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Transportation Research Board and,
Committee for Risk of Vessel Accidents and Spills in the Aleutian Islands
The National Academy of Sciences
500 Fifth Street, NW
Washington, D.C. 20001
c/o Dr. Beverley Huey via email: bhuey@nas.edu

RE: Request for correction of **Risk of Vessel Accidents and Spills in the Aleutian Islands: Designing a Comprehensive Risk Assessment - Special Report 293** Committee for Risk of Vessel Accidents and Spills in the Aleutian Islands: A Study to Design a Comprehensive Risk Assessment

Dear Dr. Huey, Committee and Board Members:

Would you please correct the material misstatements contained in your Special Report 293, ("Report"), as described below? The instant critique of the Report is not comprehensive, but the glaring identified contradictions are so important to the problem of oil and chemical risk mitigation from shipping in the Aleutians as to warrant immediate retraction and revision of the offending sections of the Report.

The fundamental question at issue is the Report's misrepresentation that funding sources, or lack thereof, for risk mitigation have not been identified but there are multiple misleading statements apparently designed to support the underlying misrepresentation. There are several sections of the Report proffering this fundamental misrepresentation:

"None of the existing measures are adequate for responding to large vessels under severe weather conditions, and the substantial funding normally required for such a capability has not been identified.", at p. 3. **"Therefore, the committee recommends that USCG and the State of Alaska be ready and available to investigate funding levels, sources, and mechanisms for an Aleutian Rescue Tug, with the expectation that the Risk Assessment Management Team and Advisory Panel would request this information for early consideration within the risk assessment process."**, at p. 6. "Implementation of risk reduction measures will involve many challenges, including establishing sources for funding and reaching agreement with the various agencies and stakeholders that will influence the failure or success of a measure.", at p. 8. "There are many challenges to implementation, including establishing sources for funding and reaching agreement with the various agencies and stakeholders that will influence the failure or success of a measure.", at p. 87. **"Therefore, should the Phase A assessment conclude that rescue tugs have potential risk reduction benefits, the committee recommends that USCG**

and the State of Alaska be ready and available to investigate funding levels, sources, and mechanisms for an Aleutian Rescue Tug, with the expectation that the Risk Assessment Management Team and Advisory Panel may request this information for early consideration within the risk assessment process.”, at p. 113.

The clear implication of these statements of fact is that neither the vessels themselves nor the state or federal regulators have an obligation to fund the mitigation of spill prevention or response measures. The Report attempts to bolster this misrepresentation with the additional false statements implying that the Aleutian shipping is not subject to regulation due to their standing in “innocent passage”:

“Innocent passage. The right of vessel passage through a state’s territorial sea when not calling at a port in that state (up to 12 nautical miles from the baseline).”, at p. xii. “The 4,500 vessels that transit Unimak Pass annually are a mix of large container ships, bulk carriers, car carriers, tankers, and others—the majority foreign flagged and on “innocent passage” through these waters.”, at p. 2. “The volume of vessel traffic through Unimak Pass is roughly double that calling on all ports in the 17th USCG District (Alaska). Yet vessels entering those major ports are subject to a set of controls, whereas similar vessels traveling on innocent passage through the Aleutians need not meet comparable requirements.”, at p. 2. “The vessels involved in this trade are a mix of large commercial ships classed as container ships, bulk carriers, car carriers, tank vessels, and others. They are mainly foreign-flagged and on innocent passage through these waters.”, at p. 4. “By contrast, the roughly 1,700 local vessel transits are mainly U.S.-registered fishing vessels, so USCG can more readily exercise its authority over them, and additional particulars on their operations may be available from U.S. authorities.” at p. 59. “International law gives each coastal state broad jurisdictional authority to prescribe and enforce within its territorial seas, subject to the right of innocent passage. Since Unimak Pass is an international strait, foreign vessels enjoy the right of transit passage through it, as well as through waters north and south of the Aleutian Islands. While the United States could establish a traffic separation scheme or impose other requirements on shipping related to navigational safety within its territorial sea with the approval of the International Maritime Organization (IMO), it may not take unilateral action that would hamper or restrict international transit rights.”, at p. 70. “The exercise of this authority, however, is subject to the inclusive rights of the international community to innocent passage. Several of the UNCLOS articles (numbers 17, 18, 19, 37, and 38) define this right of innocent passage and explain how it applies for all nations to vessels transiting territorial seas and international straits (UNCLOS).”, at p. 70. “While transit passage refers to right of passage through an international strait, innocent passage refers specifically to the right of passage through a territorial sea when not calling at a port (for the United States, up to 12

nautical miles from the baseline). With respect to the application of Title 33 of the Code of Federal Regulations (CFR) Part 155, Subpart D, concerning VRPs, there is no real difference between U.S. and foreign vessels in the applicability of the requirement to carry such a plan; however, there is now a specific provision that this subpart does not apply to certain types of vessels, including foreign flag vessels engaged in innocent passage (33 CFR § 155.1010(c)(7)) and not calling at a U.S. port. Although transit passage is not specifically mentioned as an exception, it is certainly included by implication and practice for foreign flag vessels not calling at a U.S. port. When President Reagan issued a proclamation extending the U.S. territorial sea to 12 nautical miles, he stated, “In accordance with international law, as reflected in the applicable provisions of [UNCLOS], within the territorial sea of the United States, the ships of all countries enjoy the right of innocent passage and the ships and aircraft of all countries enjoy the right of transit passage through international straits” (Presidential Proclamation 5928 of December 27, 1988). Coastal states have considerably less jurisdiction over foreign flag vessels engaged in transit passage than those engaged in innocent passage. Thus by inference, the innocent passage exception of 33 CFR § 155.1010(c)(7) applies equally to vessels engaged in transit passage through Unimak Pass.”, at p. 70. “Although the United States could impose unilateral requirements within its territorial sea, it is reluctant to impose burdensome requirements on foreign vessels on innocent passage through those waters. This reluctance is reflected in 33 CFR § 160.103 (“Applicability”), relative to the control of vessel operations, which exempts from compliance ships in innocent passage through the territorial sea of the United States or transiting navigable waters of the United States that form part of an international strait.”, at p. 73. “Jurisdictional issues are complex—the legal right of transit and the right of innocent passage limit the intervention measures available to state and federal agencies.”, at p. 75. “Vessels transiting the North Pacific Great Circle Route between the West Coast of the United States and Canada and the Far East constitute the traffic flow of primary public concern, as the largest oil spills in recent years were the result of accidents involving cargo ships on innocent passage through Unimak Pass.”, at p. 76. “This includes vessels on innocent passage transiting immediately to the south of the Aleutian chain.”, at p. 78. “As containerships represent a significant portion of the vessels on innocent passage through Unimak Pass, the growth in vessel size will have a bearing on longer-term spill risks.”, at p. 91. “The ship traffic in the region comprises a mix of large containerships, bulk carriers, car carriers, tankers, and others—most of which are foreign-flagged and on innocent passage through these waters.”, at p. 110. “Vessel traffic *through Unimak Pass is roughly double that calling on all ports in the 17th USCG District (Alaska)*. Yet vessels entering those major ports are subject to a set of controls, whereas similar vessels traveling on innocent passage through the Aleutians need not meet comparable requirements.”, at p. 110.

The Report is clearly going to extraordinary lengths to repeatedly assert that the large Trans-Pacific ship traffic cannot be regulated because it is eligible for an “innocent passage” exemption from the regulatory requirements but these assertions are directly contradicted by, and mutually exclusive of, the applicable federal law quoted elsewhere in the Report and statistics showing that this traffic is in fact subject to regulation due to their trade at U.S. ports:

“However, *if a foreign vessel is bound for a port or other location in the United States, the United States may impose additional requirements, such as a vessel oil spill response plan (VRP) for tankers, as a condition of entry.* Such plans must include a geographic-specific appendix for each USCG Captain of the Port (COTP) jurisdiction to be transited; this includes transits to the outer edge of the EEZ (USCG 2007).”, *emphasis added*, at p. 70. “While transit passage refers to right of passage through an international strait, innocent passage refers specifically to the right of passage through a territorial sea when not calling at a port (for the United States, up to 12 nautical miles from the baseline). With respect to the application of Title 33 of the Code of Federal Regulations (CFR) Part 155, Subpart D, concerning VRPs, there is no real difference between U.S. and foreign vessels in the applicability of the requirement to carry such a plan; however, there is now a specific provision that this subpart does not apply to certain types of vessels, including foreign flag vessels engaged in innocent passage (33 CFR § 155.1010(c)(7)) and not calling at a U.S. port. Although transit passage is not specifically mentioned as an exception, it is certainly included by implication and practice for foreign flag vessels not calling at a U.S. port.”, *emphasis added*, at p. 71. “USCG has also given priority to developing VRP regulations for nontank vessels.”, *emphasis added*, at p. 71. “As noted earlier, there is also a regulatory effort under way to develop VRP requirements for nontank vessels.” *emphasis added*, at p. 73. “Among the 4,470 transits of large commercial vessels through Unimak Pass following the Great Circle Route in fiscal year 2007: – 3,580 vessels westbound (85 percent) – 890 vessels eastbound (15 percent) – 3,130 vessels bound to/from U.S. ports (70 percent) – 1,340 vessels bound to/from Canadian ports (30 percent)”, *emphasis added*, at p. 59.

These facts directly contradict the prior proffered notion that “the majority foreign flagged and on “innocent passage” through these waters” because the of fact that “70 percent” of the vessels are conducting trade with U.S. ports, thereby negating their standing in “innocent passage” and are not eligible for exemption under 33 CFR § 155.1010(c)(7). Put another way, the 33 CFR § 155.1010(c)(7) exemption only applies to the vessels not bound to/from a U.S. port, thereby subjecting the vast majority of both tank and nontank vessels to laws requiring spill prevention and response plans that require that *they provide the funding the spill/risk mitigation requirements.* Thus, there are in fact, clearly established funding sources for spill prevention and response in the form of regulated tank and nontank vessels. It is particularly troubling that

the Report raises the issue of the “...right of passage through an international strait...” giving the false impression and proffering the absurd notion that it is possible for a vessel in trade at a U.S. port(s) to absolve itself of any responsibility to prepare and fund spill response plans over thousands of miles of U.S. waters simply by transiting a few miles of an “international strait” along the way. Again, “innocent passage” is only garnered by virtue of the fact that the vessel is not visiting a U.S. port or conducting oil transfers in U.S. waters, and not by virtue of the fact that it is transiting an “international straight” irrespective of the vessel’s port of destination/origin in U.S. waters. The “right of passage” does not necessarily translate to a right of exemption from regulation unless all parameters that are necessary to qualify for the exemption are satisfied and the origin or destination of a U.S. port necessarily disqualifies any vessel from the regulatory exemption.

It is important, at this juncture, to specifically identify the spill/risk mitigation requirements applicable to regulated vessel traffic. As noted in the Report at page 71 the applicable regulation is “...Title 33 of the Code of Federal Regulations (CFR) Part 155, Subpart D...”. This regulation requires the regulated vessel to fund both spill response and salvage contractors with some of the pertinent sections provided below:

“§ 155.1035 Response plan requirements for manned vessels carrying oil as a primary cargo. (a) *General information and introduction.* This section of the response plan must include—(1) The vessel’s name, country of registry, call sign, official number, and International Maritime Organization (IMO) international number (if applicable). If the plan covers multiple vessels, this information must be provided for each vessel;...(c)(6) The procedures and arrangements for emergency towing, including the rigging and operation of any emergency towing equipment, including that required by subpart B of this part, aboard the vessel;...(c)(11)(i) Location of vessel plans necessary to perform salvage, stability, and hull stress assessments. A copy of these plans must be maintained ashore by either the vessel owner or operator or the vessel’s recognized classification society unless the vessel has prearranged for a shore-based damage stability and residual strength calculation program with the vessel’s baseline strength and stability characteristics pre-entered. The response plan must indicate the shore location and 24-hour access procedures of the calculation program or the following plans: (A) General arrangement plan. (B) Midship section plan. (C) Lines plan or table of offsets. (D) Tank tables. (E) Load line assignment. (F) Light ship characteristics. (ii) The plan must identify the shore location and 24-hour access procedures for the computerized, shore-based damage stability and residual structural strength calculation programs required by § 155.240. (d) Shore-based response activities. This section of the response plan must include the following information: (1) The qualified individual’s responsibilities and authority, including immediate communication with the Federal on-scene coordinator and

notification of the oil spill removal organization(s) identified in the plan... (e) *List of contacts*. The name, location, and 24-hour contact information for the following key individuals and organizations must be included in this section of the response plan or, if more appropriate, *in a geographic-specific appendix* and referenced in this section of the response plan: (1) Vessel owner or operator. (2) Qualified individual and alternate qualified individual *for the vessel's area of operation*. (3) Applicable insurance representatives or surveyors *for the vessel's area of operation*. (4) The vessel's local agent(s) for the vessel's area of operation. (5) *Person(s) within the oil spill removal organization* to notify for activation of that oil spill removal organization for the three spill scenarios identified in paragraph (i)(5) of this section for the vessel's area of operation. (6) Person(s) within the identified response organization to notify for activating that organization to provide: (i) *The required emergency lightering required by § 155.1050(l), § 155.1052(g), § 155.1230(g), or § 155.2230(g)*, as applicable to the type of service of the vessel; and (ii) *The required salvage and firefighting required by §155.1050(k), §155.1052(e), §155.1230(e), and § 155.2230(e)*, as applicable to the type of service of the vessel. (7) Person(s) to notify for activation of the spill management team for the spill response scenarios identified in paragraph (i)(5) of this section *for the vessel's area of operation*.”, *emphasis added*.

Although these regulations were written as applicable to tank vessels, the Report at page 58 indicated that there were 40 tank vessel transits through Unimak Pass between 10/1/06 through 9/30/07, and Section 701(c) of the Coast Guard and Marine Transportation Act of 2004 (Pub. L. 108-293) (2004 Act) requires that nontank vessel response plans be prepared and submitted to the Coast Guard consistent with the tank vessel requirements no later than one year after the date of enactment of the act (i.e., by August 8, 2005), (see USCG NVIC 01-05 dated 2/4/05). The subsequent NAVIGATION AND VESSEL INSPECTION CIRCULAR, NVIC 01 -05, CH-I, issued on 1/13/06 promulgated specific requirements for nontank vessel response plans including the following table of applicability:

NONTANK VESSEL'S FUEL CAPACITY	RECOMMENDED RESOURCES			
	SALVAGE	LIGHTERING/OFFLOADING	FIREFIGHTING	OSRO
2,500 bbls & >	YES	YES	YES	AMPD, MMPD & WCDI
250 to 2499.9 bbls	YES*	YES*	NO	AMPD & MMPD
< 250 bbls	YES*	NO	NO	AMPD

* These resources need only be identified for vessels with a fuel capacity of less than 2,500 barrels.

Thus, all of the “...large commercial vessels through Unimak Pass...” that annually include “...3,130 vessels bound to/from U.S. ports (70 percent)...” would necessarily have to file a Geographic Specific Appendix that demonstrated salvage, lightering and oil spill response “...for the vessel’s area of operation” because they all carry more than 250 bbls of fuel. Indeed, most, if not all, of these vessels carry more than 2,500 bbls of fuel and would therefore have to show firefighting capability in their plans as well. It is important to note that the existing regulations applicable to both tank and nontank vessels already include a salvage and emergency towing requirement and that new, more specific emergency towing requirements are due for implementation by 2/12/09 as taken from 72 FR 6168, February 9, 2007:

“The Coast Guard has decided to extend this suspension period for another two years to allow us to complete the rulemaking that will revise the salvage and marine firefighting requirements. **DATES:** This extension is effective as of February 12, 2007. Termination of the suspension will be on February 12, 2009.”

The salvage and firefighting requirements are set forth in this imminently scheduled regulation at § 155.4030(c)-(h):

“(c) *Integration into the response organization.* You must ensure that all *salvage and marine firefighting resource providers* are integrated into the response organizations listed in your plans. The response organization must be consistent with the requirements set forth in §§ 155.1030(d), 155.1040(d), and 155.1045(d). (d) *Coordination with other response resource providers, response organizations and OSROs.* Your plan must include provisions on how the *salvage and marine firefighting resource providers* will coordinate with other response resources, response organizations, and OSROs. For example, you will need to identify how *salvage and marine firefighting* assessment personnel will coordinate response activity with oil spill removal organizations. For services that, by law, require public assistance, there must be clear guidelines on how service providers will interact with those organizations. (e) *Ensuring the proper emergency towing vessels are listed in your plans.* Your plans must identify towing vessels with the proper characteristics, horsepower, and bollard pull to tow your vessel(s). These towing vessels must be capable of operating in environments where the winds are up to 40 knots. (f) *Ensuring the proper type and amount of transfer equipment is listed in your plans.* Your *salvage resource provider* must be able to bring on scene a pumping capability that can offload the vessel’s largest cargo tank in 24 hours of continuous operation. This is required for both emergency transfer and lightering operations. (g) *Ensuring firefighting equipment is compatible with your vessel.* Your plan must list the proper type and amount of extinguishing agent needed to combat a fire involving your vessel’s cargo, other contents, and superstructure. If your primary extinguishing agent is foam or water, you must identify resources in your plan that are

able to pump, at a minimum, 0.16 gallons per minute per square foot of the deck area of your vessel, or an appropriate rate for spaces that this rate is not suitable for and if needed, an adequate source of foam. (h) *Ensuring the proper subsurface product removal.* You must have *subsurface product removal* capability if your vessel(s) operates in waters of 40 feet or more. Your resource provider must have the capability of removing cargo and fuel from your sunken vessel to a depth equal to the maximum your vessel operates in up to 150 feet.”

If the regulations at 33 CFR §155, as amended to cover nontank vessels by Public Law 108-293 and NVIC 01 -05, CH-I, were not enough for the Report to identify funding sources for spill prevention and response in the Aleutians, both the USCG and the Alaska Department of Environmental Conservation, (ADEC), are required by law to independently plan for, and equip Area Response Plans using dedicated revolving funding sources. Under 33 CFR 1321:

“The President shall, in accordance with the National Contingency Plan and any appropriate Area Contingency Plan, ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance-- (i) into or on the navigable waters; (ii) on the adjoining shorelines to the navigable waters; (iii) into or on the waters of the exclusive economic zone; or (iv) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States. (B) In carrying out this paragraph, the President may-- (i) remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time; (ii) direct or monitor all Federal, State, and private actions to remove a discharge; and (iii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available... The President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances pursuant to this section. (2) Contents The National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to, the following: (A) Assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies and port authorities including, but not limited to, water pollution control and conservation and trusteeship of natural resources (including conservation of fish and wildlife). (B) Identification, procurement, maintenance, and storage of equipment and supplies. (C) Establishment or designation of Coast Guard strike teams, consisting of-- (i) personnel who shall be trained, prepared, and available to provide necessary services to carry out the National Contingency Plan; (ii) adequate oil and hazardous substance pollution control equipment and material; and (iii) a detailed oil and hazardous substance pollution

and prevention plan, including measures to protect fisheries and wildlife. (D) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies. (E) Establishment of a national center to provide coordination and direction for operations in carrying out the Plan... In addition to any action taken by a State or local government, when the President determines that there may be an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitat, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a hazardous substance from a vessel or facility in violation of subsection (b) of this section, the President may-- (A) require the Attorney General to secure any relief from any person, including the owner or operator of the vessel or facility, as may be necessary to abate such endangerment; or (B) after notice to the affected State, take any other action under this section, including issuing administrative orders, that may be necessary to protect the public health and welfare.

Oil Pollution Act of 1990, 33 USC 2701 **SEC. 1012. USES OF THE FUND.** (a) **USES GENERALLY.**—The Fund shall be available to the President for— (1) the payment of removal costs, including the costs of monitoring removal actions, determined by the President to be consistent with the National Contingency Plan— (A) by Federal authorities; or (B) by a Governor or designated State official under subsection (d); (2) the payment of costs incurred by Federal, State, or Indian tribe trustees in carrying out their functions under section 1006 for assessing natural resource damages and for developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of damaged resources determined by the President to be consistent with the National Contingency Plan; (3) the payment of removal costs determined by the President to be consistent with the National Contingency Plan as a result of, and damages resulting from, a discharge, or a substantial threat of a discharge, of oil from a foreign offshore unit; (4) the payment of claims in accordance with section 1013 for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages; (5) the payment of Federal administrative, operational, and personnel costs and expenses reasonably necessary for and incidental to the implementation, administration, and enforcement of this Act (including, but not limited to, sections 1004(d)(2), 1006(e), 4107, 4110, 4111, 4112, 4117, 5006, 8103, and title VII) and subsections (b), (c), (d), (j), and (l) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), as amended by this Act, with respect to prevention, removal, and enforcement related to oil discharges, provided that— (A) not more than \$25,000,000 in each fiscal year shall be available to the Secretary for

operating expenses incurred by the Coast Guard; (B) not more than \$30,000,000 each year through the end of fiscal year 1992 shall be available to establish the National Response System under section 311(j) of the Federal Water Pollution Control Act, as amended by this Act, including the purchase and repositioning of oil spill removal equipment; and (C) not more than \$27,250,000 in each fiscal year shall be available to carry out title VII of this Act.”

The OPA '90 Oil Spill Liability Trust Fund described above has recently been revived and expanded to allow a maximum fund size of \$2.7 billion and automatic reactivation of taxation at \$2 billion. ADEC has a similar dedicated revolving fund, the Oil and Hazardous Substance Release Prevention and Response Fund, (470 Fund), and a duty to plan for and equip area wide spill prevention and response:

“Sec. 46.04.200. State master plan.

(a) The department shall prepare, annually review, and revise as necessary a statewide master oil and hazardous substance discharge prevention and contingency plan.

(b) The state master plan prepared under this section must

(1) take into consideration the elements of an oil discharge prevention and contingency plan approved or submitted for approval under [AS 46.04.030](#);

(2) include incident command systems that clarify and specify the respective responsibilities of each of the following in the assessment, containment, and cleanup of various types and sizes of discharges of oil or a hazardous substance into the environment of the state:

(A) the Department of Environmental Conservation, the division of emergency services in the Department of Military and Veterans' Affairs, and other agencies of the state; responsibilities assigned to each agency must be consistent with its statutory authority;

(B) municipalities of the state;

(C) appropriate federal agencies;

(D) operators of facilities;

(E) private parties whose land and other property may be affected by the oil or hazardous substance discharge; and

(F) other parties identified by the commission as having an interest in or the resources to assist in the containment and cleanup of an oil or hazardous substance discharge;

AS 46.08.005. Purpose of Fund; Description of Accounts.

The legislature finds and declares that the release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state. The legislature therefore concludes that it

is in the best interest of the state and its citizens to provide a fund containing two accounts. Within the fund,

(1) one account consists of money readily available to the commissioner for the payment of the expenses incurred by the Department of Environmental Conservation during a response to a release or threatened release of oil or hazardous substances when authorized by AS [46.08.045](#) and for related purposes intended to address those releases;

(2) the other account consists of money that the state may use during a response to a release of oil or a hazardous substance, other than one described in (1) of this subsection, and to a threatened release of oil or a hazardous substance, to pay the expenses of making preparations for the possibility of a release or threatened release of oil or hazardous substances, to reduce the amount, degree, or intensity of a release or threatened release, and for other related purposes identified in law.”

These laws therefore require the USCG and ADEC to prepare and respond to the threat of a release or an actual spill, particularly where the spiller is unidentified or is otherwise unprepared to prevent or respond to the spill due to its standing in “innocent passage”, (e.g. the 30% of Unimak Pass traffic identified as only bound for Canadian ports). It is important to note that both the USCG and ADEC can exercise jurisdiction for both tank vessel contingency plans and general area planning extending 200 nm from shore, (ADEC can only exercise jurisdiction over nontank vessels in state waters):

“**18 AAC 75 .990(156) “region of operation”** means, with respect to (A) an oil discharge prevention and contingency plan other than a nontank vessel plan, a region established under 18 AAC 75.495;

18 AAC 75.495. Regional master discharge prevention and contingency plan boundaries. (a) The regions described in this subsection and depicted on the map at Figure 1 are established for the purpose of preparing a regional master oil and hazardous substance discharge prevention and contingency plan as required by AS 46.04.210: ... (5) Aleutian Region: those areas encompassed by the boundaries of the Aleutians East Borough, the Aleutians West Coastal Resource Service Area, and the Pribilof Islands, including adjacent shorelines and state waters, and having as its seaward boundary a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured”.

These facts necessarily require the National Research Board, as a matter of scientific integrity, to amend its report to appropriately find the existence of a majority of regulated tank and nontank vessels as mandated to fund, prevention of and, response to spills in accordance with state and federal law as well as an independent duty of federal and state agencies to fund spill prevention and response within the Exclusive Economic Zone where the spiller is unidentified

and where tank and nontank vessels are otherwise exempt from regulation. The Board appropriately found that proper funding of spill prevention and response is an essential element of risk mitigation that must be resolved, the Board, however created the false impression that funding sources could not be identified and must now accurately report on how the applicable response plan regulations apply to the majority of vessels transiting the Aleutian Islands and therefore liable for funding of spill prevention and response assets. The Board must similarly disclose that the ADEC and USCG are themselves independently responsible for using dedicated funds for preventing and responding to spills where the minority, but significant quantity, of large vessels transiting the region is not subject to regulation. This government duty to respond is particularly important where the spill source is not readily identifiable and the liable party does not come forward, the liable party refuses or is unable to comply with orders to prevent/abate the pollution and/or the liable party may not be held liable for costs due to a force majeure or act of war.

With the funding sources for risk mitigation clearly identified, the nature of the risk mitigation analysis must necessarily consider the issue of the “regulatory gap”, as coined by the Committee members in Anchorage recently. These Committee members have noted that investigation of this “regulatory gap” is a necessary adjunct to further risk assessment efforts and this necessary area of investigation should be disclosed in the Report as well, particularly given the anticipated role of the regulatory agencies in further risk assessment investigations. Where state and federal regulators refuse to enforce the laws applicable to the clearly defined shipping segments subject to regulation and otherwise refuse to properly develop and equip the Aleutian Islands Subarea Plan, no amount of risk assessment will result in additional spill risk mitigation given the blatant recalcitrance in performance of mandated duties by the government agencies responsible for implementation of any risk mitigation measures. Moreover, the participation of these suspect agencies and/or their control of further risk assessment investigations necessarily compromises the credulity of such investigations and presents an apparent conflict of interest that should be likewise identified in the instant Report unless, and until, full regulatory enforcement is accomplished.

Sincerely; Tom Lakosh