank Vessel Response Plan regulations, pursuant to Section 4202 of OPA '90, with the U.S. Coast Guard were not centered around Cook Inlet or the state of Alaska. The regulations pertained to all waters of the United States, and in some cases, waters of the world. I think we have demonstrated an ability to look beyond our region and make recommendations that are free of a provincial slant.

Notwithstanding all of the above comments, let me assure you that Cook Inlet RCAC is more than willing to take part in reaching a solution that strengthens the contingency plans and meets the needs of the response action contractors employed to carry out these plans. We are currently working with members of the industry to resolve this issue and will take part, if invited, in any future legislative work sessions.

If you or your staff have any questions, or if you need a copy of the report referenced above, please feel free to call me at 235-8252 or Lisa Parker at 283-7222.

Sincerely yours,



Ken Castner
Cook Inlet RCAC
Board of Directors

cc: Senator Sam Cotton, Special Committee on Oil & Gas
Representative Cliff Davidson, Resources Committee
Cook Inlet RCAC Board of Directors



Regional Citizens' Advisory Council • 601 West Fifth Avenue, Suite 500 / Anchorage, Alaska 99501-2254 / (907) 277-7222 FAX (907) 277-4523

FAX COVER SHEET

DELIVER TO: Representative Bill Hudson

FROM: Tim Robertson

REGARDING: _____

.....

DESCRIPTION

DATE: 3/5/92 TIME: 11:00 # OF PAGES: 16
(including this cover sheet)

THESE ITEMS ARE BEING SENT:

- ☐ FOR YOUR IMMEDIATE ACTION, KEEP US ADVISED OF ACTION.
- ☐ FOR YOU TO PROCESS.
- ☐ FOR YOUR REVIEW AND APPROVAL
- ☐ FOR YOUR GENERAL INFORMATION
- ☐ FOR YOUR APPROVAL AND CORRECTION.
- ☐ FOR YOUR SIGNATURE.

REMARKS:

[The work group agreed to leave off management, pending a proposal on how it would be handled. Below is a proposal of information that would be requested if response management is certified:]

- (ix) *Spill response management services for large spills:*
 - (A) Names, experience, and background of management team
 - (B) Description of the training and experience of management team, including a description of familiarity with:
 - (1) clients' response plan(s)
 - (2) area contingency plans in area of service
 - (3) national contingency plan
 - (4) state requirements in area of service
 - (C) Description of communications system for command and control, including:
 - (1) number and type of equipment
 - (2) frequencies available
 - (3) mobility of equipment
 - (4) description of communications redundancy
 - (D) Description of logistic management system, including:
 - (1) transportation coordination
 - (2) material maintenance and support
 - (3) security
 - (4) inventory control
 - (5) resource management
 - (E) Description of operational management system, including:
 - (1) spill trajectory interpretation
 - (2) boom and skimmer tactical direction
 - (3) temporary containment direction
 - (4) natural and economic resource sensitivity
 - (5) nonmechanical removal direction
 - (6) manpower supervisory capacity
 - (F) Administrative management system, including:
 - (1) procurement system
 - (2) accounting system
 - (3) claims processing system
 - (G) Description of public information and dissemination system.]

(f) *Attestation.* A responsible corporate official of the contractor shall sign the application, affirming that the factual information contained in the application regarding the capabilities described in paragraphs (a)-(e) is, to the best of his knowledge and belief, true and accurate as of the time of signing.

(g) *Agreement for Inspection and Participation in Drills.* The contractor shall state that the contractor agrees to submit to inspection and verification

8-25
DRAFT February 27, 1992

[Preamble Language]

Contractor Certification Program

a. Purpose and Scope

This regulation establishes a response contractor certification program. It has two major purposes.

First, many spill responders are expected to be named in multiple vessel and facility response plans, and the preparers of those plans need a common basis by which the responders will be measured and credited. Spill contractors' response services must be matched to the plan holder's requirements. Certification allows plan preparers to know in advance the value the plan reviewer will give for a particular contractor's capabilities. Plan preparers must assemble a sufficient number and mix of contractors to satisfy their response planning responsibilities. In addition, certification will allow contractors to know what credit their capabilities will be given, so they can better present or market their services. Contractor certification also will allow the contractor's capabilities to be evaluated and credited on a fair, consistent and efficient basis.

(A second major purpose of certification is to verify that response resources do in fact exist and are available from that contractor. The plan holder has a responsibility to verify a contractor's capability and claims, because the plan holder is responsible for performance under the response plan. The public purpose of certification is to better assure that the increased response capability required by OPA to help protect the environment from the threat of oil spills does, in fact, come about.

Contractor certification does not in any way relieve the plan holder of the plan holder's responsibility to carefully evaluate and select competent contractors. Certification is not a generalized "seal of approval" or guarantee of performance. Contractor certification is not intended to establish professional standards or provide a judgment of the many important but unquantifiable factors that would be necessary to establish an overall evaluation of a contractor's competence and skill.

Certification is simply a process by which the President's designee (e.g., the Coast Guard) will verify the existence of certain "facts" -- i.e., management structure, personnel, and the inventory of response equipment, -- and, where possible, assign a particular "quantitative value" to that inventory for purposes of relating specific contractor's response services to a plan holder's particular spill size. Certification must be based whenever possible on objective and quantifiable measures. However, certain important subjective factors must be identified by the contractor in the contractor's application to provide a clearer understanding of a contractor's capabilities.

DRAFT February 27, 1992

The proposed regulation reflects this intent in the definition of the term "certification". One key element of that definition is that certification is a process. Response contractors, to be cited in vessel response plans, must first file an application with the Coast Guard, identifying the service being offered, the type, quantity and location of equipment, number, training and qualifications of personnel, including corporate and individual spill response experience, management structure and certain other information about associated support. This information is factual in nature, and therefore subject to straightforward verification.

The certification definition also recognizes that certification is fundamentally the responsibility of the President under OPA-90. The President has delegated this responsibility to the Coast Guard. The Coast Guard may use other organizations to assist it in the certification process. However, the responsibility for certification remains a governmental one, because certification derives from the President's responsibility to review and approve vessel and facility response plans.

The definition of "certification" refers to the assignment of one or more "Response Values," where possible, for each of the contractor's designated response services. The translation of the type, location and quantity of equipment and personnel into a quantified capability for response is inherently a matter of judgment, particularly given the recognized limitations in spill response technology and variability in the types and conditions of any particular spill.

Each oil spill, particularly any large spill, is unique. The capability needed in a particular response will vary, involving dozens of factors, some of which cannot be accurately measured or predicted. For evaluation and quantification purposes, assumptions must be made regarding these factors. Many of these assumptions may not prove accurate or valid in any particular spill response. Many assumptions also are beyond the control of a particular responder, just as in the analogous case of response to a fire. Accordingly, this proposed regulation carefully avoids any intimation that various planning assumptions are or ever should be viewed as performance standards.

Although a contractor's capabilities must be related to a certain size spill, the assignment of individual Response Values is necessarily artificial and somewhat arbitrary. The term "Response Value" is used in this proposed rule to reflect this reality.

Although a contractor may wish to suggest a "Response Value" for each of a contractor's designated response services, the federal government retains the ultimate responsibility for the assignment of that factor.

b. Application for Certification

To obtain certification, a response contractor must first submit a certification application. The application must identify basic information about the contractor, as well as specific details regarding the contractor's available equipment, personnel, management structure and support. The type of information required, and the detail of that information, depends on the level and type of service that the contractor intends to offer. The application is intended to provide sufficient specific factual information to permit the application reviewer to assign one or more "Response Values" to each of the contractor's response services.

In addition to this quantifiable factual information, the response contractor also must provide descriptive information on certain important factors that bear on whether the contractor should be allowed to be cited in a spill response plan. For example, the application must list all notices of violation issued by the Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) and the Coast Guard related to oil spill response operations for the last five years, and a description of the disposition of those notices. In addition, the contractor may, as supplemental information, submit information that describes the contractor's experience.

The contractor must attest that the required factual information is true and correct to the best of the contractor's information and belief as of the date of attestation. Because the application is made to a federal agency for purposes of obtaining a governmental approval, knowing false statements would be subject to enforcement action under federal law. The contractor also is obligated to notify the COTP of significant changes in response capability (see below).

As a supplement to these factual matters, the response contractor may apply for and propose one or more "Response Values" to be assigned to the contractor's capabilities, by designated geographic area for each specific type of response service. (see below). The response contractor can supply supporting analysis or argument to support its proposal. The contractor may also submit supplemental information describing the contractor's experience, regulatory awareness or other factors which the contractor believes may be relevant to an understanding of the contractor's response capabilities.

The contractor may submit the application to the reviewer any time after the rule goes into effect. *[note: the Coast Guard will need to define who will act as reviewer of contractor applications. If the Coast Guard does not want to centralize all review of contractors, then it is recommended that a tiered approach such as follows be used:]* The reviewer, in the case of a contractor who requests certification only in a single Captain of the Port (COTP) zone, will be the COTP. If the contractor requests certification in more than one COTP zone, but not more than

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one Coast Guard District, then the reviewer will be the District Commander. In the case of a contractor seeking certification in more than one District, the review shall be the Chief, Office of Marine Safety, Security and Environmental Protection.

c. Certification Process

Once a certification application is received, the reviewer must make an initial review of the application to determine if it is complete. If not, the application should be immediately returned to the applicant with an explanation of the additional information needed to process the application. Once a complete application is filed, the reviewer has 45 days to assign an initial "Response Value" to the contractor, based on the representations in the application. This determination is only interim, because it is subject to subsequent verification of the factual information in the application, as well as a more refined evaluation once the agency has the opportunity for in-depth review.

The process described above is expected to result in an "interim status letter." The "Response Value" in the interim status letter may be used by plan preparers until final review and certification is complete. It is expected, given the workload of contractor and plan reviewers, that the Response Values contained in interim status letters likely will be the basis for the initial submission of response plans that are required by February of 1993. If the Response Value established by certification varies from the value used in the interim status letter, plan holders relying on that interim status will be allowed a reasonable time to supplement their resources. This may be accomplished through upgrade of the contractor capabilities or by supplementing or replacing that contractor's resources with other certified contractors.

d. Certification Criteria

The reviewer must certify any contractor who submits a true and complete application demonstrating response resources that satisfy the approval criteria. Certification may be denied if information in the application is false, or if the contractor fails to meet the approval criteria for certification of any services. An important part of contractor certification is the assignment of a Response Value or Values to the contractor's response resources for purposes of preparation of vessel or facility response plans. The reviewer will assign Response Values based on a best judgment basis, as informed by certain presumptive planning criteria. These planning criteria will be made available to contractors to allow them to suggest appropriate Response Values. A contractor whose capability does not match these presumptive norms may submit information demonstrating the equivalency of its own resources. Planning assumptions used to arrive at the Response Value may also be adjusted based upon a demonstration that other planning assumptions are more accurate for the contractor's specific equipment or personnel.

The certification of a contractor also includes the concept of the credit due a contractor given the contractor's combination of mobilization time and location. Contractors, for a given response service for a given Port Area, would be assigned a classification. Class I for a given service for a given contractor requires a mobilization time of less than [2] hours and location of the resources associated with the service within the COTP Port Area. A Class II contractor service would be located within the Port Area, and mobilization within [12] hours, or a contractor with a combination of mobilization time and location that would allow the resource to be moving within the Port Area within the [12-hour] period. Similarly, Class III would be within [24] hours, Class IV within [48] hours, and Class V within [72] hours.

The Response Value would therefore be specific to a certain geographic area for a specific class of service. For example, XYZ Response Contractor could be certified for Class II on-water oil removal services for the offshore environment in a specified COTP port area in an amount of 10,000 barrels. The same contractor also may be certified for Class II on-water removal service for the nearshore harbor environment of 15,000 barrels.

Part of the certification process requires that contractors define their mobilization time. The primary goal is that equipment and/or personnel will be available and ready to deploy, upon notice, with prompt dispatch. The intent of this requirement is to ensure that first crews are dispatched and someone is working to fill any special requirements.

c. Denial of Approval and Appeals

If the reviewer finds that the contractor does not qualify, the contractor can be denied approval. The letter of denial must state why approval was denied, and explain any deficiencies, and explain the process for appeals and resubmittal. The reviewer also may approve a different Response Value for some or all of the contractor's designated services.

If the reviewer denies certification, or selects a "Response Value" less than what the contractor applied for, the contractor may appeal the decision to ... *[note: appeal process to be specified by the USCG, but with the recommendation of at least one level of internal appeal, and with at least one appeal to Washington before going to the courts].*

f. Notification of Significant Changes in Response Capability

Once a contractor has been certified, certification is valid for a period of [5] years. However, contractors are required to notify the COTP of a significant reduction of capability, as specifically identified in the certification. The proposed regulation requires this notification to be in advance, if the significant reduction is

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planned, or no later than 24 hours after the contractor becomes aware of the significant change, if unplanned. The COTP can then determine whether to require plan holders to secure additional capability, or make other practicable arrangements to compensate for the reduced capability.

g. Effect on State Certification

The contractor certification established in this rule is designed to implement the requirements of OPA. Some states may have similar contractor certification requirements under individual state laws. Nothing in this rule is intended to preclude reliance on these certification rules or the federal certification process by states where it is appropriate to do so. In fact, States are encouraged to rely on the federal certification process, to the maximum extent practicable, taking into account any differences in the purposes and value of the federal certification process and the specific requirements of state law.

[REGULATORY LANGUAGE]

[NOTE: The regulations describing the contents of vessel and facility response plans will establish the types of services for which the response plan holder must rely only on certified primary response contractors]

Sec. XXX.00 Contractor Approval

(a) This section defines the process for certification of response contractor services to be cited in individual response plans.

(b) *Definitions.* For purposes of sections XXX.01-.05, the terms below shall have the following meanings:

(i) "*Certification*" is the process by which the President's designee will verify a primary oil spill response contractor's inventory of available spill response equipment, personnel, management structure, and support, and assign a Response Value for those resources within a standardized classification of designated response services, for a specific geographic area, for purposes of preparation of spill response plans.

(ii) "*Certificate*" is the final document issued following verification, inspection and final review by the reviewer.

(iii) "*Interim status letter*" means the letter sent by the reviewer to the contractor describing the initial Response Value assigned to the contractor pending verification of the factual information contained in the application and an in-depth review of the contractor's application for purposes of certification.

(iv) "*President's designee*" means the federal official delegated responsibility by the President under OPA-90 for approval of response plans. Pursuant to Executive Order 12777 the President has delegated responsibility for approval of vessel response plans and transportation-related onshore facilities to the Commandant of the Coast Guard. The Commandant has delegated responsibility for certification of primary response contractors to various "reviewers" under this rule.

(v) "*Response contractor*" is any person who provides designated response equipment or services under contract or other means approved by the President directly to an owner or operator of a tank vessel or facility required to have a response plan under 33 U.S.C. 1321(j)(5), which designated equipment or services are required to be available and identified in such plan.

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(vi) "Reviewer" means: (1) in the case of a response contractor seeking certification in a single COTP zone, the COTP; (2) in the case of a response contractor seeking certification in more than one COTP zone, but only one Coast Guard District, the District Commander; and (3) in the case of a response contractor seeking certification in more than one Coast Guard District, the Chief of the Office of Marine Safety, Security and Environmental Protection.

(vii) "Response Value" means the value, in terms of barrels of oil for a particular defined service in a defined geographic area, that is assigned to a primary response contractor for purposes of being identified as response capability in a vessel or facility response plan.

(viii) "Mobilization time" means the time in which initial personnel are able to begin movement of response resources to the spill scene.

Sec. XXX.01 Contractor Certification Application Content

(a) *Required Information.* A person desiring to be a primary response contractor must file an application that contains at least the following information:

- (i) Contractor's name, mailing address and phone number;
- (ii) The specific response services being offered for certification;
- (iii) The specific location of all spill response resources, and the areas in which spill response services using each resource is being offered;
- (v) A list of all Occupation Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) and U.S. Coast Guard (USCG) notices of violation related to oil spill response operations and disposition of those notices for the last five years. Any applicant with less than five years under their current business name or organization shall provide the same information for any oil spill activities or businesses participated in by the principals in the new company within the last five years;
- (vi) an organizational diagram depicting the chain of command;
- (vii) a call-out list for the contractor's resources, and a description of the call-out procedure;
- (viii) For each type of service, the types of oil to which the contractor is willing and able to respond;
- (ix) For each type of service, the planned mobilization time for that resource.

(b) *Equipment.* For each type of service, the specific significant equipment available to be applied to that service, including:

- (i) type, quantity, age, and location;

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- (ii) whether the equipment is owned or under contract;
- (iii) If the equipment is contracted from another party, the application must identify:
 - (A) the name, address and telephone number of the owner of the equipment;
 - (B) the equipment's storage location and area of operation;
 - (C) the contractual terms regarding availability of the equipment to the contractor;
- (iv) a statement of the maintenance program for such equipment, together with a description of records of such maintenance;
- (v) identification of the number of operators necessary to operate the equipment over a sustained response (i.e., 30 days);
- (vi) for each piece of equipment, a description of: the make, model, type, and applicable design limits (e.g., suitability for different types of oils and operating environments, as related to adverse weather);
- (vii) a description of contractor's communications equipment, including the amount and frequencies, and identification of certified operators;
- (viii) for any equipment not located in the COTP zone for which certification is sought, a description of the transportation capabilities available for use in a response;
- (ix) a description of the readiness for mobilization of response resources and the means of mobilization.

Equipment shall be listed only if it is in a fully operable condition. Future equipment, ordered but not yet delivered and fully operable, may be listed, but it must be listed separately and so identified.

(c) *Personnel.* For each category of personnel identified as a spill response resource, the application shall, for each location:

- (1) list by job category;
- (2) match to the equipment list and scope of service, including the plan for how the equipment and people necessary to provide the service will be brought to bear in an incident from what source; and
- (3) list training and qualifications, including OSHA Hazardous Operations training and how additional personnel are planned to be trained within what timeframe if they will be required to meet the service listed.

The application shall also list the total personnel available.

(d) *Management Structure.* The application shall identify the management structure associated with the service(s) offered.

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(c) *Service-specific information.* In addition to the general information described above, the applicant must submit the following service-specific information, as applicable to the service offered:

- (i) *Boom control/containment/protective booming services*
 - (A) Describe the platforms for deployment (number/type); and,
 - (B) Amount and condition (e.g., 2000' of offshore boom/vessel).
- (ii) *On-water recovery services*
 - (A) recovery platform (for owned vessel and vessel of opportunity recovery systems):
 - (1) name of vessel;
 - (2) size/class;
 - (3) location; and,
 - (4) contract terms of availability.
 - (B) skimming system:
 - (1) make;
 - (2) model;
 - (3) manufacturer's nameplate capacity; and
 - (4) applicable design limits (e.g., suitability for different types of oil and different operating environments, as related to adverse weather).
 - (C) personnel trained to operate the equipment:
 - (1) name;
 - (2) position description; and,
 - (3) training or experience.
- (iii) *Shoreline remediation services*
 - (A) number of persons available for beach cleanup
 - (B) description of supplies/support for beach cleanup
- (iv) *Transfer/storage services*
 - (A) type and capacity of storage/transfer facilities

[Services considered for certification but not included at this time are source control, non-mechanical removal, wildlife treatment, lightering, salvage, fire fighting, logistic support, disposal, analysis and testing]

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(f) *Attestation.* A responsible corporate official of the contractor shall sign the application, affirming that the factual information contained in the application regarding the capabilities described in paragraphs (a)-(e) is, to the best of his knowledge and belief, true and accurate as of the time of signing.

(g) *Agreement for Inspection and Participation in Drills.* The contractor shall state that the contractor agrees to submit to inspection and verification

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of the designated capability cited in the application. The contractor also agrees to make itself available to participate in drills as reasonably necessary to verify the contractor's application.

(h) *Self assessment.* A primary response contractor may submit with the contractor's application a suggested Response Value for each of the contractor's response services for each geographic area to be served. The applicant should provide an explanation and analysis to support the suggested Response Value, based on standardized planning factors identified by the reviewer, or such other planning factors as the contractor shall demonstrate more accurately reflects the contractor's response capabilities. The applicant may also include other information that may bear on an applicant's capabilities, including a description of the applicant's experience and regulatory awareness and compliance.

(i) *Mobilization.* The contractor shall state the time for initial mobilization of its resources. Equipment readiness shall include being available and able to be promptly dispatched to a spill site, not counting normal maintenance and repairs.

Section XXX.02 Contractor Certification Application Procedure.

(a) *Filing address.* Applications must be filed with the appropriate reviewer. The addresses are as follows:

[provide filing addresses]

(b) *Time for Filing.* Applications may be submitted at any time after adoption of this paragraph.

Section XXX.03 Contractor Application Review

(a) *Review for completeness.* Upon receipt of a response contractor certification application, the reviewer shall promptly evaluate the application for completeness. If the application is not complete, the reviewer shall return the application promptly, identifying the deficiencies in the application.

(b) *Review for interim status.* An application shall be reviewed within 45 days of receipt of a complete application. The reviewer shall send an interim status letter within 5 days of completion of a review. If, at a later time, the reviewing agency determines that the terms of the interim status letter should be limited, it shall so notify the contractor, who shall be given a reasonable time to provide acceptable numbers or types of response resources.