



**Aleutian Island Risk Assessment Advisory Panel:
Regulatory Workshop Summary
Anchorage, AK
November 12, 2009
9:00 AM- 5:00 PM**

Advisory Panel Member Attendance

Brent Paine (Primary-Fisheries); Tom Gemmell (Alternate-Fisheries); Shirley Marquardt (Primary-Local Government); Louise Audette (Primary-Mariner, Oil Barge/Tanker); Mike McGlothlin (Alternate-Mariner, Containership); Marc Smith (Primary-Mariner, Trampers); Ed Page (Primary-Marine, General); Tom Rueter (Alternate-Marine, General); David Gregory (Alternate-Subsistence User); Bob Umbdenstock via teleconference (Primary-Marine Salvor); Rick Wilson (Alternate-Marine Salvor); Pete Garay (Alternate-Marine Pilot) Whit Sheard (Primary-NGO, Environmental); Karol Kolehmainen (Primary-NGO, Local); Frank Kelty via teleconference (Alternate-NGO, Local); Jeff Williams (Primary- Resource Manager); Catherine Berg (Alternate-Resource Manager)

Management Team Attendance

Gary Folley (ADEC); Lt. Commander Robert Fields (USCG); Krystyna Wolniakowski (NFWF); Jay Wright (NFWF) via teleconference

Risk Analysis Team Attendance

Laura Tesch (ERM); Jack Colonell (ERM)

Facilitation Team Attendance

Tim Robertson; Amy Gilson; Leslie Pearson (Nuka Research & Planning Group)

Public Attendance

Jim Butler (Guest speaker- Law Office of Baldwin & Butler); Doug Davis (Guest speaker-Law Office of Keesal, Young & Logan); Dave Eley (Guest speaker-Cape International, LLC); Jean Cameron via teleconference (Guest speaker-Pacific States/B.C. Oil Spill Task Force); Marty Farris (Guest speaker-ADEC/IPP); CDR James McMahan (Guest speaker-USCG District 17); Jon Neel via teleconference (Guest speaker-WA Department of Ecology); Judy Miller (ASRC Energy Service); Roy Corral (Alaska Newspaper); Nick Garay (Public); Bob Pawlowski (Denali Commission/Public); Bev Niemann (Delta Western) via webinar; John LeClair & Bob Heavilin via webinar (AK Chadux); Rose Cox via webinar (AK Newspaper); Michael LaTorre via webinar (North Star Utilities); Leiv Lea via webinar (Foss); Robin Waldron via webinar (Qawalangin Tribe); Tom Lakosh (Public)

Purpose: A key goal of this project is to identify and evaluate risk reduction measures for safer marine transportation operating throughout the Aleutian Islands and Bering Sea. The goal of this workshop is to inform the Advisory Panel, Project Team and Public about the legal/regulatory framework that would govern any proposed risk reduction measure. This workshop included briefings on international, federal, and state rules governing marine vessels transiting the region.

International Law, Conventions and Treaties

U.N. Convention on the Law of the Sea (CDR James McMahan)

Link to presentation:

<http://www.aleutiansriskassessment.com/documents/01McMahonLawoftheSea.pdf>

This presentation provided a basic foundational on the International Law of the Sea and served as background to the other presentations made throughout the day. The International Law of the Sea is designed to clarify the government's authority over the sea and freedom to navigation. The first United Nations Convention on the Law of the Sea (UNCLOS) was in 1958 of which the United States was a party too. This Convention reviewed issues associated with defining extent and authority for the territorial sea, high sea, continental shelf, and fisheries and conservation. Issues associated with the High Sea and fisheries and conservation were not well receive or addressed. In 1960, UNCLOS 2 occurred with the goal of trying to resolve and reach agreement on fisheries and the high sea but nothing came out of the conference. In 1973, UNCLOS 3 occurred and the product of that Convention was the Law of the Sea. It took nearly a decade to codify customary and international law (1982). In 1994, the United States signed the Law of the Sea but it has not ratified it. Congress has the authority to ratify the Law of the Sea Convention. The United State will accept and act in accordance to the Law of the Sea and recognizes the rights of other nations in waters off their coast. Within the Law of the Sea, 12 nautical miles representing the Territorial Sea; the Contiguous Zone extends from the coastline out to 24 nautical miles and often referred to the regulatory zone; and the Exclusion Economic Zone extending 200 nautical miles from the coastline allowing for the sovereign rights to resources. A coastal state can claim a continental shelf and can exercise sovereign right on the seabed or under the seabed. A coastal state can put in place a safety zone of 500 meters from a facility such as an oil platform.

National waters or Internal waters are subject to the territorial sovereignty of a coastal nation and vessel operators must request consent to come into the area. Coastal states exercise full sovereignty subject to the right of safe haven and safe harbor. In territorial sea, innocent passage exists allowing the right to traverse the territorial sea going from one country to another country and this can include anchoring to avoid storms. Vessel operators must also provide assistance to other vessels in distress. A coastal state can temporarily suspended transit for security purpose. A vessel operator cannot load or unload cargo or persons and may not interfere with coastal state communication.

Straits used for international navigation are referred to as transit passage straits. It's important to have access through the straits, which connects one area of the high seas to another. A coastal state can't suspend the right of transit passage. The coastal state has limited authority with an international strait. A vessel must comply with collision regulations and international pollution control standards. Traffic separation schemes can also be established.

International Framework Overview (David Eley)

Link to presentation:

http://www.aleutiansriskassessment.com/documents/02EleyIMOPresentation_Aleut_AP.pdf

This presentation focused on the International Maritime Organizations (IMO) contribution to safety, clean seas and secure, safe shipping. The objective of the overview was to explain who IMO is, where it gets its mandate and how it contributes to safe shipping and cleaner oceans. The four most comprehensive IMO instruments are—Safety of Life at Sea (SOLAS), Marine Pollution Prevention (MARPOL), Standards of Training, and Certification & Watch keeping for Seafarers (STCW) and International Safety Management (ISM) code. Of recent the International ship and port security code has become very important. After the Exxon Valdez oil spill there was a push by nations and IMO to cooperate more closely on oil spills and the ability to respond to oil and chemical spills.

The IMO organization is a daughter agency of the United Nations (UN) proper. It's set up like the UN—it has its own Secretary General, and an assembly that meets every two-years. There are several committees and sub-committees within the organization. IMO is topical, they continue to try and advance or raise the bar for safety. Top topics include piracy, irradiated nuclear fuel and carriage at sea.

Important definitions for understanding IMO vessel registration include:

- Nation state
- Flag state- the state or location of which the ship is registered (Panama, Liberia) and dues paid to IMO is based on the registered tonnage
- Port state- state the vessel is calling business
- Coastal State- the state that the ship is passing by offshore (i.e.-United States)

An International treaty or convention get its power when the parties or countries sign onto or ratify a treaty. The treaty only becomes an international law when countries ratify a treaty, convention or code. IMO conventions fall under the categories of safety, environmental protection, and liability & compensation particularly for pollution. The primary conventions and codes are: Safety of Life at Sea (SOLAS), Marine Pollution Prevention (MARPOL), Standards of Training and Certification & Watch keeping of Seafarers (STCW), International Safety Management (ISM) code. These conventions have been ratified by 99% of the tonnage of the foreign flagged vessels. A code is a set of technical guidelines on how to do things or conduct activities. The Port state interprets the codes for applicability and possible enforcement. IMO doesn't regulate coastal state issues.

The Nairobi convention on the removal of wrecks is the newest issue IMO is working on. Conventions are named after the location where the meeting or convention was held (i.e.-Nairobi). This convention is designed to have companies pay into a fund to pay for the removal of vessels.

SOLAS focuses on how ships are structured, operated and managed. Not all vessels have

to adhere to SOLAS. If the vessel is used for international voyages or trade then they're required to comply with SOLAS. SOLAS has been updated with amendments almost every year.

Flag of convenience—the reason these ships are registered in foreign companies is because they are not taxed according to domestic laws of that country. In terms of economics it's quite good—Panama, Costa Rica, Malta have these schemes. The standards are very high because they all comply with SOLAS. The concern may be the lack of flag state overview of the vessels to ensure compliance. Countries use classification societies like Det Norske Veritas or American Bureau of Shipping. A surveyor will inspect the ship and issue a certificate to make sure it's in compliance with SOLAS. SOLAS has a provision for Port State control such as inspections. There's an ISM code incorporated into SOLAS. Essentially they must have a written system for operating the ship.

MARPOL had its genesis with the Torrey Canyon incident in the United Kingdom. There are many annexes to MARPOL and the U.S. hasn't signed off on all the annexes. There's a precautionary approach that says that we're going to build ships and put restrictions on how they operate but it's possible they may have an impact on the environment. The second is the polluter must pay for the cost of the incident. Special areas can be established through IMO where stricter transit rules apply. These areas have been established in the—Black Sea, Red Sea, Baltic Sea and parts of the Mediterranean Sea. There are provisions for Places of Refuge in MARPOL to assist ships transiting around coastal states. Shipboard Marine Emergency Plans (SOPEP) is required to be onboard all vessels. These plans provide minimal standards.

Questions & Discussion on International Laws & Framework

Marc Smith: Based on what's been presented, just the definition of Unimak Pass, does it fall under the international strait or doesn't?

Jim McMahon: Quick answer, yes. It is an international strait. It's a body of water connecting the EEZ with the Bering Sea on one side and the Gulf of Alaska on the other and is capable of being used for international navigation.

Pete Garay: How about the Bering Straits?

Jim McMahon: It's also considered an international strait.

Pete Garay: Does it complicate things that there are two countries on either side?

Jim McMahon: Yes. For example if you want to establish a traffic separation scheme. Both countries must agree before going to the IMO and petition for the change.

Tom Gemmell: Are there other areas considered international strait besides Unimak Pass?

Jim McMahon: There's not an easy answer. There are some countries that state the strait not only has to connect the high seas and EEZ must be used for international navigations

before it's considered to be an international strait. There are other countries like the U.S. that take the position that the strait must be capable for being used for international navigation.

Tom Rueter: When a vessel is ultimately proceeding to or departing from a west coast U.S. port does that subject that vessel to U.S. regulations while proceeding through the international strait?

Jim McMahon: The answer to that question is going to depend on the type of vessel. There are some regulations in place. I don't want to go into too much detail since I don't want to steal the show from Lt. Rob Fields who will be discussing the vessel response plan requirements. There are regulations that could touch certain vessels bound for U.S. ports.

Pete Garay: When a ship breaks down in an international strait, does the status of that vessel from innocent passage change to something else after a breakdown?

Jim McMahon: If that vessel presents an imminent threat of pollution or damage to the coastal state then the coastal state can take actions to prevent that from happening. If you have a vessel that breaks down and is heading towards rocks, the captain of the port can mandate that the vessel call a tug and have assist it.

Pete Garay: It doesn't have to be a Lloyd open form; the captain can just mandate an order.

Jim McMahon: Yes.

Pete Garay: Imminent? What does that mean? Let's say the Selendang Ayu, is there a period of time used—seven hours, one day?

Jim McMahon: The question asked was how do we define imminent. General principle of international law, if you wait longer you're at risk of having something bad happen. It's going to depend on the particular circumstances.

Gary Folley: Doesn't the Captain of the port make a judgment call?

Jim McMahon: Yes. The Captain of the port would need to articulate the factors or circumstance considered of how they determined it was an imminent threat.

Marc Smith: Are there any IMO instruments that the U.S. is not a signatory to?

Dave Eley: The U.S. has ratified most of the codes or provisions. There are a couple of annexes in MARPOL that haven't been signed. The sewage provision in MARPOL, the CG recognized that ships going into port would comply with the various conventions. The international pollution convention fund is managed out of London; the U.S. doesn't pay into it since we've got other funds or regime.

Dave Eley: I've got a question for Jim. When you have Cuba that has a 200-mile EEZ

and the U.S. that has a 200-mile EEZ and their 75-miles apart, how is the EEZ divided up in that regard?

Jim McMahon: Generally you'll see states that have overlapping EEZ's work to establish a mutually agreeable boundary and they may follow some principles like equal distance. There are some states that can't agree to their EEZ so they may take their dispute to an international forum at The Hague. There's a body that you go to requesting a commission be formed such as an International Tribunal to listen and resolve the dispute. They'll look at past case law and take into consideration arguments from the coastal states and may come up with a different solution. What's interesting in the Pacific that there are other coastal states like in Southeast Asia, the South China Sea you have a number of overlapping EEZ so it does create the potential for dispute. You may have countries come up with creative solutions like the continental shelf boundary being set for resources under the sea at one location but the EEZ for fisheries is set at a different location. It's just up to the two countries.

Brett Paine: Can I elaborate on that point? The U.S. and the Russian government are currently under negotiation on the boundary line between the two countries in the Bering Sea. There's the 200-mile zone, which we call the donut-hole where a treaty exists with six countries that govern fisheries in that zone. Above the donut-hole there's an area that's less than 200-miles from the coastline and there actually was a treaty negotiated in the late-80, the Russian government didn't sign but the U.S. Congress did sign. Currently because of this dispute, the U.S. Coast Guard patrols this area. There's a Russian Pollack fishery that occurs in this zone. There are ongoing negotiations that occur annually.

Mike McGlothlin- David, you talked earlier about irradiated nuclear fuel situation. What would be the affect of a nuclear powered warship transiting the Aleutians carrying this that has a casualty?

Dave Eley: I think it would be pretty bad. The contaminate nature of radioactive material is immense and how it spreads with a half-life. Those are probably regulated better than others. In Russia, there are ships tied to the dock where I've heard that some of the reactors have fallen through the ship and they're laying on bottom next to the dock. At some point, work will have to be done to raise and recycle the reactors. They may be transported on the northern route. It's something to monitor in the future.

Jim McMahon: I'll read a couple of articles from the Law of the Sea Convention that would apply to that scenario. Although the U.S. is not a party to the Convention, we do comply with the Convention. Article 30 talks about non-compliance by war ships with the laws and regulations of the coastal state, if any war ship does not comply with the laws and regulations of the coastal state concerning passage through the territorial sea, the coastal state may require it to leave the territorial sea immediately. That would be a vessel in innocent passage. Article 31 says the flag state shall bear international responsibility for any loss or damage to the coastal state resulting in non-compliance from a war ship or any government ship operated for non-commercial purpose concerning passage through the territorial sea. You'd pretty much be left with this war ship requesting assistance from the coastal state. It's a sovereign immune vessel so we wouldn't be able to take any enforcement action.

David Eley: If I may ask a follow-up question, given the U.S. is not a signatory to the Law of the Sea what kind of negative impact may that have with regard to this group or the State of Alaska may want to do with international transit through the Aleutians?

Jim McMahon: With respect to innocent passage and transit passage, in my opinion I don't think it would have any impact. Under our Ocean's Policy we said that it's customary and international law. Also when a country signs a treaty it has an obligation to do it's best to abide by that treaty. Probably the biggest drawback is having the lack of seat at the table when discussions are occurring. Another drawback would be lack of credibility with other nations that are party to the Convention.

Pete Garay: Are there any international straits that are designated as a particularly sensitive sea area? If so, what specific or particular tools would that give the bordering state to mitigate risk?

David Eley: The areas that Jim mentioned earlier such as the Mediterranean, Straits of Hormuz, and Red Sea have specific traffic schemes. The discharge rules under MARPOL are why some of these areas have specific traffic or transit schemes. You could make areas around various parts of the Aleutians particularly sensitive areas and you'd have to petition IMO to establish them.

Whit Sheard: Who sets the discharge limits and how do you go about establishing these area?

David Eley: You would send a resolution or draft resolution to IMO for consideration for it's next environmental protection meeting. You can do it as an NGO or the U.S. Coast Guard or State Department to introduce the resolution. Or you can do what the State of California has done and just make a law that says if you come within 24-miles of our coast then you must comply with our laws.

Pete Garay: if you have a particularly sensitive sea area (PSSA) can you increase your jurisdiction?

Doug Davis: all of the considerations of international law are trumped by the coastal states ability to regulate pollution type of problems or issues in that area.

Jim McMahon: Keep in mind with these PSSA's you'll have the State Department, defense and homeland security involved. Freedom of navigation is critical to the Defense Department.

Jean Cameron: How far do our notifications extend out if a vessel is in distress or casualty?

Jim McMahon: I would have to do some research in the CFR's. I don't know if it's 3-miles or 12-miles.

Shirley Marquardt: Lets say you have a vessel operating under a flag of convenience, in a

U.S. port having come from Asia and they weren't planning on transiting out of American waters anytime soon because their conducting business and let's say the Coast Guard was doing a port stay inspection that the vessel wasn't in compliance with SOLAS? Would they need to have those requirements met while they're in our EEZ.

Brad (Coast Guard MS Anchorage): It depends on the violation. If it's serious and some major issues then the vessel is detained in port until it's corrected to the Coast Guards satisfaction. We may give them a couple days or they may be allowed to correct it prior to their next port of call.

Shirley Marquardt: Do they have to keep onboard records of inspections?

Brad (Coast Guard MS Anchorage)- The Coast Guard keeps records via a database and it's shared with other countries.

David Eley: In terms of a ship that you may not be comfortable with being in your waters then you look at the vessels records. The vessel may be on a 'watch list'.

Shirley Marquardt: It's still not clear to me as to who has the authority to allow a vessel to leave port if there not in compliance with some of the requirements (operable line gun). I know that when the Pilots go onboard they'll ask the Captain if they've got this or that. They keep this information. Who can step in and say you're not going anywhere until certain things are fixed.

David Eley: If the Coast Guard finds a discrepancy they report it to the flag state, class society and it will all become a part of the record. There's a hammer that's there under Port State control.

Overview on the Pacific States/British Columbia Oil Spill Task Force (Jean Cameron)

Link to presentation:

<http://www.alutiansriskassessment.com/documents/03CameronAIRABriefing.pdf>

The intention of this presentation was to provide the Advisory Panel and Project Team with a background on the Pacific States/British Columbia Oil Spill Task Force (Task Force). The Task Force is an information resource for this Project. The Task Force exists to support the member agencies and was created 20-years ago under a memorandum of cooperation signed by each members head of state/province. The key stakeholders are the oil companies, response organizations, agencies, public interest groups, tribes and regional citizen advisory committees. Task Force members invite stakeholders to attend project meetings, participate on workgroups and round table discussions. The Task Force issues Legacy Awards to nominated organizations that have made a difference in oil spill prevention and response. The Task Force has many accomplishments, which include: review of west coast pilotage, outreach to recreational vessels and marina, tracking conversion of double-hull tankers. From 1999-2002 a study was conducted that reviewed the west coast vessel traffic patterns and volumes, casualty rate by vessel type, model drifts and tug availability data. Under the preparedness and response objective the Task Force has two agreements—one is to share member agency personnel during a significant

response and the other is the release of industry equipment to be relocated outside of its area of operation (mutual aid agreement).

The Task Force members worked very closely with the Alaska Regional Response Team on the development of Potential Places of Refuge guidelines, which meet the requirements established under IMO. All member agencies require contingency plans except for Hawaii. The Task Force is promoting response technology for limited visibility operations. Ongoing activities, the Task Force is interested in expanding the tracking of double-hull conversions outside of the TAPS trade; establishment of Harbor Safety Committees, and the Task Force is in the process of setting up a webpage on our site to each of the Harbor Safety committees. The Task Force currently is undertaking a significant project related to responding to spills in trans-boundary regions between Alaska-Canada and Washington-Canada. The Task Force sponsors the Clean Pacific conference which occurs every two-years and is timed with the annual meeting. The next annual meeting the Task Force will be promoting remote response activities and challenges.

Website for more information and access to Task Force project reports:

<http://www.oilspilltaskforce.org/>

Federal Laws & Regulations

Oil Pollution Act of 1990 (Doug Davis)

Link to presentation:

<http://www.aleutiansriskassessment.com/documents/04DavisOPA-90.pdf>

My background in all of this I've represented ship owners since I've started practicing in the maritime area on behalf of what is referred to as P&I Clubs or Pollution and Indemnification associations who are a group of international insurers. There are thirteen of these P&I associations, called the international group of associations. These are actual mutual insurance companies where individual ship owners pay into the association their a member of based on tonnage and the number of ships. P&I associations have a network of correspondence located around the world and correspondence assist the ship owners members when they have a problem. Most of the P&I clubs have law firms to assist the ship owner.

We've had some experience over the years with OPA90. OPA90 was passed by Congress following the Exxon Valdez Oil Spill and is the centerpiece of federal oil pollution legislation. Coastal states (United States) have the right to enact and enforce their own pollution laws. The right of coastal states to enforce their coastal law also applies to ships transiting in innocent passage. If a ship has a pollution issue the Coast Guard has the authority to regulate the vessel, as well as the State of Alaska. OPA extends out to the limit of the EEZ or 200 nautical miles. The right of individual states (Alaska) also has the right to enact their own pollution laws.

The features of OPA include elements of liability for a person that will be responsible (responsible party) is strictly liable without regard to fault. This includes removal and damages resulting from an incident. The responsible party is any person that owns, operates and charters a vessel. Section 2702 of the U.S. Code provides for the liability provisions. Removal costs are also defined in the act. These are the cost of removal after

a discharge has occurred or a substantial threat of a discharge. Damages are also specifically defined in the Act and apply to natural resources, personal property, subsistence use, loss of revenue (taxes), loss of services and public services, basically third-party damages.

Defenses to liability and limitation of liability on the part of the responsible party— complete defenses include: act of god, act of war and acts or omissions of independent third parties. These largely don't come into play during a spill. The limitation amount depends upon whether it's a tank vessels or non-tank vessel and relate to tonnage. The maximum amount the responsible party will be liable for paying.

One feature of OPA was the adoption or implementation of the Oil Spill Liability Trust Fund (OSLTF). The fund was created in 1986 but didn't come into play until after OPA was passed. Industry provides funds into this account. There are some very detailed claims procedures related to the fund. The claimant must file a claim to the responsible party first prior to submitting a claim to the OSLTF administrator.

There's a separate federal financial responsibility requirement under OPA and there's no pre-emption of state law. State's now have their own separate liability regimes.

Vessel Response Plans, NTV Proposed Rules, Salvage & Firefighting, Aleutian Trade Act Vessels (LT. Rob Fields)

Link to presentation:

<http://www.aleutiansriskassessment.com/documents/05FieldsVRP.pdf>

This presentation covered vessel response plans, non-tank vessel proposed rules and salvage & firefighting requirements. The vessel response plans program responsibilities, which the Coast Guard administers, as well as tank vessel response plans, non-tank vessel response plans, salvage & firefighting, waivers and rule making. The vessel response plan program is to prepare and align industry with existing, new and upcoming regulations. A consistent enforcement effort foster compliance by industry and possibly spur the buildup of response resources in remote areas and verifies vessel compliance with response plans and non-tank vessel requirements and verifies GSA's or geographic specific appendix.

After the passage of OPA90, tank vessels were required to submit response plans and non-tank vessels were required to submit response plans since August 2005. The notice to proposed rule making was published in August of this year so there's been somewhat of a lage. In that time, we've been educating and working with the non-tank vessel entities. Tank vessel response plans are required to have salvage and marine firefighting resources identified and contracted by February 2011. Tank vessel response plans apply to U.S. vessel or foreign constructed or adapted to carry oil in bulk cargo or residue, transfer oil subject to the jurisdiction of the U.S. Tank vessel response plans do not apply to foreign vessels engaged in innocent passage, offshore supply vessels, dedicated response vessels, and public vessels. A foreign tank vessel arriving or departing a U.S. port must have an approved plan and GSA for each zone it transits. Prior to conducting operations a qualified individual (QI) for shore side activity must be identified. The vessel response plans must be updated and include current contact information. One time waivers can be

authorized for tank vessels if the following is met- the owner/operator has a valid response plan or SOPEP onboard the vessel, a qualified individual is identified, and the owner or operator has a contract with a private oil spill response contractor that's capable of responding to a worst-case discharge from the vessel in that zone.

Non-Tank vessel response plans came out of the 2004 Maritime Transportation Act, which required the Coast Guard to issue regulations that require an owner/operator of a non-tank vessel a plan to respond to a worst-case discharge and to a substantial threat of a discharge. The rules were published in August 2009 and there's a 90-day public comment period. Non-tank vessels are self-propelled; they use oil as a fuel, 400 gross tons or greater and operate on the waters of the U.S. The enforcement of August 2008 focused on vessel of 1600 gross tons and above, and those that have not submitted plans. Using the Captain of the Port (COTP) operational controls until plans are submitted or have obtained pending or interim operational status. Non-tank vessel response plan database shows the status of plans-pending or interim operations, either is fine. These plans contain contracts for Oil Spill Response Organizations in the COTP zone, designated QIs and contains information on drills and training.

Salvage & Marine firefighting requirements for vessel response plans final rule, going back to OPA90 it mandated tank vessel operators to be capable of responding to the vessels worst-case discharge. Coast Guard amended vessel response plans, marine salvage and firefighting requirements for tank vessels carrying oil. These revisions clarify the salvage and a marine firefighting requirement that must be identified in their response plan and establishes time requirements for each of the acquired salvage and marine firefighting services. These changes assure that each of the services are identified and available for responding to incidents, up to and including a worst-case discharge. Originally plans didn't include this type of information. These new requirements will need to be added to the plan, as an appendix. The requirement focus on resource availability, defines salvage and marine firefighting services, establishes planning timeframes for response and provides criteria to determine resource provider adequacy. The planning criteria are based on location/time frames. Special salvage operations plan, heavy lift operations also have timeframes. Marine firefighting requirements have the same timeframe criteria but also include pier side capabilities. There's less variety and fewer marine firefighting capability across the country.

The Aleutian Trade Act is associated with the transportation of cargo related to fisheries that are onboard a vessel or fish tender in the Aleutians. The Aleutian Trade Act of 1990 provides for continued cargo service to remote communities in Alaska while ensuring increased safety standards for the fish tender vessels. Early on there were a lot of opinions on how this Act all came about. For a number of years going back to the 70's there were only a select number of fish tenders with only 20 identified leading up to the house proceedings and the vessels were exempt from a number of safety and manning requirements including inspections. The exemption in this law allowed for the carrying of general cargo to or from a place in Alaska by these vessels so long as there was no competition by a common carrier that provide weekly service by water from the U.S. In 1989, a couple of transport companies started to establish weekly services to Dutch Harbor and Unalaska, which in essence pre-empted the existing law for the fish tenders. The fish tenders were looking at discontinuing service to Dutch Harbor and go strictly

back to traditional fish tending operations or they would have to comply with the more stringent Coast Guard requirements, which would have probably put the fish tenders out of business. Furthermore, the large transport companies were not going to provide service to the smaller communities in the Aleutians. The fish tenders could conduct cargo deliver to the other communities but the tenders still had to come into Dutch Harbor. What does the Aleutian Trade Act mean for us—the fish tenders are non-inspected vessels, their exempt from vessel response plans, non-tank vessel response plans and SOPEP. Fish tenders are significantly sized vessels and could create problems during a response.

COTP Jurisdiction of vessels transiting and calling U.S. Ports (CDR James McMahon)

Link to presentation:

<http://www.aleutiansriskassessment.com/documents/06McMahonJurisdictionVessels.pdf>

This presentation began by providing a general framework for taking law enforcement or regulatory action. Typically before the Coast Guard could take some type of action there would have to be two things in place, first domestic legal authority to conduct law enforcement operations or take regulatory measures and the second is international jurisdiction over the vessel in question. When talking about authority to take action, we're talking about the government's legal power to act and their need to be a specific statutory basis of that authority. Jurisdiction is the legal power to exercise control over a person, place or thing and it's actions and effects. There are three types of jurisdiction the Coast Guard can have: prescriptive jurisdiction and that's the states power to make laws applicable to certain actors, events, things and places; the second being enforcement jurisdiction and that's the states power to compel compliance with it's laws and punish violations; and the third type of jurisdiction is adjudication jurisdiction and that's the power to subject certain persons or things to the states judicial process.

When applying jurisdiction there's different aspects that we look at the person, place and act. When we're talking about the maritime realm we're talking about the nationality of the vessel or flag of the vessel, nationality of the actor, person or victim, the location of the acts that might violate the law or the location of effects of a persons act. When talking about the act we're talking about the crime itself. In the maritime realm there are three different types of states that could have jurisdiction and that would be concurrent jurisdiction. A person is typically considered to be a vessel and there might be four different types of vessels that could be involved: a U.S. flagged vessel; a foreign flagged vessel; a third type is a state-less vessel, which is a vessel that claims no registry and isn't registered in any state. In international law any nation has jurisdiction over a state-less vessel; a fourth type is a vessel assimilated to statelessness, which is a vessel that tries to claim two flag states.

The second element is place. Place is whether the person or vessel is located in the internal waters, territorial sea, contiguous zone, EEZ or high seas. Internal waters have the same characteristic as land (i.e. Canada and U.S. border crossing). Typically a coastal state won't take action against a foreign flagged vessel unless they've disturbed the peace of the Port. A couple of other exceptions to the coastal state exerting jurisdiction over foreign vessels in internal waters would be the concept of force majeure and a sovereign immune vessel. Within the territorial sea the coastal state can regulate safety of navigation, protecting navigational aids, cables and pipelines, living resources and fish,

pollution, marine scientific research, fiscal immigration, sanitation and custom laws. A vessel that is in innocent passage through a territorial sea and enforcing the pollution laws against the vessel then the international standards would be applied. Those standards are developed at the IMO by the various states that engage there. The right of transit passage through an international straight is the right of non-interference for a vessel or aircraft transiting through an international strait used for navigation between areas of international waters. Vessels may generally operate without restriction provided their transit is continuous and expeditious. That passage may include anchoring as a course of navigation (storm avoidance). A coastal state may not exercise jurisdiction over a foreign flagged vessel engaged in transit passage but may impose limited restrictions related to navigational safety, the prevention, reduction and control of pollution, fishing or loading/unloading of any commodity, currency or person (i.e. prescriptive jurisdiction).

The act is typically some sort of offense that's defined in international **and** domestic law. In order to have a jurisdictional hook the violation of the offense must be found in both a treaty and domestic law. The Coast Guard must work within a certain framework. Typically starting with international law, bi-lateral agreements, treaties with countries to board vessels. Under international law will be domestic laws. Domestic laws need to be in alignment with international laws and conventions. The COTP zone extends out 200 nautical miles.

There's an overarching policy issue that's in place and the issue is ensuring that ocean trade continues to flourish and grow. Under customary international law there's a presumption that ports of every port states should be open to all foreign commercial vessels and that a port may be closed or a vessel denied entry to the port only when important interest of the port state justify the closure. Reasons for closure could be security, protection of the environment. Constraints on condition to port entry may be imposed and they must be non-discriminatory and consistent. The conditions should not have the practical effect of denying or impairing the traditional rights of the sea (rights of innocent passage, rights of transit passage).

In looking at the Great Circle map, there's a regulation in place for tank vessels and proposed rule for non-tank vessels. A vessel leaving a foreign port to a U.S. port will be required to have a GSA for each COTP zone it transits through. If you have a vessel that heading from Japan to Canada and it's transiting through our EEZ the regulation doesn't apply to the foreign flagged vessel, same if it's going through our territorial sea or Unimak Pass in innocent passage. There is a regulatory gap that certain vessels are going to fall through and aren't required to meet the non-tank vessel or GSA requirements.

Questions & Discussion on Federal Laws & Regulations

Marc Smith: Does OPA90 prescribe penalties?

Doug Davis: OPA specifically spells out response costs and damages but there are provisions in the Clean Water Act that provide for extensive civil penalties and fines.

Pete Garay: Two questions—Who in the State department issued the ruling about what the Australians ultimately did with pilotage? The second part is the opinion was OK with

the Australians had compulsory pilotage in the international strait as long as the vessel is going to or from an Australian port? Would that same opinion hold true for a vessel going from Japan to Washington, or a west coast state? Unimak Pass could be a compulsory pilotage area provided the vessel is heading to a U.S. Port?

Commander McMahon: Yes. Based on the way I'm reading the demarche I believe that would be acceptable. The Secretary of State probable the office of laws and treaties and it's dated February 2007 did the opinion.

Marc Smith: Specifically on the Western AK and COTP zone, alternative compliance issues, what's the current stance on the enforcement of that and where is that going to go when there isn't alternative compliance to worst-case discharge or the ability to respond?

Lt. Field: I'm going to have to research that question and get back to you. I should clarify a couple things from my presentation. When I was talking about the Aleutian Trade Act and vessels exempt from having vessel response plans—that's on the federal level. As far as the state, I'm not certain.

Tom Lakosh: I'd like to point out the laws applicable to them. There are laws pertaining to the Coast Guard mandate to prevent and respond to spills in an effective and immediate manner. These started in the Deep Water Port Act in 1972, amended by the Clean Water Act and OPA90. It pertains to who's liable to respond where and it gets down to the question of who actually pays for the equipment. The first and foremost issue is the Coast Guard is granted the jurisdictional authority to prevent and respond to spills it's also giving them the mandate to insure effective and immediate removal of a discharge or mitigation and prevention of a substantial threat of a discharge of oil or a hazardous substance. In all instances, whether a ship is subject to regulations or not, whether it's truly in innocent passage the Coast Guard is required to respond. It's required to show up with a salvage vessel, response vessels and equipment to meet the open-water requirement to respond in at least 6-foot seas. However you interpret the term effective and immediate must apply to private ships. I could argue that they have to follow them around every foot of the way even if it means following the vessel around with a salvage tug, lightering barge, and OSRV but minimally, practically it means the Coast Guard has to show up where ever a vessel is in trouble or threatening to spill oil anywhere within the EEZ to 200-miles out and everywhere in-shore with that. The question is who's responsible to show and with what assets is going to show up when that vessel losses control as an innocent passage vessel that losses power in Unimak Pass?

Ed Page: The jurisdiction is real clear that the Coast Guard can access the OSLTF and mobilize the resources. Even though the innocent passage vessel may not have the resources the Coast Guard has a process to access resources. The responsible party has an obligation to show that they can do something and if they can't in a timely manner then the Coast Guard will respond.

Tom Lakosh: The problem is you have to have an effective area plan that identifies resources so they can effectively respond to an oil and hazardous substance discharge. Identification, procurement, maintenance and storage; establishing Coast Guard strike teams, and that all has to be in the sub-area plan, immediately available to provide an

effective immediate response. If every vessel went to Canada, you'd still have to have that in the sub-area plan and pay for it out of OSLTF funds. Whether you want to hang these guys for GSA's or not and you want to give them an alternative compliance agreement, the Coast Guard still has to show up with the equipment.

Marc Smith: I'd like to point out that there was a response recently where the Strike Team was activated and they fulfilled their duty. I spent years in the Aleutians and I never saw an instant where the Coast Guard shrugged their duties. I think you bring up some great points and the Advisory Panel will take them into consideration. The question is the Coast Guard has limited resources and they did recently activate the Strike Force and fulfill their duty.

Gary Folley: I'm not sure I really understand your question, Tom. The Coast Guard does access to assets. They have a Strike Team and in the case of the Mar-Gun they responded to a vessel grounding in St. George in one-day.

Tom Lakosh: Effective? The Selendang Ayu?

Gary Folley: I think a one-day response from California to St. George, Alaska is impressive.

Leslie Pearson: Actually I have a question regarding the salvage and marine firefighting regulations. Since there's really not much capability in AK, do you know who might be pursuing this?

Lt. Rob Field: No I don't. I believe their hoping to entice industry to move in and meet these requirements.

Tom Lakosh: If the Coast Guard has the responsibility to immediately and effectively respond can a shipper say while I caused so much more damage because the Coast Guard didn't effectively and immediately respond? Is that a liability dodge for a tanker or shipper because the Coast Guard didn't have a sub-area plan that meets the requirement of the National Contingency Plan?

Doug Davis: Short answer-No. That isn't a defense under the OPA. It's not an act of god, third party, and force majeure. It doesn't rise to the defense of OPA.

State Laws & Regulation

Jurisdiction, Prevention & Response Contingency Plans (Martin Farris)

Link to presentation:

<http://www.aleutiansriskassessment.com/documents/07FarrisAleutianworkshop.pdf>

The Department of Environmental Conservation, Non-crude marine vessels group is aligned with the crude oil marine vessel group located in Prince William Sound. We regulated, monitor and review contingency plans for the non-crude carriers in western Alaska. We review the oil discharge prevention and response contingency plans or Plans in accordance with the applicable regulations set forth in Alaska Statute 46.04.030. We conduct inspect of all the regulated vessels on a regular basis. There's a large number

listed in plans that don't visit the state. We conduct drills to test the capability of the plan holder to respond. Our authority to require a Contingency Plan (46.04.030) and it basically says that if you plan operate a vessel carrying oil then you must have a plan. The geographic area of jurisdiction is defined as waters of the state, including all waters of the state. The geographic jurisdiction is often in question but AS 44.03.010 defines it as offshore water and land. The jurisdiction of the state extends offshore from the coast of the state as follows- the marginal sea, high seas and submerged land. That means if you're operating a vessels and you're offshore, outside of the 3-mile limit and you've got a problem with your vessel and it's going to impact the state or does impact the state then the state has authority. Jurisdiction exemption doesn't apply to non-tank vessels operating in waters of the state if the non-tank vessel is engaged in innocent passage. State laws don't conflict with federal. Operators must meet the federal requirements prior to obtaining an approved state contingency plan.

Contingency plans must be submitted for approval and have the proper content. The plan holder must show that they're in compliance with all state and federal laws. The plan holder must show DEC their equipment; we do inspections and possibly conduct a drill before approving a plan. The parts of the plan include a response action plan, prevention plan, training, technology, procedures, and design and safety procedures. Supplemental information is basically information on the vessel, size, engine, and firefighting capability, basically everything about the vessel. Best available technology is what works the best for the situation at hand. Response planning standard (RPS) is a volume of oil dictated in regulation related to the size of the vessel, product being carried and the persistency of the product. A non-crude carrier normally has to have an RPS of 15%. The RPS for a non-crude carrier such as those transiting Unimak Pass would be 15% of the cargo carried. The plan holder would have to show that they had all of the resource to collect that amount of oil in 48 hours, and continue on until the spill was cleaned up. Proof of financial responsibility is also required in order to obtain plan approval. This is surety that the plan holder can pay for an oil spill and all of the damages that may occur from an oil spill.

A non-tank vessel is defined under state law as a vessel over 400 gross tons, self-propelled and uses petroleum for fuel (fishing vessel, cruise vessel, freight vessel). AS 46.04.055 requires operators to have a plan, and proof of financial responsibility.

Regulatory Similarities, Differences & Compliance (Jim Butler)

Link to presentation:

<http://www.aleutiansriskassessment.com/documents/08ButlerAIRA.pdf>

What is it like to be one of these people in the room and from the regulated community? The decisions that are going to be made by your agency and the Advisory Panel are all going to effect day to day operations and that's going to trickle through to the communities. This presentation will touch on some of the players and how they can be perceived by the people on the other end of the phone (regulator); similarities between the state and federal models; the challenges, and things to keep in mind.

Who are the players? When I look at an agency, I break them into two groups-planners or technical folks and the response community. Most operators' deal primarily with the

planning and some have departments within their company that deal with the planning. On the response side when they have to call the Club, it's a situation they weren't hoping for but we have a plan in place. For the most part the response is the artistic component—is the response in the winter; summer, where, what spilled and what are the conditions; from a regulated party standpoint most of their world is in the planning world. That's the world that's a cost. It's in their budget. The response world you call your insurance man and you hope that you're in compliance with the policy so that insurance covers the incident. It's very expensive to comply with the planning world because the rules and regulations are changing. The operators in the Aleutians—domestic players are investing and complying recognizing that they're part of the community; the overseas players are seafarers. They go around the world looking for opportunities, come into port and drop off cargo but they may not come back for a while. Their view on how to comply is a bit different. You see it with the fish trampers too. Then you've got the spot charters. Last you've got the players on the bottom and that's the service provider. Every industry has service providers—oil spill response contractors, non-tank vessels, and incident management teams.

Similarities—everyone says that planning standards aren't performance standards. Tell that to someone trying to get his or her plan approved. In the planning world you've got to identify elements and must come up with a nightmare scenario and convince someone you've got the resources to respond to the scenario. Everyone has to have some capability with the shore side. There's a lot of different ways that can be done by developing relationships. I believe the Coast Guard thinks their regulations are most importance since they're meeting the jurisdictional responsibilities and I can tell you the people that work for the state take their jurisdictional responsibilities seriously too. They also have consulting agencies that get involved and they're issues are very important. It's pretty hard to get this all sorted out. Everyone believes that his or her regulations are most important.

Differences—Marc touched on this and it's the alternative planning criteria. It's kind of on a trip-by-trip basis. A contract is required by other approved means. What is another approved means? A virtual handshake. With the federal government a vessel response plan (VRP) is required for all vessels regardless of voyage, and the VRP model is fairly rigid. On the state side, it's relatively flexible. After the Kuroshima incident the state decide to create regulations for non-tank vessels (NTV) and asked how can we do this? The regulators sat down with industry to develop a different approach. They came up with a concept involving a response plan facilitator, which is similar to the concept of a qualified individual. Someone that is authorized to spend money on behalf of the ship owner to initiate a response, they're authorized to sign contracts. The response plan facilitator has the ability to enter into a relationship with an incident management team and oil spill response contractor. The process took away the VRP requirement when shippers are operating in state waters. The NTV's have submittal options—a detailed plan or a streamline plan and get approval within 5-days.

Challenges- At the end of the day someone has to pay for all of this. It's amazing all the different ideas you can get on what people think they should pay for their share versus everybody else. People may decide to charge by trip, maybe the type of cargo being carried, fleet discounts, a newer and nicer ship. Now you've got to figure out how to get

the fee into the fleet to support your operation and the system. The other challenge is to get the fee to keep the system going over time. Post-OPA90 is a good thing that happened in the lower 48. Post-OPA90, companies purchased equipment and created oil spill response cooperatives, which got pretty expensive over time. Prevention works! Look at the numbers Post-OPA and spills have gone way down. Companies still have to sustain all this capital, people aren't spilling oil and the technology of ships has improved too. Companies began to re-evaluate the system. The challenge for plan holders is the ability to adapt to changing economy, supply-demand yet stay in compliance with the regulations and within budget.

One of the biggest challenges with the transiting fleet is there's really no focal point for dealing with the shippers. If the vessels transit through the GSA and come into port at Long Beach the COTP can check them out for compliance. How do you develop an administrative component to support the system? Remote areas and cascading of resources, which indicates you've got non-traditional equipment and logistical methods. There's a need to try and align the federal NTV regulations and figuring out how to have a compliance regime for not only pollution but also the marine firefighting with a goal of trying to work towards a common program so the operators have some level of confidence that they'll be in compliance. You've got a higher probability the system is going to be sustained over time if you recognize the public, industry and regulators are all customers. Sustaining the system is real important.

Questions & Discussion

Tom Gemmell: I've got may be questions primarily for Marty. I want to make sure I heard you correctly in that you're exerting state jurisdiction beyond the 3-mile limit.

Marty Farris: Only if there's an occurrence outside of the 3-mile limit that will impact state waters.

Tom Gemmell: So your asserting jurisdiction in the Canadian and Russian waters.

Marty Farris: No.

Tom Gemmell: Does state law recognize the right of transit passage?

Marty Farris: Yes. State law does not conflict with any federal laws. If federal law allows for transit passage then the state recognizes that law.

Tom Gemmell: My last question for both of you is how much of the state law duplicate what the federal government is doing?

Marty Farris: I don't know if the state regulations duplicate federal regulations. I think of the federal regulations are in place but we don't conflict with them. When we go onboard and inspect a vessel we're not re-inspecting what the Coast Guard has inspected. If I see a violation of the federal requirements then we notify the Coast Guard of our findings. We don't do the same thing the Coast Guard does. We don't inspect Oil Spill Response Organizations (OSRO) either.

Jim Butler: I'll start at the back and move to the front. On the OSRO comment I do think the state regulations on the NTV side and NTV cleanup contractor, in order to get registered the NTV cleanup contractor has to agree to participate in agency conducted drills, whether or not there's a responsible party. The state can actually exercise the NTV cleanup contractor. If you're a large operator the state must go through the plan holder to exercise the OSRO. The reason for that is with all these NTV moving through you don't know who to exercise or when a ship might be coming in. There's always duplication in state and federal regulations. The legislature and Congress do connect a lot on just exactly how to deal with pollution but I can say that over time there's been an attempt by for the agencies that implement the statutes to communicate and try and figure. The operator still has to submit two plans for review, they'll still be answering to two different planning regimes and to the extent they get aligned will be driven by efforts like this to try and make that happen. The operator has to make a commitment to the federal government in writing and the state government in writing and to that extent your overlapping.

Ed Page: I'm trying to size everything up today. Anything your going to implement is going to cost something and you've got to price it out. Because of jurisdictional issues you'll never be able to get everyone to contribute to the solution. They still present a risk. They'll be driving by and won't contribute to mitigate the risk. Is that correct?

Jim Butler: Yes. You know people need to get away from the idea that ship owners just don't care when there's a pollution incident. It's a big thing. It shocks their company and reputation. They see the people that are injured. They take it very seriously. An analogy of these vessels that are outside of the safety net in post-OPA 90 is that the Coast Guard and state now have the resources and money or funds to respond to spills. The Coast Guard has contracts with most of the OSRO and the state and Coast Guard know how to work together. It's important to keep in mind that most of the pollution events come from the unregulated community. Go to a local harbor. The Coast Guard and state can still activate the system to deal with that part of the equation and they frequently do. The old adage of ready, fire, aim is very much alive in the government response world.

Ed Page: I'm looking at all the regulatory schemes and recognizing that there are some options such as PSSA's, routing but they're very challenging and long-term. I'm always looking for quick and easy solutions that make good sense. We need to recognize the timeline for recommendations and pragmatic common sense solutions that we can make progress on.

Tom Gemmell: It seems to me that there are things in the IMO regulatory pipeline that are happening, does anyone have a sense of what that will translate into in terms of risk reduction?

David Eley: A couple of items that have been mentioned are traffic separation schemes and PSSA. If you want to get it through IMO you've got to have a sponsor for it like the State Department, Coast Guard or an NGO that's registered with IMO and put it forward. There are two committee meetings a year for each major group and this would be the Marine Environmental Protection committee. In theory you might be able to get a

resolution passed within 18-months but there has to be a lot of support for the resolution. I don't know what that would to reduce risk though.

Karol Kolehmainen: This question might be off task but how many Regional Citizen Advisory Council's (RCACs) in the state and who funds them and what are there function?

Leslie Pearson: There are two RCAC's—Prince William Sound and Cook Inlet. They were memorialized in the OPA90 in a section specific to Alaska and Prince William Sound. Industry provides their funding through a contract and Coast Guard on an annual basis recertifies the organization.

Jim Butler: The idea came out of trying to find a mandated mechanism for stakeholder affected by oil transportation and pollution to have a designated forum to participate in the oil spill planning process—plan review, evaluating best available technology. The concept was to provide oversight not just to industry but also the agencies. There was a sense that agencies and industry over time can become a little bit to align with a mutual interest and individuals on a local level can monitor and participate in the process.

Bob Pawlowski: The dialogue has gone farther than Cook Inlet and Prince William Sound. Senator Begich has identified an Arctic RCAC as part of the implementation of the Arctic marine shipping assessment. That has not gone forward but the dialogue has started.

Tom Lakosh: My comments on the Tesoro and Prince William Sound Contingency plans challenged whether they'd be shipping crude oil from the Sakhalin Islands to Nikiski and the residual oil back to the Far East. I got as far in request for additional information from the DEC to have Tesoro state that they would not use Unimak Pass. They responded that they're under no restrictions on the use of Unimak Pass. The question I'd like to get back from Marty is are they going to be restricted from using Unimak Pass without having a full contingency plan for the area?

Marty Farris: Is this a subject that you're in litigation with the state right now?

Tom Lakosh: Technically it's not in litigation because the Commissioner hasn't responded.

Marty Farris: The process has begun and therefore I can't discuss it.

Tom Lakosh: The issue I raised before about the Coast Guard being able to respond for non-regulated vessels, vessels in innocent passage and outside of the regulated area with 30% of the vessels heading to Canada. Don't you think the Coast Guard should be chipping in to pay for OSRO's, that 30%?

Jim Butler: Right now 30% of nothing is nothing. I don't know if that's the case but frankly industry has chipped in because there's a 2 billion dollar bank account that can be turned on in about five minutes to deal with what might be going on out there as is the

state's response fund. I think that it's up for discussion but I don't anticipate the federal government to subsidize on a long-term basis to any system.

Risk Reduction Measure Case Study: Washington State Neah Bay Tug (Jon Neel)

Link to presentation:

<http://www.aleutiansriskassessment.com/documents/09NeelNeahBayERT.pdf>

Thanks for the opportunity to describe Washington's efforts to have an emergency response tug at Neah Bay. I plan to focus on our efforts and program here in Washington. I don't plan on commenting on whether the Aleutian Islands need a similar system. I'll talk about the need of having an emergency response vessel in Washington State, the mission of the tug, funding history, history of usage, the recent shift to industry funding and what the future holds.

The 2008 vessel traffic data that the tug is available to respond to includes 6200 cargo/passenger vessels, 843 oil tankers entering which is up slightly and the number of barge movements (5397) in Puget Sound is down by about a thousand. The important item here is the variety of vessel traffic. It's important to understand that these numbers reflect inbound transits to British Columbia and Washington State ports in Puget Sound. This list does not include the Columbia River. In general, there's well over 15 billion gallons of oil moved through the Strait, we have 8 major ports and 5 refineries in Puget Sound.

Along the Olympic coast an Area to be Avoid has been established where traffic must transit further offshore allowing more time for the tug to the location of a disabled vessel. Resources at risk by spills include fish & wildlife, tribal lands, commercial fishing, subsistence use and local communities of tourism and recreations.

The types of maritime casualties include drift groundings, power grounding; collisions; structural failure and fire & explosions. The tug staged at Neah Bay really is focused to respond to drift groundings where a ship has lost propulsion or steering. They have some opportunity to intervene for power groundings too.

In 1991 the legislature passed a requirement that an emergency response system be established for the Straits of Juan de Fuca. They didn't define the emergency response system. Beginning in 1999, the Department of Ecology pulled together a stakeholder group and established the North Puget Sound Risk Management Panel. The panel discussed the need for an emergency response vessel at Neah Bay and if there was, who should fund it. Before the report for the North Puget Sound Risk Management Panel came out it contained enough discussion and impetus that in the fall of 1999 the federal government offered up some money for the initial deployment of a tug. That was the first deployment. Since that initial deployment the State of Washington has paid for the tug on a seasonal basis. The cost for seasonal deployment has ranged from 1.5-2.0 million dollars per year. The tug is on duty during the winter months, which are considered the highest risk period. The number of responses to date has been 43 and there probably would have been more if there was year-round funding of the tug. In fiscal year 2008-09, the legislature provided 3.7 million dollars to fund a year-round tug. That provided for close to 10K per day for a tug contract. We've been paying for the tug, crew and ancillary

items. The fuel is paid for separately. This fall we began a tug deployment. The tug is at Neah Bay right now. During the last legislative session in the spring of 2009, the legislature passed a Senate Bill # 5344, which transfers responsibility for funding the tug to industry.

The largest port in the Strait of Juan de Fuca is Port Angeles, which is about 6-hours from the outer coast. There's no guarantee that a tug would be available in Port Angeles too. Some of the function of the tug is to stand by and assist vessels with mechanical problems. It doesn't always bring ships in under tow. The COTP might specifically order a ship to obtain the nearest available tugboat to provide assistance. Washington State at that point releases the tug from our contract and the tug gets underway using a private contract with the vessel company. When it's released from the Washington State contract then the tug company can reach it's own contract with the vessel company. This is a way for the State to relieve itself from some liability.

Other countries around the world have emergency towing vessels. The vessels are multi-mission vessels, larger and government funded. The tugs in Europe are located in similar ocean margins, weather and latitude.

As mentioned earlier, the 2009 Washington State legislature passed Senate Bill 5344 and that legislation requires industry to do several things—mainly to shift the funding from a government funded tug to an industry funded tug. On October 31st, industry submitted a report to the legislature describing the progress on their negotiations to establish a mechanism fee schedule for them to finalize contract for a tug. Coming up very soon is the deadline for plan submission. On the December 1st, industry operating in those waters will be required to submit a plan as part of their oil spill contingency plan to provide emergency response service by July 1, 2010. The reason why they need to be submitted earlier is so that they can be reviewed by Ecology, approved and a contract can be subsequently let to a service provider. Future use and challenges is who would be covered under oil spill contingency plans, however the tug will also be available as risk response to the Canadian traffic. The tug can be dispatched to non-regulated vessels and Washington State may pay for the dispatch.

More information is posted on the Department of Ecology website:

http://www.ecy.wa.gov/programs/spills/response_tug/tugresponsemainpage.htm

Questions & Discussion

Marc Smith: Does any of the cost that the state incurred been offset by any of the responses?

Jon Neel: Over the past 6-years we've had a fixed amount of money. When the tug is dispatched, it reaches an agreement with the company that has the vessel in distress. It's released from our contract and the State stops paying. They go on a price sector contract dollar and if they charge a dollar or a million dollars the state doesn't get anything from it. There's been a couple times when we've just paid for the tug response too.

Tom Rueter: What's the State's current outlook on the plan that industry must submit?

Dale Jensen: We're hopeful that it will come together. Industry has met 4 times and has worked through a lot of the administrative details, liability issues, how the money will be collected and the type of vessels. I believe they've already contracted with a company to develop the bid document. What they haven't done is reach total agreement on how they'll pay for it. The oil industry has committed to pay 50%, cargo-fishing-cruise ship industry has committed to 30%. The bigger part is that nobody wants to see it go back to the legislature.

Tom Gemmell: What kind of sea state, wind conditions that the tug must operate in.

Jon Neel: That information is on the website under contract details. The goal is to be able to get a fully laden oil tanker under tow in 20-ft seas, winds and hold into the sea/wind until other assistance arrives.

Bob Pawlowski: What does industries get out of it? Do they get any tax incentives or breaks?

Jon Neel: No.

Adjourned at 5:00PM AST