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ALASKA OIL SPILL COMMISSION

NOVEMBER 14, 1989

ANCHORAGE, ALASKA

OIL SPILL COMMISSION MEMBERS

- Walter B. Parker, Chairman
- Esther C. Wunnicke, Vice-Chairman
- Margaret J. Hayes
- Michael J. Herz
- John Sund
- Timothy Wallis
- Edward Wenk, Jr.

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November 14, 1989

Anchorage, Alaska

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Walter B. Parker, Chairman

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Margaret J. Hayes

Michael J. Herz

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**PARALEGAL PLUS**

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1 (Tape Number 89-11-14-1)

2 MR. PARKER: The agenda: until 10 o'clock we'll have a  
3 discussion on prevention. From 10 to 11 we will have the  
4 Environmental Protection Agency; from 11 to 12 the Alaska  
5 Department of Natural Resources; from 12 to 1, the Alaska  
6 Department of Fish and Game; from 1 to 2 we'll have lunch; at 2  
7 o'clock we'll have a presentation by our consultants on tanker  
8 design contingency and risk analysis, ECO from Annapolis and  
9 after that we will have a report from another consultant, Mr.  
10 Lathrop from Santa Barbara, I think. That's not quite his home  
11 base but he's done a lot of work there. And after that, we will  
12 have a report from our SeaGrant, what our SeaGrant law  
13 professors have been up to. Tonight the Commission is having a  
14 dinner from 7 to 9 o'clock at the Sheraton Hotel. The speaker  
15 will be Charles Champion who is formerly the State Pipeline  
16 Coordinator for Alaska and who was instrumental in our earlier  
17 efforts to impose some standards on the prevention of oil spills  
18 in Alaska.

19 MR. HERZ: Mr. Chairman, could I make a  
20 recommendation for a minor agenda change which is that this  
21 afternoon we have Mr. Lathrop follow the ECO presentation and  
22 then have the discussion, rather than doing it the other way, the  
23 way it is in the agenda. 'Cause it seems to me it makes more  
24 sense to have those comments before we have our discussion.

25 MR. PARKER: Is there any objection to that? (No audible

1 response.) Alright, we'll do that. Okay, for the benefit of the  
2 audience, the Commissioners, you can read their name tags, but  
3 I'll introduce them anyway. On my right is my vice-Chairman,  
4 Esther Wunnicke. On her right, Commissioner Mike Herz. on  
5 the far right, Commissioner Tim Wallace. On my left,  
6 Commissioner Meg Hayes. On her left, Commissioner Ed Wenk.  
7 On the far left, where he belongs, Commissioner John Sund.

8 MR. SUND: Left and right is purely relative.

9 MS. WUNNICKE: That's true.

10 MR. PARKER: Down the table we have our counsel, John  
11 Havelock, and sitting with him is our staff writer, because he is  
12 going to right the report, Steve Winbeck. So, we will proceed  
13 with our discussion of prevention that was opened up yesterday  
14 by Commissioner Wenk. Counsel, do you want to start off?

15 MR. HAVELOCK: Thank you Mr. Chairman. Yeah. Go  
16 ahead.

17 MR. WENK: How would it be to have just - maybe take a  
18 few minutes to warm up, just a brief presentation, maybe two  
19 minutes.

20 MR. HAVELOCK: Before you make your brief summary, I  
21 wanta make a brief announcement, which is that the Chair's  
22 announcement of the dinner this evening, that dinner is a open  
23 meeting and anybody who wants to come to that may. We will  
24 have free seats along the wall, as it were, and you can sit at a  
25 dinner table, if you wish to. Peggy's not here at the moment, if

1 you talk to a member of the staff and make sure there is an  
2 arrangement for you. You're welcome to come and join us at the  
3 dinner. It's informal, but it is a public meeting under the public  
4 meeting law and anybody is welcome to come. Thank you Mr.  
5 Chairman.

6 MR. WENK: I'll make this very brief, 'cause I'm eager to  
7 hear the comments from Counsel and members. There are  
8 several levels at which the Commission has approached its task  
9 and what is suggested in this paper is in no way an either/or  
10 proposition with regard to other levels. This is simply saying  
11 that they're two realities that I believe we're all away of, but now  
12 we're putting front and center. The first is that there is such a  
13 thing as a marine oil transportation megasystem. And I'll come  
14 to the second reality in just a moment. That megasystem has  
15 three components. The first is a set of hardware, including  
16 tankers and tank farms and so on and so on, all of which are  
17 tangible, visible, and usually thought of as "the" system. What  
18 isn't instantly revealed is the second part of the megasystem and  
19 that's all of the organizational components and stakeholders.  
20 And these organizational components do, of course, start with the  
21 people on board ship, people at the tank farm, the organizations  
22 that are shipping the oil, the organizations that own the oil, but  
23 more than that, the organizations that are presumably looking  
24 after the public interest as far as regulation is concerned,  
25 primarily safety. But also, the fact that there are stakeholders,

1 other than shareholders, and finally in this system are the  
2 people that use the final product: you and me in terms of filling  
3 our gasoline tanks. Those are the two components.

4 The third component is this other reality. And that is, as  
5 we suggest in the paper, every piece of hardware that we buy: a  
6 bike, a VCR, television set, comes with operating instructions.  
7 And so, there are operating instructions for these megasystems.  
8 These operating instructions, I'm suggesting begin with policies  
9 set at the very top of each of the major organizations involved.  
10 Some of these are highly visible, stated as policy. Many,  
11 however, are derived from what could be thought of as the  
12 corporate cultures and I would use the word corporate here to  
13 mean any organization and not just private enterprises. The  
14 mind sets, the points of view, the value set held by the senior  
15 officials in each of these organizations has a tremendous amount  
16 to do with what happens at lower levels when there is the  
17 opportunity to make decisions. It is human nature to please the  
18 boss. It is human nature to be sensitive to the reward systems of  
19 that particular culture. And, it is also recognized that these are  
20 not consistent. That the values held by one set of the  
21 participants in the megasystem may collide with the values held  
22 by another. That's the story of democratic government. Now  
23 what does all this lead to?

24 The suggestion that's made in this think piece is that we  
25 need to deal with the whole system. We need to deal with the

1 failure of the whole system and we need to deal with remedies  
2 that are equal in potency to the cause. Equals the wrong word;  
3 that are consistent with the cause. And for that reason, the  
4 recommendations which you have start with new authorities  
5 given to the President of the United States by Legislation; new  
6 authorities that I believe are necessary at state government; new  
7 obligations put onto corporate enterprises, both by state  
8 regulation, by hopefully some self-initiated expression of social  
9 responsibility by firms, but also just in case the notion that the  
10 securities and exchange commission has a role to play.

11 But, finally, I'd like to underscore, as we said yesterday,  
12 that whereas these three components are those that we hold  
13 accountable, all of us are responsible. And the notion,  
14 fundamental notion in this system is to heighten the visibility as  
15 to what's going on so that everyone effected by the potential of  
16 risk has better information, has better opportunities to be  
17 consulted. Thank you

18 MR. PARKER: Counsel?

19 MR. HAVELOCK: Mr. Chairman, subject to the will of the  
20 Commission, we're sort of feeling our way to what the format is  
21 gonna be here and you may wanta just ask some questions of the  
22 -- I have prepared to take a devil's advocate role here, as you  
23 know. And Dr. Wenk has had the opportunity to review a two-  
24 page paper that I did, or two and a half pages, critiquing his  
25 paper and I am prepared to cross-examine him and to make

1 counter-points to him if that will enlighten you. I think the -- in  
2 terms of this fitting into the overall program, my sense of Dr.  
3 Wenk's thesis is that he is, he's looking at the institutional  
4 setting of prevention, which is actually, programmatically  
5 speaking, down the line. That is the way we set up the system  
6 for tomorrow. We're going to look at some technical fixes and  
7 the ECO program, although it certainly has brought institutional  
8 implications, involves a lot of technical fixes that this  
9 Commission should consider, at least conceptually, if not in their  
10 fine detail. And, I do -- think it's appropriate to look at the  
11 institutional setting as sort of an overview this morning. Our  
12 witnesses that are coming on later in the morning, my devil's  
13 advocate point of view anyway, are, in fact, in some ways more  
14 pertinent pieces of the system from my point of view this  
15 morning, than the point of the eagle's point of view overlooking  
16 the entire megasystem. But at any rate, I see them, I think that  
17 a kind of a discussion that you might develop might give you  
18 some sort of a premise for examining the role of mega-agencies  
19 in my view, like EPA, less so in the case of DNR and DF&G since  
20 they are just state agencies, but that there is -- we can make  
21 some logic, in any words, out of the progress of our discussion.  
22 With that I know -- and some Commissioners may just wanta  
23 have some questions of Dr. Wenk to begin things off. But I am  
24 prepared to spend some time if you'd like.

25 MR. PARKER: Commissioner Sund?

1 MR. SUND: Yeah, Mr. Chairman, just to kind of lay out  
2 here. I think this is probably a little bit more for tomorrow's in-  
3 house discussion or whatever that we're gonna have. But I just  
4 wanta make a couple, I guess, comments or observations on how  
5 I kind of see this coming together in the end. I, I guess,  
6 inherently support the idea that the Commission should make  
7 some kind of statement on this level. I've felt that from the first  
8 day. But more particularly as we've gone on here and talked to  
9 the different agencies and talked to see how this "system"  
10 operates or doesn't operate or fails to operate and how we can  
11 change it. I think the total system, if people wanta make the  
12 change it has to be made at these levels. And I think the  
13 Commission oughta make some statement to that level here.  
14 And I do think there's probably room for both sides; that we can  
15 make a general overall statement of the system's gotta be  
16 changed. If we wanta change it, I think what Ed's laid out here  
17 of some of the things you haveta do to make those changes. You  
18 got to change, if you wanta change. You can't just tinker around.

19 MR. HAVELOCK: Tanker around?

20 MR. SUND: Yeah, tanker around too. And, you know, it  
21 comes from several observations. One that, you know, I was  
22 totally shocked when I was back in Washington D.C. with the  
23 reaction of the Coast Guard and I know Virgil Keith is here and  
24 he and I were in talking with them and you know, when their  
25 reaction is that how are you going to improve the safety of the

1 marine transportation system and their answer is we're not  
2 gonna tell you because they might tell us to do it and not give us  
3 any money. Really lays it on the cards on the table that the chief  
4 agencies responsible for overseeing this industry is not gonna  
5 play in the policy level role. Then somebody gotta say and this is  
6 the only way I think you can say it. So I think that's a level that  
7 has to be brought out. And, you know, the other thing that  
8 became fairly clear, real clear to me yesterday is the giving up to  
9 the United States control over our own waters to foreign  
10 countries. We basically said that we are not going to say anything  
11 about what a foreign tanker can look like or act like when it gets  
12 into U.S. waters. We're saying okay, well we can only control  
13 U.S. flag tankers. Well, that's fine in Alaska cause that's mainly  
14 what we have. But think about it. We don't have any U.S. flag  
15 tankers. The guy from Exxon or Chevron here yesterday has got  
16 41 tankers in his fleet and seven of them are U.S. flag. And then  
17 we're saying well, we'll only affect policy on U.S. flagged vessels,  
18 even if they come into U.S. waters. Well, that's crazy. you know,  
19 if we wanta have anything to say about our environment and  
20 control of our environment, protection of our environment, we  
21 have to step out and say we're going to tell people in the world  
22 what their ships are gonna look like when they come into U.S.  
23 waters. And that's a big battle. That's a U.S. State department  
24 level battle on down and it's going to have to start at the  
25 Presidential level and work it's way up.

1 I feel very confident making that statement at this level  
2 and going on. On the other hand, I do see that we do have some  
3 responsibility to say there's some technical stuff that we can do  
4 now to improve the safety in Alaska and I think that's another  
5 part of what our report is. So, I think the report or the paper of  
6 Dr. Wenk has opened up the -- not opened up the issue, it's been  
7 here all the time. But it's actually pulled together a lotta ideas  
8 and I would support moving on with it. And I don't know that  
9 we have 30 minutes left here, but I think, you know, we could  
10 discuss the issue amongst ourselves and feel out the issues that -  
11 - and then see where we want to go tomorrow or Wednesday  
12 with flushing it out. But I think there's room in the  
13 Commission's charge to come out on both levels and I would  
14 support that area. So, I'm willing to go down and -- you know,  
15 not all of the recommendations I would agree with, but I do  
16 agree with the general thrust of the issue.

17 MR. PARKER: Okay, thank you Commissioner. I was --  
18 Tim.

19 MR. WALLIS: Just a quick question. Are we talking now  
20 on our discussion on prevention or are we talking on focusing  
21 our discussion on Commissioner Wenk's report?

22 MR. PARKER: Your choice. The -- I was not particularly  
23 surprised at your reaction to the Coast Guard. Having dealt with  
24 the Coast Guard through four presidents on this issue, why I  
25 found them to be exactly the same as the first time I visited.

1 They are very stable agency and their views. The only time they  
2 changed was when we got their attention through fairly dramatic  
3 political action. The problem is in dealing with this megasystem  
4 why you have to first define the megasystem. And the  
5 megasystem, of course, is, largely occurs on the east coast and in  
6 the Gulf of Mexico. And in the time this Commission had  
7 dealing with that part of the system which operates from Valdez  
8 to the West Coast and to the Panama, and to Panama seemed  
9 about all had time to cope with in defining the megasystem that  
10 feeds the East Coast and the Gulf, at it's peak imported  
11 8,700,000 gallons a day. It's down to about 6.8 million gallons a  
12 day at this time, but rising rapidly. But, that is a problem that  
13 our recommendations will affect, but I don't see how we  
14 particularly deal with that as far as dealing with the President, I  
15 think our perceptions on that will be much better after we listen  
16 to the President's men from EPA who has never been before us  
17 yet and is indicative of what this administration brings to the --  
18 brings to this particular problem.

19 MS. WUNNICKE: Mr. Chairman. To follow up on  
20 Commissioner Sund's comments and his experience with the  
21 Coast Guard and your own as well as all the other parts of the  
22 system, I think that the value that this commission has is the  
23 ability to look at all the parts. I've been struck, and I tend to be  
24 an optimistic person, I've been struck by the fact that almost all  
25 the parties to this event and parts of the system have, from their

1 own window, from their own perspective, looked at ways to do  
2 better. And many of them have constraints on that ability, just as  
3 I'm sure was expressed to you with respect to budget. We don't  
4 have those constraints in that we can look at the whole picture.  
5 We can look at all parts of the system. But I do think we need to  
6 approach our recommendations, not only from the overall view  
7 that Commissioner Wenk has expanded on from the very  
8 beginning of our meetings, but also addressing the functioning of  
9 the part. So I think that we have a role to play in making very  
10 concrete, practical recommendations to the solution of the  
11 problem as well as a role in making the kind of recommendation  
12 that Commissioner Wenk proposes.

13 I do have a question. You've done -- I guess -- much of  
14 what was in your paper, thanks to you, we already knew from  
15 other materials that you had given to us or seen to that we  
16 received. I was somewhat disappointed that perhaps this could  
17 have been written before the Exxon Valdez and maybe much of it  
18 was written before the Exxon Valdez. I would like to ask you to  
19 turn your good head to expanding on the specifics of the Exxon  
20 Valdez in relation to your premise. I think that would be very  
21 helpful in laying the foundation for the recommendations that  
22 this Commission might make.

23 MR. WENK: Thanks very much, Commissioner Wunnicke,  
24 for raising that issue, 'cause I think the Exxon Valdez turned out  
25 to be an accident that was bound to happen. And that, in no way,

1 absolves anyone in responsibility. If anyone uses that statement  
2 to say, well if it was gonna happen anyway, it's no concern of  
3 ours. Untrue. It was a responsibility of all the parties to have  
4 looked at just this kind of thing on their own. They're the ones  
5 who, in fact, had, in many cases and maybe every case, some  
6 legal responsibility to look ahead, to anticipate, to be pro-active  
7 in matters of safety rather than reactive. And the reactive mode  
8 is what we found to be true, the ole barn door closed after the  
9 horse is gone. That must date back to Adam and Eve.

10 What the Exxon Valdez did was to produce instant  
11 visibility to the fact that there was a west coast megasystem. I  
12 understand the point that Chairman Parker is making that its  
13 impossible to deal with East Coast, Gulf coast, and so on. On the  
14 other hand, the systems that we are dealing with here, for which  
15 we want some kind of remedial action of the west coast with  
16 Alaskan oil, the lessons learned and the remedies proposed have  
17 general applicability. So, I don't believe it's necessary to try to  
18 sketch a megasystem beyond the west coast one. I think it  
19 would be very interesting simply to sketch the west coast, Alaska  
20 based megasystem. i think we'd learn a lot now that we see all of  
21 those components, the lessons can be applied generally.

22 What is it that Exxon Valdez did? Two things. It  
23 illuminated how many stakeholds there really were in the  
24 megasystem. And these are now visible and audible, in a sense,  
25 for the first time. The residents of Alaska, and more particularly

1 the native communities along Prince William Sound, the  
2 fishermen all the way down including Kodiak, the people who  
3 were attracted to Alaska and committed to Alaska because of its  
4 natural beauty, who felt personally violated by what happened.  
5 These are the stakeholders that were there all along, but  
6 suddenly we sense their presence. But the second thing that it  
7 did was to agitate the system to the point that we saw all of  
8 these components and we also could tell a little bit about how  
9 they thought, what their -- this corporate culture is that we've  
10 been talking about in terms of what it is that dictates their  
11 behavior. We keep coming back to the Coast Guard and whereas  
12 there are some disappointments I have to share with you an  
13 impression in the 60's the Coast Guard was far more responsive,  
14 inclined to take responsibility and able to muster the funds to  
15 carry out it's duties. This began with the first oil contingency  
16 plan that was generated in 1986. Giving, incidentally, lead  
17 responsibility to EPA's predecessor at WPCA, with Coast Guard  
18 assistance. But when, in fact, that was switched on for the very  
19 first time with the Santa Barbara Oil Spill, it was the Coast Guard  
20 that was on the scene within minutes, setting up an open line to  
21 Washington, D.C. with then the involvement of the various  
22 parties. Fortunately the oil took their own initiative as best  
23 anyone could at the time. But the Coast Guard was there, was  
24 prepared, it had money in the kitty. It also had funds for  
25 research on contingency planning and cleanup. So, indeed, did

1 the Maritime Administration in '68 and '69 and '70. So  
2 something really has happened to the Coast Guard that we've  
3 recognized because of this -- for the first time because of Exxon  
4 Valdez.

5 Let me give you what I think is a litmus test. My  
6 impression, personal impression, is for the first few hours after  
7 the spill the Coast Guard officials were frightened to death that  
8 they would have to federalize it. I think they realized their  
9 limitations in funds, maybe even in authority. The one fund that  
10 was specifically set up for the Clean Water Act had been depleted  
11 and not refreshed. It was the President though who nailed us  
12 down in saying, we will not federalize. I'm sure that he had  
13 recommendations up the line before he made that statement,  
14 from a variety of sources, as any President would and should.  
15 The crux of the matter is, though, that point of view of the Coast  
16 Guard is partly a consequence of decisions made in the White  
17 House that the Coast Guard should also be heavily involved in  
18 drug interdiction; that the Coast Guard should be heavily  
19 involved in monitoring fishing off the west coast; the Coast  
20 Guard should be heavily involved with environmental protection;  
21 all with a reduced budget also set by the White House. Now  
22 there is a story -- I mean, your point is so well taken. There is  
23 the lesson we can learn from Exxon Valdez. I don't think  
24 would've learned otherwise.

25 MR. PARKER: Well, I think, following up on that, if we

1 follow it up with a recommendations to put more authority in  
2 the White House, why the Coast Guard would just put the other  
3 way, to put the Coast Guard under firmer direction under the  
4 President's men, the Halderman, the Erlichman, the present  
5 crowd that's in there is certainly not going to create a stronger  
6 and better Coast Guard. And the American people continue to  
7 elect Presidents with a perspectives that their past Presidents  
8 have had, present and past Presidents have had, why that's  
9 exactly what you're going to get.

10 MR. WENK: Well, Mr. Chairman, you must know I share  
11 your dismay at policies from the current Administration and the  
12 last two. But, it seems to me that we have to go beyond that to  
13 look at two things. The first is that if there is to be any  
14 corrective, it's gonna have to be done at that level. The Coast  
15 Guard is helpless on its own. That's been proven by the  
16 evidence. But also, I think there is lots of reason to believe that  
17 the White House, including the last two White Houses, are not  
18 impermeable to the political sensitivity and citizen action. We  
19 have seen issue after issue in the Reagan administration and also  
20 with the Bush Administration where ideology was clearly and  
21 sharply expressed only to be followed by a quiet retreat when  
22 the people made their voices known. My feeling is that this isn't  
23 just democratic political theory. My feeling is that there is a lot  
24 of pragmatic evidence that presidents of whatever ideological  
25 stripe are obliged to listen. Therefore, if anything is gonna

1       happen, it's gonna happen because we've got an alert press,  
2       we've got a concerned set of citizens with enough activists -- not  
3       every individual we know will be an activist, but just enough, just  
4       like enzymes in a biological system. It only takes a few to make  
5       all the difference. And I don't think, under those  
6       circumstances, particularly given the atmosphere that exists  
7       right now, that led to the Congress in both houses to pass strong  
8       bills knowing they're going to have to go to this same President  
9       for signature -- and let me just call to your attention that both  
10      bills -- I'm referring now to the Senate 686 starts off by saying  
11      that the President shall do so and so. Every provision in S686 is  
12      to be carried out by the President of the United States. So, I  
13      think the Commission would be out of step with what I believe is  
14      the political marching direction in the Congress today. I mean  
15      literally, today.

16           MR. HERZ: Mr. Chairman. It seems to me that where I  
17      see there is sort of a gap is that you have set the stage very well  
18      at the high institutional level. We have picked up a step, several  
19      steps below that with the prevention stuff and then below that,  
20      the response stuff. But there's a gap. As I see it, the gap is how  
21      you translate this highest level institutional kind of change that  
22      we're talking about into a mechanism for getting the Coast Guard  
23      what it needs. And I'm struck by the fact, by the way, that -- and  
24      you can confirm this, I think, from your Washington experience,  
25      the agencies that are successful in the budget cycle are the ones

1 that go and have real good salesman and go out and hustle for  
2 their agency. There's something very curious -- I was just  
3 thinking about the Coast Guard people that we have heard here,  
4 and what has been articulated in the press since the spill. I  
5 don't get the sense that the Coast Guard is advocating for itself  
6 what it needs. I mean, is it trying to duck the responsibility or  
7 is it just the wrong people that are not advocating strongly  
8 enough or is it because there is something missing institutionally  
9 between this top level and the kind of fix up things that we are  
10 going to be suggesting about in this report.

11 MR. PARKER: No, Commissioner, you know the agencies  
12 that are successful in the budget process, at least in the last 25  
13 years, are those who have the guts enough to go around OMB and  
14 the President's staff and go directly to Congress. Those who  
15 take the President's marching orders sit back there quietly and  
16 eat it.

17 MR. SUND: I'd just like to make a couple observations  
18 here. One, I think the Coast Guard are what you call good  
19 soldiers. They work for the secretary of transportation and they  
20 do what they're asked to do. But when they're asked to do  
21 something, they don't say no, we won't do it; they say, we'll try.  
22 And that may have been a good point or a bad point, but DOD  
23 would have given -- if somebody to Department of Defense and  
24 told 'em the interdict drug smuggler is coming in the Gulf Coast,  
25 they'd have said give us \$300 million and we'll try. Coast Guard

1 said we'll try and then we would cut their budget. So, I have  
2 some sympathies for them, but -- you know, back to this, how do  
3 you change the system. I become pretty frustrated and that  
4 leads to a fairly high degree of cynicism in my own way of  
5 thinking, one follow the other in the whole process. Can we  
6 effect any change? I do not accept the level of risk that we are  
7 exposed to by the present transportation system of oil. To me  
8 it's not acceptable. Period. And I wanta do something about it. I  
9 do not know what leverage you have to move to change corporate  
10 structure, but I -- how do you change the corporate attitude?  
11 You have to find a motivating lever to move them and you have to  
12 identify each part of this system. The Coast Guard is one part.  
13 You have to figure out how to move them, if that means get 'em  
14 more money or whatever. Corporate structure's one part. State  
15 environmental law is another part. And I think that this is just  
16 putting one more lever in one segment of it.

17 If you recall, Vice Admiral Robbins, when he was here and  
18 we asked him, are you going to federalize the spill, next spill?  
19 Right? Remember that series of questions? Right, if Exxon says  
20 we're not coming back, will you do it? And he said -- he actually,  
21 physically took his checkbook out and said I don't have enough  
22 money in my checkbook. I said, will the commandant of the  
23 Coast Guard do it? And he says, no. And we eventually got down  
24 that he basically said the President of the United States will  
25 make the decision whether to federalize the spill if Exxon

1 decides not to come back. That's where this decision level is at  
2 now and that's where it's gonna be out. So, I think it's a  
3 question of not whether you're going to ask the President to do  
4 or not to do it. I think the question is what you can ask him.  
5 And I think then you get into some of the recommendations, but  
6 the other observation that I have is that we don't have, until the  
7 Exxon Valdez -- we ask, what did the Exxon Valdez do for us.  
8 We don't have any Ralph Naders through oil transportation  
9 systems. I mean, we got into cars 'cause they killed people, but  
10 until this thing came along, I don't think we had an awareness  
11 that we're damage to the environment with oil. I think the  
12 Exxon Valdez has brought that issue home to the United States  
13 and the world that there's something there and we're protecting  
14 ships, we're protecting cargo. Remember, that's what we got in  
15 the Exxon Valdez, right? They let the oil go 'cause their rule  
16 was to protect the ship and cargo. And what we're saying, hey  
17 there's another value here. It's called the environment and I  
18 think that awareness has now been raised up to another level.  
19 But if you want to continue to effect change on the system,  
20 people have to be able to say we're doing good or bad, and you  
21 can only do that with information. And that's one of the  
22 recommendations in Ed's report here is the creation of these  
23 annual reports. To pull together data that is -- and this is kind  
24 of a laundry list. It may be good list, it may be a bad list. We may  
25 want to improve on it, but the question is what data do you need,

1 as a private citizen, as an environmental group, as an outsider, as  
2 somebody in state government, do you need to say are we doing  
3 a good job or not doing a good job. And I think we've all been  
4 frustrated here by the lack of the data. We can't get -- how many  
5 violations, safety violations have been written up from the Coast  
6 Guard in the last 10 years. How many near misses? Doesn't  
7 exist. So, I think, in answer to Esther's question, the Exxon  
8 Valdez has brought home a lot of of these issues here and I  
9 think, you know, time is getting a little short here this morning  
10 and we're actually gettin' into what I think is tomorrow's  
11 discussion and the next day's is that our report goes on two  
12 levels. It goes on here's how we think you can effect the big  
13 picture and here's some things we can implement in the Alaska  
14 trade immediately that will make life a little safer for us. But,  
15 you know, the answer is this is gonna happen again and the  
16 result won't be much different.

17 MS. WUNNICKE: Mr. Chairman.

18 MR. PARKER: Tim's next.

19 MR. WALLIS: Yes, Mr. Chairman, just so we don't get too  
20 frustrated here. Let me just say that it's not our job to convince  
21 the Coast Guard to, or Congress, to increase the Coast Guard's  
22 job. Our job here is to make some observations and make some  
23 recommendations and to recommend to the Governor and to the  
24 Legislature that they pursue a certain avenue. If it is to have  
25 them influence the increase in budgets, fine. That would simply

1 be our recommendation as to how we go about enforcing  
2 prevention. And so, you know, that's about as far as I think this  
3 Commission can go. So I don't think we ought to get too  
4 involved in the intricacies of federal budget.

5 MS. WUNNICKE: Mr. Chairman. What I was getting at  
6 earlier with Mr. Wenk was I know you've done a lot of other  
7 research with Alyeska and other elements of the system and was  
8 just asking that you share that with the full Commission as a part  
9 of flushing out your premise in this paper. I would make an  
10 observation and I don't think I've done this in the months that  
11 we've been together, but my experience is not at the level of the  
12 President, but I was Commissioner of Natural Resources and  
13 there were 700 specific statutory directives to the  
14 Commissioner of Natural Resources. It's necessary in that kind  
15 of situation to delegate. And I think there is room for what  
16 Commissioner Herz says is that next level of the elements of a  
17 system that we may be able to effect in addition to the overall  
18 recommendation that you propose.

19 MR. WENK: Well, let me try to answer your question in  
20 two different ways with regard to what lessons maybe I've  
21 learned to share with you in more detail vis-a-vie maritime oil  
22 transportation and its safety. First, I'd like to tell you a little  
23 story and I'll be very brief where, in a sense, the same  
24 phenomenon existed and drew legislative remedies, statutory  
25 remedies. I alluded to it yesterday. It's documented in the book

1 that staff now have and it's a time in the 1950's when the entire  
2 maritime science and technology activity had fallen into decline.  
3 We still had a merchant marine fleet in the 50's, which we  
4 hardly have left now. But what changed this was a piece of  
5 legislation that was generated in the Senate in 1960 that finally  
6 got through in 1966. That's not unusual for it to take more than  
7 one Congress to get through, which established for the first time  
8 in legislation that the United States is a maritime nation and  
9 that we have a stake in maritime -- in the health of our maritime  
10 enterprises. Now that's hard to believe with the country then,  
11 what, 180 years, that there had never been a statement of that  
12 kind before. Thus, a national policy that we're gonna do  
13 something to continue -- or I should say improve the health of  
14 the system.

15 The second part of the legislation said that there are a lot  
16 of little elements of this system that are the province of the  
17 Department of Commerce. This is at a time when there was --  
18 this is before NOAA. There was an ESSA (ph) even before that a  
19 Coast Geologic Survey and a Coasten Geothetic Survey and the  
20 Weather Bureau. There was the Bureau of Commercial Fisheries.  
21 There was the atomic energy commission involved. Why?  
22 Because they were disposing of radioactive waste off the  
23 Washington coast. The National Science Foundation, the  
24 Department of State and so on. There was only one person who  
25 could provide that trans-agency leadership, the President of the

1 United States. Now, the interesting thing is if you track back  
2 legislation that very few bills ever assigned responsibilities to the  
3 President. If you analyze the bulk of legislation, they assign  
4 responsibilities to the Secretary of Transportation, to the this, to  
5 the that. Why? Two reasons. First of all, that person can be  
6 called up to testify and be held accountable. So there is a very  
7 great reluctance, there has been, for the Congress to assign  
8 responsibilities to the President who, if he were to be called,  
9 and he wouldn't be, he'd send the, usually, the head of OMB. But  
10 in the case of maritime affairs, there were so many agencies  
11 involved, there was no choice. I'm convinced the Congress has  
12 tripped, has tripped over the same thing now with this S686,  
13 because it isn't just the Coast Guard we've been focusing on the  
14 Coast Guard. You go through all the other maritime agencies  
15 who are involved in safety of oil transportation, obviously EPA,  
16 but also the Corp of Engineers and also the Department of State  
17 in negotiating with the Canadians over some of these safety  
18 issues right up here. The Congress, I think, has come to that  
19 conclusion once more that only the President can do it.

20 Now, I can understand the pessimism about it, but I want  
21 to come back to Commissioner Sund's point earlier about the  
22 role of this report and underscore its importance. One of the  
23 provisions in that 1966 act was to require an annual report by  
24 the President on the health of the nation's maritime system. It  
25 gave him an advisory council, incidentally, chaired by the Vice-

1 President and a presidentially appointed staff to do it. This is a  
2 hard copy. They always come back -- they come out in soft copy.  
3 But anyway, this gives you some idea of what such a report looks  
4 like and this is the one from 1968 which, for the first time,  
5 mentioned oil spill contingency planning and prevention. But it  
6 covered such topics as expanding international cooperation, use  
7 of food from the sea, encouraging development of non-living  
8 resources, enhancing benefits from the Coast Zone. This is,  
9 now, the precursor to the legislation you know well, of course,  
10 the Zone Management Act of 1972 -- facilitating transport and  
11 trade. Not that this is not looking at biology. This is looking at  
12 the uses of the sea and the relationship of the national interests.  
13 At the very beginning, what, a message to the Congress signed  
14 by, in this case, Lyndon B. Johnson. Now that's the kind of  
15 visibility that our maritime activities had for about five years until  
16 it fell into decline. It was never revoked. And nobody paid any  
17 attention.

18 MS. WUNNICKE: Thank you, perhaps that.....

19 MR. PARKER: That's why.....

20 MS. WUNNICKE: I think that doesn't answer my  
21 question, but maybe I can ask it of you at another time.

22 MR. PARKER: That's why I felt that that whole effort was  
23 a bitter failure. Those of us who were also interested, especially  
24 from a maritime state like Alaska were hoping that out of that of  
25 the Johnson Administration we'd have a cabinet level voice for

1 the oceans. And instead, we got NOAA tucked away down there  
2 in the Department of Commerce so our policy was always made  
3 over at State where they did have a cabinet level voice and could  
4 go and crate away all of our prerequisites to whoever in order to  
5 satisfy the Department's and State's aims rather than the aims of  
6 maintaining a U.S. maritime presence. So, I think we have a  
7 fundamental, different view of, fundamentally different view of  
8 history as to the whole perspective and what was what.

9 MR. WENK: Mr. Chairman, I'm sorry that we have a  
10 difference of view in history. All I can suggest is you go back to  
11 the record. And I understand how bitter you are about this, your  
12 disappointments personally, but I think you'll find that those in  
13 the maritime business refer to that as the golden age and they  
14 do so because of the amount of legislation that did get through,  
15 the fact that NOAA was at a lower level than anybody helped,  
16 including this Commissioner, who was its primary advocate if  
17 you read in the politics of the ocean, you'll understand the  
18 Secretary of Transportation wrote the President a letter asking  
19 him to fire me because I was a supporter of that type of agency.  
20 So, you're talking to someone who was willing to put his job on  
21 the line in support of the cabinet level agency.

22 MR. PARKER: Anything else, Counsel.

23 MR. HAVELOCK: No, Mr. Chairman.

24 MR. PARKER: Oh, I.....

25 MR. WENK: Well, could I just summarize one point? This

1 is one member's attempt to try to put things into perspective.  
2 Everyone on this Commission has their own view of things as  
3 indeed is the real virtue, as you said yesterday, of having a  
4 Commission. It's not everything. even in itself it's not complete.  
5 If these were to be adopted there's a lot of work. I think, I  
6 would suggest at this time to -- it seems to me that all I could do  
7 here is to keep this kind of discussion in, on the agenda, so to  
8 speak, so that we do have some attention at this level of  
9 operation and finally, with the view that the Commission is going  
10 to render a report of national significance. Of course it's  
11 important to the people of the state of Alaska. It was appointed  
12 by the Governor of Alaska, but it is going to be read and reacted  
13 to by maritime interests in the lower 48, by the U.S. Congress,  
14 probably by people in other countries. And for that reason it  
15 seems to me that there is a real opportunity of making a set of  
16 recommendations that have the potential of changing a system  
17 which is, we said yesterday, has a tendency to be error inducing  
18 rather than safety promoting.

19 Mr. Chairman, thank you very much.

20 MR. PARKER: Okay. Thank you Commissioner Wenk.

21 MR. SUND: In the transition here, Mr. Chairman, to the  
22 next item on the agenda, I would just make a footnote that I  
23 guess sitting in Alaska, working on this report, here you kind of  
24 -- or at least I was getting pretty microscopic in terms of trying  
25 to effect the Alaska trade or who are we trying to influence, as

1 Tim keeps bringing up. But in my four or five days of trooping  
2 around Washington, I did find quite a high level of awareness and  
3 anticipation of what this report's gonna be from Congressional  
4 staff to Administrative people to just consultants in the hallway,  
5 which kind of renewed my concern, I guess, a little bit that we  
6 do make the best effort we can to make recommendations that  
7 can be implemented on all levels of the spectrum.

8 MS. WUNNICKE: Mr. Chairman, I just wanted to thank  
9 Commissioner Sund for sharing with us that experience in  
10 Washington and basically that was all I was asking Commissioner  
11 Wenk was to share with us his other investigations that he's  
12 done with respect to the Exxon Valdez.

13 MR. WENK: Oh, I'm sorry. I misunderstood your  
14 question, Esther.

15 MS. WUNNICKE: Okay.

16 MR. SUND: We'll get an answer to that later.

17 MR. WENK: I'm sorry, I really didn't understand.

18 MS. WUNNICKE: I knew -- I know that you've done other  
19 investigations that haven't been shared with us and I was just  
20 asking that you flush out your report with those conclusions.

21 MR. SUND: I'll translate the question when it's done.

22 MR. PARKER: Well, Commissioner Sund, I think the -- it  
23 was always our intent to make our recommendations at that level  
24 and I think, you know, the problem with Congress moving on  
25 the bills at the same time we are moving has limited the impact

1 we could have on those bills, but I'm happy to say we've been  
2 able to have some impact on what has happened in the House,  
3 considerably less in the Senate, of course, since they were so far  
4 ahead. And I think the information flow has had some effect  
5 there in the implementation of those -- whatever comes out of  
6 the conference committee will lie the secret of success,  
7 however. Congress can budget and Congress can write laws, but  
8 someone has to carry them out successfully.

9 So that -- I see that Mr. Ewing has arrived. Mr. Ewing's  
10 Assistant Regional Administrator for the Environmental  
11 Protection Agency, Region X.

12 MR. EWING: Good morning. I think you've gotten a copy  
13 of the written response that I made to your questions that you  
14 provided to me a month or so ago. And in light of the fact that  
15 you've got those comments, I'll open with just a brief statement  
16 today and then make myself available to respond to any questions  
17 that you have.

18 MR. PARKER: Okay.

19 MR. EWING: Good morning, Mr. Chairman, members of  
20 the Commission. I am the Assistant Regional Administrator for  
21 EPA Region X with responsibility for Alaska operations. Included  
22 in my responsibilities are that of managing the Superfund  
23 program here in Alaska, which provides emergency and other  
24 immediate response to release of hazardous substances into the  
25 environment. I also serve as the co-chair of the Alaska Regional

1 Response Team. I appreciate this opportunity to be with you  
2 this morning.

3 Let me start by laying out kind of the grand scheme of  
4 things from a federal perspective. The National Oil and  
5 Hazardous Substance Pollution Contingency Plan is a master plan  
6 under which the federal bureaucracy operates when it comes to  
7 oil spills and hazardous substance incidents. That particular  
8 plan establishes three organizational levels. The first level is a  
9 national response team, commonly referred to as the NRT. It's  
10 composed of 13 federal agencies, chaired by the U.S.  
11 Environmental Protection Agency, vice-chaired by the Coast  
12 Guard based in Washington, D.C. The second level of  
13 organization is the Regional Response Team. There are 13  
14 Regional Response Teams across the country. Here in Alaska we  
15 have our own Regional Response Team which is co-chaired by  
16 U.S. Coast Guard and the U.S. EPA. The third level is that of the  
17 on-scene coordinator. For every spill incident that occurs, there  
18 is an on-scene coordinator that is responsible for operating  
19 under the direction of the RRT and carrying out the actions that  
20 are necessary to respond to the incident.

21 The RRT's are basically policy, planning and coordinating  
22 bodies. They provide guidance to the on-scene coordinator  
23 prior to an incident, through the Regional Contingency Plan and,  
24 during an incident, by providing assistance as requested by the  
25 OSC. The U.S. Coast Guard provided the federal on-scene

1 coordinator role and chaired the Exxon Valdez incident specific  
2 RRT meetings, Regional Response Team meetings. The National  
3 Contingency Plan calls for the U.S. Coast Guard to take the lead  
4 role during coastal pollution incidents. EPA's role on the RRT  
5 ensures EPA input to the oil spill response and  
6 recommendations for the federal on-scene coordinator. So,  
7 we're there to assist in case of a coastal spill. EPA also has a  
8 responsibility for review the appropriateness of dispersants,  
9 biological additives and other chemical agents used on an oil  
10 spill. EPA's response activities in regards to the Exxon Valdez  
11 spill involved traditional support to the Coast Guard through the  
12 Alaska Regional Response Team, direct technical assistance to  
13 the Alaska Department of Environmental Conservation, and a  
14 substantial research and development effort directed at bio-  
15 remediation.

16 Now, as I've indicated, I've provided written response to a  
17 number of questions you provided earlier and I'll just stop there  
18 and try to respond to any specific questions you might have that  
19 would expand upon the previous submittal.

20 MR. PARKER: Okay. Thank you Mr. Ewing. One of the  
21 things that's come up in our hearings time and time again has  
22 been the desire of those involved in this spill for a much  
23 stronger controlling agency in any future spills. In other words  
24 the role of the on-scene coordinator, they express it on-scene  
25 commander, so forth. Has EPA reached any conclusions they

1 could share with us now as to how you would visualize  
2 strengthening the National Contingency Plan to provide that?

3 MR. EWING: Let me say that there are tradeoffs that you  
4 have to be aware of when you strengthen any one individual's  
5 power and authority. I think that my observation is that the  
6 organization that is set forward in the National Contingency Plan  
7 is basically sound. I think it brings the right agencies together,  
8 makes the resources of the federal government available as  
9 needed in a situation. I think that it's probably more a matter of  
10 trading and of developing the experience in the individuals who  
11 play that role of on-scene coordinator so that they can play that  
12 role more effectively. I think you're well aware that there are  
13 two competing sets of authorities at work. There was in the  
14 case of the Exxon Valdez situation too. While the State of Alaska  
15 is a member of the Alaska Regional Response Team, they also  
16 have a set of statutory authorities that, in some degree, compete.  
17 I don't know that they conflict, but they give the State of Alaska  
18 some responsibility and parallel with that which the federal  
19 government has. So, if you were take the step of giving a federal  
20 on-scene coordinator total authority and responsibility, you  
21 would probably be doing that at the expense of the state. That's  
22 something I think you'd want to consider very carefully before  
23 you took that step.

24 My experience is that another part of the balancing -- it's  
25 important to be able to take action swiftly, take the right action

1       swiftly, but it's also important to make sure that you're  
2       considering all the factors that need to be considered. And  
3       sometimes, having a little less authority and having a need to  
4       consult with local officials and State officials and other federal  
5       agencies may result in a better decision, a better action, than if  
6       you had all the authority vested in one person and they were able  
7       to move swiftly and perhaps overlook some things that need to  
8       be considered.

9               I don't know that there is a good answer. I don't know  
10       that I could come down and say that we ought to have a  
11       commander vested with total authority, 'cause I'm not sure that  
12       that's the right answer. But I think that whoever we have needs  
13       to be well trained and we need to do as much planning in  
14       advance as we can.

15              We've done some of that here in Alaska. I think you're  
16       aware that we did have prepared and in place, an oil dispersant  
17       use guideline specific to Prince William Sound, which is, I think  
18       that's the kind of thing that we need to have worked out in  
19       advance so that there is -- so as many decisions can be made in  
20       advance of an incident as possible. That, I think, and set you  
21       burning guidelines, animal cleaning guidelines, all of those kinds  
22       of things have been worked out through the Alaska Regional  
23       response Team. And I think provided some assistance to the  
24       on-scene coordinator as he had to make the decisions he had to  
25       make there.

1 I won't give you a black and white answer on that -- on  
2 how to perceive.....

3 MR. PARKER: Yeah.

4 MR. EWING: .....with regard to authority.

5 MR. PARKER: You -- they are reviewing the National  
6 Contingency Plan, all of the 13 agency members, as I  
7 understand. Is there a report coming out on that?

8 MR. EWING: I am not aware that there is a review of the  
9 National Contingency Plan. What the President has ordered to  
10 be done is a review of contingency plans that pertain to ports in  
11 the United States. The burden for that review falls primarily  
12 with the National Response Team, at the National level, and  
13 there have been a group, a sub-committee of that organization  
14 put together to review these, headed by the Coast Guard and  
15 there's a report due to the President, I believe in January of  
16 1990. That is not aimed at the National Contingency Plan.  
17 That's aimed at port-specific plans across the United States.

18 MR. PARKER: The -- I think the -- you know, the  
19 problem I have, at least in dealing with Exxon Valdez is whether  
20 to deal with it as aberrancy or to deal with it as a true system  
21 failure. Because, we have this situation where the three  
22 principle people on the scene with responsibility initially -  
23 Commander McCall and Mr. Lawn of State DEC and the Alyeska  
24 Terminal Manager - all, you know, were superseded within two  
25 days by the, in effect by Commissioner Kelso, though he was not

1 the State on-scene coordinator. I believe Mr. Lamero was, but it  
2 was obviously Mr. Kelso who was running things, Admiral Nelson  
3 and by Mr. Iorocy from Exxon. None of the three people who  
4 had any particular knowledge of the, you know, -- had read the  
5 contingency plans in depth, or thing. You know, whether that,  
6 you know, was just something that was germane to Exxon Valdez  
7 and may never happen again that such a similar transfer of  
8 authority would take place or not is the sort of thing I'm  
9 wrassling with and which I think led to a lot of the things we  
10 heard at our hearings.

11 MR. EWING: I think that when you're doing contingency  
12 planning, you've gotta look at worst case situations and you've got  
13 to plan for worst case situations. And even though the Exxon  
14 Valdez may be an exceptional spill in terms of volume, in terms  
15 of the national attention that it received and the fallout from that  
16 national attention, I think that you've got to plan for that kind of  
17 thing. Otherwise, when it happens, you can assure yourself that  
18 you'll fall short of being able to respond adequately.

19 I think that there is nothing wrong with the Coast Guard  
20 basically bringing in someone of higher authority, higher rank.  
21 in fact, I think -- I was in Washington, D.C. when this incident  
22 occurred. I was back there on a three month detail. And as I  
23 watched it from that level, it seemed quite appropriate to bring  
24 in someone with more rank and more authority to be able to deal  
25 with the kinds of national pressures that were coming down on

1 the Coast Guard. So, I don't have a problem with that.

2 And generally speaking, the Coast Guard through the  
3 ranks are pretty familiar with the National Contingency Plan.  
4 That's one of their areas of responsibility is oil spill and I don't  
5 think -- we brought in Admiral Nelson and later brought in some  
6 of the even higher ranking Coast Guard folks that that hurt the  
7 process. I think that they had all of the technical people there  
8 still to advise them.

9 It does, though, characterize the conflict that I pointed  
10 out when you've got basically the State with an on-scene  
11 coordinator and the federal government with an on-scene  
12 coordinator. I think it was contemplated that there would be  
13 input from the State, but it's not contemplated in the National  
14 contingency plan that there will be two separate bodies trying to  
15 direct the same response. I think in terms of the Exxon  
16 involvement -- now, the contingency plan does contemplate the  
17 spiller being the primary responsible party for clean up. So, I  
18 think the fact that Frank Iorocy was there, the fact that Exxon  
19 was deeply involved throughout is appropriate. He should not  
20 have been making the decisions or calling the shots and  
21 ultimately it was the federal on-scene coordinator's  
22 responsibility.

23 But, I think that, I think that if there's anything that we  
24 learn from this is that we need to educate more people. I think  
25 some steps have been taken to kind of force the education of the

1 industry. And I think the State and federal government has gone  
2 through an education process here that if we don't loose the  
3 lessons we've learned that a future situation like this might be  
4 handled a little more smoothly.

5 MR. PARKER: Probing the next step then, on the  
6 dispersants there was this model plan worked out which  
7 everybody was justifiably proud of with zone 1, 2, and 3 already  
8 to go. All the pre-planning had been done. Yet, of course Exxon  
9 is going to court saying they were denied the use of dispersants.  
10 It was -- made that statement consistently from the beginning  
11 and I think, you know, where's the failure in perception there  
12 that the spiller had, you know, such a strangely different view  
13 than what was actually in the plan.

14 MR. EWING: And I don't know that, I guess I don't know  
15 the basis for you saying that the spiller had a different view of  
16 the situation.

17 MR. PARKER: They kept saying they were denied the use  
18 of dispersants, but Commander McCall, of course, has strongly  
19 said Zone 1 was ready to go. They could go in Zone 1 any time,  
20 you know.

21 MR. EWING: They could go in Zone 1 with the approval of  
22 the federal on-scene coordinator, who was Commander McCall  
23 at the time. I don't know -- I guess I don't believe that there was  
24 confusion what was in the plan. I think the confusion, or the  
25 conflict, appears to be over what the Commander gave them

1 permission and what he didn't give them permission to do.

2 MR. PARKER: He's pretty strong in his statement, that he  
3 did.

4 MR. EWING: Well, I think all of the evidence that I have  
5 seen bears out what the Commander says in that regard.

6 MR. PARKER: Okay, I -- you know, those are critical  
7 elements. You know, if we're gonna do a catastrophic spill  
8 response better the next time, I was sort of thinking -- to me it's  
9 been something like punching pillows, but I think as our  
10 detailed research starts to bring results hopefully that will  
11 harden up some.

12 MS. WUNNICKE: I have some questions Mr. Chairman  
13 with respect to the regional response team. That's -- the region,  
14 of course, is all of Alaska. Is that correct?

15 MR. EWING: All of Alaska, yes.

16 MS. WUNNICKE: At what level within the agencies  
17 represented on the regional response team were the  
18 representatives to the team within the agency? Was it the heads  
19 of agencies. Were you, yourself or your superior, the Co-chair of  
20 the team.

21 MR. EWING: Normally, I am the co-chair of the team.

22 MS. WUNNICKE: And you sit on all those meetings.

23 MR. EWING: Normally, I would. In this situation, as I  
24 mentioned, I was out of state. My replacement had the  
25 opportunity to sit in my place as co-chair of the regional

1 response team.

2 MS. WUNNICKE: Has a regional -- I know the state only  
3 has one representative on the regional response team and from  
4 that may come some of the problems that you indicate. Has any  
5 thought been given to expanding the state's membership on the  
6 regional response team to include more than one  
7 representative?

8 MR. EWING: I don't know that point, that the issue has  
9 been raised formally with RRT. I have not given thoughts to  
10 expanding membership.

11 MS. WUNNICKE: What examination has the team itself  
12 made in the light of the Exxon Valdez in terms of its own  
13 membership or -- I would just ask the question about  
14 membership, but in terms of its own participation and  
15 involvement in the regional contingency plan.

16 MR. EWING: Well, I think we, back in May or June, did  
17 convene the team to basically go back over everything that  
18 occurred step-by-step from the first notice of the spill up to that  
19 point in time to see what we could learn from what had taken  
20 place. I think that we have not, as co-chairs, as the leadership of  
21 the RRT, dictated that anyone provide anyone other than they  
22 choose to assign to the team, but I think there has been some  
23 self-examination on the part of some of the federal agencies and  
24 some who had chosen not to participate previously are now  
25 participating and I think some are taking a look to make sure

1 that they have an adequate level of representation on the team.  
2 So I think there's been some self-adjustments on the part of the  
3 agencies taking place as a result of what took place with Exxon  
4 Valdez.

5 MS. WUNNICKE: But there is no report, as Commissioner  
6 Wenk would say, of lessons learned to come out of the Regional  
7 Response team.

8 MR. EWING: There will be. There always is a report  
9 prepared by whoever the lead agency is, on an incident after the  
10 fact. The Coast Guard, in fact, will be preparing a report on this  
11 incident. I don't know what they're time for turning that out,  
12 but I suspect that what we did back in May or June will be a part  
13 of that, but it'll be a more indepth review themselves of their  
14 own activities.

15 MS. WUNNICKE: Could that be made available to us?

16 MR. EWING: Yes. Certainly.

17 MS. WUNNICKE: Thank you. Thank you, Mr. Chairman.

18 MR. PARKER: Meg.

19 MS. HAYES: We have received quite a number of public --  
20 much public testimony come forward to us about the problems of  
21 having bright ideas that people had or had had on the shelf about  
22 cleaning up the oil in Prince William Sound and I'm sure that  
23 many of those people have been beating on your doors as well as  
24 ours. According to their testimony they have. My question is  
25 that I understand from some of the people that have come

1 before us the bio-remediation has been the technique that has  
2 been around for a long time. Yet I see that the report that you  
3 clipped to your testimony as just dated August '89. I wonder  
4 what the history of bio-remediation is. Did it take a spill of this  
5 magnitude to get it to the point where it became -- had some  
6 kind of credibility with EPA or with people making decisions  
7 about spill clean up.

8 MR. EWING: I guess you could probably ask that question  
9 about almost all of our oil spill technology. I think -- I flew out  
10 with the Administrator and with the Secretary of Transportation  
11 two or three days after the spill and I think the response that I  
12 heard from both of them as they reviewed what was going on was  
13 that the technology that they saw basically looked like the same  
14 technology that's been around since the '40's. I think it was in  
15 that particular tour of Prince William Sound that William Riley,  
16 the Administrator of EPA said there's got to be something better.  
17 There's got to be a better way to approach this and I think one of  
18 the first things he did when he got back to Washington was to  
19 ask the office of Research and Development to pull together the  
20 top experts from around the world to talk about other  
21 techniques. The thing that came out of that meeting was the  
22 concept of bio-remediation. Within a matter of weeks we had a  
23 research team in the field trying out bio-remediation and based  
24 on the results of that it did go to full scale application in August.  
25 I think there were 70 some miles of beaches that were treated.

1 And what you see there is basically a report documenting what  
2 we did from March up through about August of this year.

3 MS. HAYES: Well, obviously, this report, which I haven't  
4 had a chance to look at and just having had look at it, is designed  
5 for the layman. The resident of Homer that's worried about what  
6 bio-remdiation is going to do to their beach, rather than the  
7 scientist. I guess my question is what kind of program do you  
8 have for ongoing research. Are we going to make another -- if  
9 this -- first of all, does bio-remediation indicate a quantum jump  
10 over our state of knowledge from a year ago, before the Valdez  
11 oil spill?

12 MR. EWING: Well, in terms of ongoing oil spill research,  
13 since about mid-1980's there has been very little ongoing  
14 research. About 1985 EPA's funding for oil spill response  
15 research dried up. We closed down our facility that we had back  
16 in New Jersey for doing oil spill research, so this bio-  
17 remediation project was basically one that we boot-strapped  
18 together, pulling in resources from our labs and so forth to do it.  
19 I, you know, I suspect that if nothing else, this spill will result in  
20 some cranking up again EPA, probably the Coast Guard, maybe  
21 some other agencies to go back and see what we can do to bring  
22 the technology from the 40's, or wherever it left off, up to the  
23 present, so we're in a little better situation in the future.

24 MS. HAYES: Do you have an intent to put in some kind of  
25 request like that in the next federal budget cycle?

1           MR. EWING: I personally do not, but the Administrator of  
2 EPA will, in fact, be putting something forward, I'm sure.

3           MS. HAYES: Do the regions put together  
4 recommendations to the Administrator about what should be in  
5 the budget?

6           MR. EWING: We have an opportunity to review. We don't  
7 often -- we're not often the original source of ideas for things to  
8 go in the budget.

9           MR. PARKER: Yeah. Counsel do you.....

10          MS. WUNNICKE: Mike.

11          MR. PARKER: Oh, Mike.

12          MR. HERZ: Mr. Ewing, I've always been puzzled by -- I  
13 understand the RRT role that EPA has for ocean spills, but it's  
14 never been clear to me the way in which the agency is  
15 structured both at a federal level and at a regional level, in terms  
16 of how, what within the agency is designed to prepare the  
17 person who is, yourself, the RRT co-chair, and other members of  
18 the EPA staff to deal specifically with oil issues and problems.  
19 And could you sort of give me a little background on how that  
20 works, particularly in the region; what your background is and  
21 how your staff is organized relative to oil work.

22          MR. EWING: It's, you know, here in Alaska it's not real  
23 tough to organize staff. I've got one person available for oil spill  
24 response, so to call it an organization is maybe stretching it a  
25 little bit. But, our responsibility is basically for inland spills;

1 chemical spills and oil spills that are inland on the rivers and  
2 streams and waters of the United States. The individual that I  
3 have in the oil spill area is basically trained. He's a Coast Guard  
4 officer; he was a Coast Guard officer before coming to my  
5 organization. So, his basic oil spill response training came from  
6 the Coast Guard and he has added to that the many classes that  
7 are available in EPA on the chemical response side of things,  
8 which EPA has quite a number of training opportunities. Add to  
9 that the National meetings that occur on an annual basis that  
10 EPA, the Coast Guard and the American Petroleum Institute are  
11 a part of to bring together individuals who've had experience on  
12 spills over the course of the year to allow them to share that  
13 experience. All of that is training that they receive. In addition  
14 to mock exercises that we run through with the RRT provides  
15 experience. We have one or two exercises that we run through  
16 on an annual basis to give all of the agencies some experience in  
17 oil spill response. That's.....

18 MR. HERZ: Are those field exercises?

19 MR. EWING: Those are field exercises, yes.

20 MR. HERZ: So, are those drills. Does EPA have the  
21 authority here to call drills.

22 MR. EWING: To -- for example, to exercise Alyeska in oil  
23 spill response, no, they do not have.

24 MR. HERZ: So, how do these drills -- how do these  
25 training exercises come about?

1           MR. EWING: Well, they're done voluntarily. I'm not  
2 talking about activating an institute to carry out a contingency  
3 plan, I'm talking about basically going into -- setting up a  
4 situation and then either going through a, just a dry run exercise  
5 to carry out that particular scenario. In some instances we go  
6 into the field and in concert with someone like Alyeska and  
7 other industry, we may actually pull booms and do that sort of  
8 thing, but not real elaborate.

9           MR. HERZ: And I see in your response to our questions  
10 that you say that there's no EPA regulation requiring submission  
11 or review of any plans and EPA has not reviewed the Alyeska  
12 plan. I guess the set of questions I'm framing -- what I'm trying  
13 to get a sense of is EPA's given a very high level, decision making  
14 responsibility in the RRT structure on the one hand. On the  
15 other hand, in terms of local knowledge about various things that  
16 are -- how things work at Alyeska; detailed evaluation of what oil  
17 response equipment and people are available and all those kinds  
18 of things, don't seem to be part of EPA's responsibility. And I  
19 guess what I'm getting at is the question of why your agency is  
20 given so much responsibility and decision making and yet, at the  
21 level of preparation to be able to do good decision making, there  
22 seems to be practically nothing there. It seems to be a big  
23 discrepancy.

24           MR. EWING: Well, I think if you look at what our  
25 responsibility is with regard to a spill like, a coastal spill like the

1 Exxon Valdez spill, our responsibility basically gets back to  
2 chemical application and the dispersant use guideline  
3 development to begin with. EPA did chair the committee that  
4 developed the dispersant use guidelines. Bio-remediation was  
5 an EPA initiative. Waste disposal, EPA provided the technical  
6 expertise on waste disposal in conjunction with the Alaska  
7 department of Environmental Conservation. It was not EPA's  
8 role in this particular spill to be knowledgeable about the use of  
9 booms or skimmer technology, that sort of thing. That's outside  
10 of our responsibility. So, I think when you look at the resources  
11 that are available to EPA nationally, I'm not uncomfortable with  
12 the role that's given to EPA in a spill like the Exxon Valdez. If  
13 this were an inland spill with the level of staffing that I have  
14 here, I would very quickly need to turn outside and bring in  
15 people from elsewhere in the United States or bring in  
16 contractors to assist EPA is carrying out its role, but the  
17 structure for accomplishing that is in place and can be done  
18 readily.

19 MR. HERZ: I'd always assumed that EPA's role in the RRT  
20 was designed for EPA to be sort of the advocate for the  
21 resources. In other words, this is the Environmental Protection  
22 Agency and you have U.S. Fish and Wildlife Service, you have  
23 other agencies who are the resource agencies. But in terms of  
24 the RRT structure, because of the predominant role, the  
25 decision making role that EPA is given, I've always assumed that

1 there is that sort of advocating for the resources. My question is  
2 the degree to which, in advocating for the resources in both the  
3 decisions relating to the use of bio-remediation and the decision  
4 relating to dispersants, did you, were you in concert with the  
5 state and state resources agencies about risk to the environment  
6 in use of both of those procedures or techniques?

7 MR. EWING: Let's back up just a minute, 'cause I think  
8 the conception that you have of EPA's role is shared by a lot of  
9 people and it's not a correct perception. I think EPA has the  
10 role. It has the strong leadership role for two reasons. One,  
11 again, if an incident is a chemical or an oil spill incident that  
12 happens inland, EPA has the lead responsibility. EPA would have  
13 the designated federal on-scene coordinator. It would be one of  
14 my staff or someone that I'd bring in to play that role. That's the  
15 reason we have the role that we -- the leadership role that we  
16 have. When it comes to being an advocate for the resources, the  
17 primary responsibility for that goes back to the trustee agencies,  
18 to Fish and Wildlife Service, to BLM, to Forest Service, to the  
19 state DNR or the agencies who in fact have the trust  
20 responsibility for that resource. EPA overlays all of that, again,  
21 from an environmental trade off point of view. I think our role,  
22 when a technique is used, whether it's digging up gravel from a  
23 beach and hauling it away or digging it up and cleaning it or  
24 replacing it, using dispersants on a beach or whatever, our role  
25 is to try to arrive at some independent conclusion about whether

1 there's a net gain to the environment or not. Everything that's  
2 done in response to a spill should result in a net gain to the  
3 environment. And if it doesn't, it should be done. So, we do  
4 have a role to play in that regard when it comes to resource  
5 protection, making sure that our actions are wisely taken, but  
6 primarily respon.....

7 MR. HERZ: Those trustee agencies are not part of the  
8 decision, for example, to apply dispersants. EPA plays -- I mean,  
9 that's the place where they're supposedly advo -- at least in my  
10 interpretation, they're advocating for the resources.

11 MR. EWING: The trustee agencies, Fish and Wildlife  
12 Service, for example, Fish and Game were involved in the  
13 development of the dispersant use guidelines, so their input was  
14 provided at that time. At this particular point in time when you  
15 talk about use of dispersants in the water, the guidelines are in  
16 place and really the only one who needs to decide is the federal  
17 on-scene coordinator, at this point in time. But we've laid the  
18 ground work. In laying the groundwork, all of those who have  
19 authority and responsibility have been involved. Okay. There  
20 was a point to your question that I jumped back to the beginning  
21 and I may have missed where you were headed in your question.

22 MR. HERZ: Well, I guess where I was headed was the last  
23 question really relative to the preceding questions about how  
24 your agency's organization and the degree -- number one you  
25 pointed out that you only have really one person allocated to

1        what is a potentially -- well, not only potentially, but in this past  
2        case, a major job and a major responsibility. What  
3        recommendations do you have for your agency in terms of what  
4        is needed and what changes in organization and structure you  
5        would propose based on what happened or didn't happen in this  
6        incident?

7                MR. EWING: I think one thing that I should be clear on  
8        is, even though I've got one person here, we brought in  
9        individuals with on-scene coordinator responsibility from around  
10       the nation. Virtually every region of the country provided people  
11       which we either used directly or we loaned to the state to carry  
12       out the role that they were carrying out. We had available to us  
13       our SWAT team, so to speak, out of Edison, New Jersey, a  
14       specialist in oil spill came out and were available immediately  
15       and whenever we needed him throughout. So, even though we  
16       are very thin here locally, we do have access to all the resources  
17       of the agency when an event like this comes along. Every  
18       bureaucrat is looking for ways to beef up an organization to be in  
19       a better position and I, you know, I'd like to have more  
20       resources here in Alaska too, but understand the tradeoffs that  
21       exist when it comes to formulating budgets and it's not always  
22       possible to have all that you likes to have.

23               MR. HERZ: So there's -- I mean, you felt like you had all  
24       the assistance, and people and things -- there's nothing that you  
25       need urgently enough to make a plea for it?

1 MR. EWING: Well, I didn't say that. I, in fact, have made a  
2 plea in the channels that can assist me in that regard. But, I  
3 recognize the limitations of the federal budget and I don't see  
4 the coffers and lots of new resources flowing in the way of  
5 staffing here to Alaska.

6 MR. HERZ: Yeah, but we'd like to know what you really --  
7 what you need. I mean, I'm astounded that someone in an  
8 agency that has this major responsibility won't advocate for his  
9 agency to say, gee, what I really needed; what we didn't have;  
10 what didn't work; what we should've done; those are the kinds  
11 of things where perhaps the Commission can be helpful in terms  
12 of its recommendations. And we're looking for input that will  
13 help us do a better job of making recommendations.

14 MR. EWING: I understand that. And I, again, I think that  
15 if there's a lesson to be learned here, it's not one of all agencies  
16 running out and getting more staffing. I think the lesson to be  
17 learned is that the kind of situation, the kind of event that did  
18 occur, can occur. And I think as I look back at it, I think that  
19 there needs to be much more emphasis on prevention. I think,  
20 it's very clear to me, I think it should be clear to all of you after  
21 going through the weeks and months of testimony that you've  
22 gone through here that the number one answer is that we've got  
23 to focus attention on prevention. I think in this particular  
24 situation they're a number of things that could have been done at  
25 not a whole lot of cost to private industry or the government that

1 probably would have resulted in prevention of this incident  
2 occurring. So, there's got to more.....

3 MR. HERZ: For example, I was -- in the Bay area we had a  
4 tank rupture and a major shell facility/refinery, we lost about half  
5 a million gallons of oil last year. And what came out in the  
6 hearings that followed that was that in the region, Region IX,  
7 there are some 55 - 60,000 tanks that should be inspected --  
8 that EPA has the responsibility to inspect. And allocated to do  
9 that job is one half-time slot. Now that's prevention. That would  
10 be prevention if, in fact, those inspections were carried. And I  
11 guess what I was probing for here was, there must be a host of  
12 prevention tasks that the Environmental Protection Agency is  
13 supposed to be carrying out that it can't carry out because it has  
14 insufficient budget, insufficient people, insufficient training and  
15 I can't get you to articulate that you have any needs. Everything  
16 that your agency is doing is adequate. You say that there needs  
17 to be more prevention, but you won't focus on what the tasks are  
18 that need to be done and, you know, I think our role is to try to  
19 help do a better job in terms of prevention, in terms of response  
20 and we need the help of the people who are sitting in the  
21 position of interpreting legislation that is supposed to be carried  
22 out by various agencies and what I'm hearing is that there isn't  
23 anything that you need.

24 MR. EWING: Well, I think you've prematurely drawn that  
25 conclusion. I am saying that the number one thing that we need

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3               MR. HERZ: For example, I was -- in the Bay area we had a  
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19      help do a better job in terms of prevention, in terms of response  
20      and we need the help of the people who are sitting in the  
21      position of interpreting legislation that is supposed to be carried  
22      out by various agencies and what I'm hearing is that there isn't  
23      anything that you need.

24             MR. EWING: Well, I think you've prematurely drawn that  
25      conclusion. I am saying that the number one thing that we need

1 to do is focus on prevention. And the number two thing we need  
2 to recognize is that these kinds of events will occur. No matter  
3 how well you prepare they're going to occur and we've got to  
4 take the steps to bring our response technology up to the  
5 present. Okay. And I think that dictates a need, on a  
6 coordinated basis -- I don't mean every agency running out and  
7 doing their own thing, but on a coordinated basis of doing the  
8 research and development that's necessary to give us better  
9 booms, better skimming equipment, better chemicals for use in  
10 dispersant, better information on insitue burning - when to use  
11 it, what are the tradeoff. It's a tool that's been around for a long  
12 time, but it's not one that I think we've really gone through an  
13 adequate evaluation of what the tradeoffs are and when it's best  
14 to use it and when it isn't. I think there needs to be some  
15 attention focused in that area. I think that things like bio-  
16 remediation we ought to carry that as far as we can in terms of  
17 finding our just what the limits of its application might be. So, I  
18 think that beyond that, or as a part of that, I think we need to do  
19 as the Department of Environmental Conservation is doing now,  
20 and that is lean very heavily upon private industry who has  
21 responsibility for being prepared to insure that they have  
22 adequate contingency plans; that in fact they drill; make sure  
23 that those are more than just paper documents. In fact, if an  
24 event comes along that they can find the booms and they can put  
25 them in place and they've got the equipment there to do it.

1 I applaud the kinds of things that the Department of  
2 Environmental Conservation has done over the last few months  
3 on the case of Alyeska to strengthen the ability to respond. So, I  
4 guess what I'm saying is that the primary effort needs to be ,  
5 needs to be on prevention, but be prepared when the event does  
6 come to respond. Make sure the responsibility -- those who  
7 have the responsibility, understand well their responsibility and  
8 their feet are held to the fire. DEC is doing that. I, I guess I am  
9 not uncomfortable with the level of review that EPA is able to  
10 perform of spill prevention contingency plans. The SPCC plans  
11 that are required for oil storage in inland situations here in  
12 Alaska, I think that even though I've got one individual dedicated  
13 to oil spill for the entire state, every inspector that goes out into  
14 the field is capable of doing an SPCC inspection and, in fact,  
15 does, as a matter of routine. So, I think the state is being  
16 covered in that regard. So, I hope that gets at your concern and  
17 I hope it gives you maybe a list of things that you can put into  
18 your report. I think there are some things that need to be done.

19 MR. HERZ: Thank you.

20 MR. PARKER: Meg.

21 MS. HAYES: I just was wondering, if you had an inland  
22 spill in inland waters with either an unknown or a financially  
23 indigent spiller, would EPA have the resources to step in and do  
24 something about it.

25 MR. EWING: We have the same fund available to us that

1 the Coast Guard has available. So the oil spill fund that the Coast  
2 Guard taps is the same fund that we would tap for an oil spill  
3 situation inland. So, if that fund is broke, as it almost was at the  
4 time of the Exxon Valdez situation, we would be in the same  
5 situation the Coast Guard would be.

6 MS. HAYES: Do you know if that spill, if that fund is still  
7 broke.

8 MR. EWING: Well, in the case of the Exxon Valdez, you  
9 have two funds. You have one that was created as part of the  
10 TAPS project and then you have one that comes from the Clean  
11 Water Act. That was the fund that was down to about, I think  
12 down to about four or five million dollars at the time of the spill.  
13 That would not have kept us in operation for a day. To be honest  
14 with you, I don't know what the level of funding is in that fund at  
15 this point in time.

16 MS. HAYES: And so, that presumably would influence the  
17 decision about federalizing the spill if there was a.....

18 MR. EWING: There's no decision to be made if there's no  
19 one that you can put your finger on. It has to be federalized in  
20 that instance. So we're in a situation of using what we have  
21 available and I think if we were in a catastrophic situation, I'm  
22 confident that Congress would put money, make money available  
23 to do what needed to be done.

24 MS. HAYES: Oh, I had one more question. Since you said  
25 that you were doing, responsible for doing the weighing up as to

1 whether a certain technique was positive or negative with  
2 respect to the environment, I wondered if you had done that  
3 kind of analysis for all of the waste and the materials that had  
4 been used in the hand wiping of rocks and the physical cleaning  
5 that had been done last summer in terms of the incinerator  
6 problems, the waste land filling problem, that kind of thing.  
7 Had you come up with a analysis of that?

8 MR. EWING: Well, the permitting of the incinerators -- in  
9 this state, the permit program for air emissions is delegated to  
10 the state of Alaska. The state did come to us for technical  
11 assistance as they considered permitting the various  
12 incinerators that Exxon came forward with and we did, in fact,  
13 provide that technical expertise. We did not attempt to  
14 influence the state's ultimate decision on whether to permit or  
15 not to permit. We gave them information and let them make the  
16 decision, which is their responsibility to do.

17 MS. HAYES: I missed the bigger question of the resources  
18 that go into producing all of that absorbent material, the  
19 distribution of it and the eventual disposal of it. Had you done  
20 some kind of analysis on that.

21 MR. EWING: No, we had not.

22 MS. HAYES: Okay.

23 MR. PARKER: Counsel?

24 MR. HAVELOCK: You spent some time in Washington, I  
25 gather, and have some, a general idea of the application of

1 environmental laws as seen from the top.

2 MR. EWING: That's correct.

3 MR. HAVELOCK: I guess the view of the national public is  
4 that the Environmental Protection Agency has, maybe together  
5 with the CEQ has broad responsibility for overseeing the  
6 protection of the environment. Would you agree that's a popular  
7 perception.

8 MR. EWING: That is not only the popular perception, but  
9 I think that perception was shared by the President also. I think  
10 manifest when he gave EPA the lead responsibility for  
11 restoration of the oil spill impacted areas even though, if we go  
12 back and look at the way the national contingency plan lays out  
13 that responsibility it would have more -- that would have been  
14 directed probably to trustee agencies rather than to EPA. But  
15 the President's perception was that EPA was responsible and  
16 gave that assignment to William Riley, the administrator of EPA,  
17 we've undertaken that responsibility.

18 MR. HAVELOCK: So, you've undertaken that responsibility  
19 then. You at least have the statutory authority to do it whether  
20 or not there were inter-agency agreements that delegated it out.

21 MR. EWING: We have the ability to provide the leadership  
22 and coordination with agencies who do have legal authority to  
23 get the job done, we believe. It's a little early to draw any final  
24 conclusions on that.

25 MR. HAVELOCK: And part of your agreement involves the

1 division of authority between land spills and sea spills, with the  
2 Coast Guard. Am I correct in that?

3 MR. EWING: That is correct.

4 MR. HAVELOCK: Is that statutory or is that simply rules,  
5 regulations and procedures?

6 MR. EWING: That is rules, regulations and procedures,  
7 the national contingency plan. I don't believe it goes back to the  
8 Clean Water Act itself. I think it originates with the national  
9 contingency plan.

10 MR. HAVELOCK: What kind of responsibility does EPA  
11 have with respect to spills in fresh water?

12 MR. EWING: EPA's responsibility is the same for spills in  
13 fresh water as the Coast Guard has for spills in coastal waters.

14 MR. HAVELOCK: So you, in fact, do have -- is it correct  
15 that the EPA then does have a maritime role when it comes to  
16 non-coastal waters. Is that right?

17 MR. EWING: That's correct.

18 MR. HAVELOCK: And I assume that the agency has a very  
19 substantial experience with managing spills in inland waters?

20 MR. EWING: We have some experience. I think, I  
21 wouldn't -- I don't know if I'd characterize as very extensive  
22 experience in dealing with spills in inland waters, but we do  
23 have some experience.

24 MR. HAVELOCK: Do you have a -- you have departments  
25 within the agency or divisions or subsets, bureaucratic subsets,

1 where you have specialists that deal, in fact, with marine spills,  
2 inland marine spills.

3 MR. EWING: That's correct.

4 MR. HAVELOCK: With respect to the TransAlaska  
5 Pipeline System, do you see the agency as having a prevention  
6 role with respect to that line?

7 MR. EWING: The agency does have a prevention role with  
8 respect to the line. That role is shared with the Bureau of Land  
9 Management over which much of the line transits. They have a  
10 responsibility also.

11 MR. HAVELOCK: How many people do you have assigned  
12 to that responsibility?

13 MR. EWING: I have indicated that I've got one person in  
14 the state of Alaska specifically responsible for oil spill. I, in fact,  
15 had, over the course of the last 12 months, brought in a team of  
16 people to review the Alyeska pipeline, however. As I pointed out  
17 earlier, the number of people we have here is not limiting on our  
18 ability to deal with the situations that we face.

19 MR. HAVELOCK: So since the marine spill, you have  
20 assembled a group of people that are working on the pipeline. Is  
21 that right?

22 MR. EWING: What -- I assembled the group of people to  
23 do a one-time review of the preparedness of the various stations  
24 along the pipeline to deal with spill situations. That's a one-  
25 time, that doesn't mean that's the only time it'll be done, but it's

1 not a standing thing. It's a special purpose assignment given to  
2 the team.

3 MR. HAVELOCK: Well, is this a prevention oriented team?

4 MR. EWING: Yes.

5 MR. HAVELOCK: So, you're assessing the risks of spills on  
6 the TAPS line.

7 MR. EWING: That's correct. And I would not say that  
8 assessing the risk of spills, it's assessing the preparedness to  
9 deal with a spill should it occur.

10 MR. HAVELOCK: Then, if I'm hearing you correctly,  
11 you're not do -- it's not a prevention oriented review, it's a  
12 response type of review.

13 MR. EWING: Well, it's prevention in terms of if you look  
14 at spill prevention counter measures plan, basically that's a  
15 containment. If there is a spill that occurs that occurs at a  
16 holding facility there needs to be a capability of that spill being  
17 contained. If a tank ruptures, you have secondary containment  
18 around the tank to ensure that the oil, in fact, doesn't get out  
19 into the environment beyond that secondary containment. So,  
20 in some sense, it is prevention from an environmental pollution  
21 point of view.

22 MR. HAVELOCK: It's prevention -- well I -- one would  
23 recognize that prevention can still occur in terms of the order of  
24 magnitude. But from what you've told me, you're not doing  
25 anything on prevention in terms of an original spill. Is that

1 right?

2 MR. EWING: That's correct.

3 MR. HAVELOCK: Now, does the environmental protection  
4 agency believe that it has any responsibility for preventing spills  
5 on the TransAlaska Pipeline system, the upland leg?

6 MR. EWING: That responsibility is primarily with the  
7 Bureau of Land Management. The pipeline office is with the  
8 Bureau of Land Management so that responsibility is primary lies  
9 with BLM.

10 MR. HAVELOCK: Not only is it primarily, but in practice,  
11 from what you've told me, it's virtually exclusively, is it not?

12 MR. EWING: That's where the statutes place the  
13 responsibility.

14 MR. HAVELOCK: By which you mean there are some  
15 specific statutory responsibility that deal with BLM. Do they  
16 override EPA's general authority to protect the environment, in  
17 your view.

18 MR. EWING: Again, I think that my view of our  
19 responsibility is, as I've laid it out, and that is to make sure that  
20 secondary containment for oil spills that might occur at stations  
21 along the pipeline, in fact, are in place. And that -- EPA has no  
22 authority to regulate pipelines, per se. We do have authority to  
23 deal with storage facilities, but any kind of transportation of oil is  
24 beyond EPA's regulatory authority whether its a tanker truck or  
25 whether it's pipeline. I think you have a number of pipelines in

1 the state of Alaska. Regulation of that transportation devise is  
2 not within EPA's regulatory authority.

3 MR. HAVELOCK: Well then isn't it fair to characterize  
4 EPA as having no prevention role in that regard then?

5 MR. EWING: You could make that characterization if you  
6 choose. And I think with regard to pipeline, it's true.

7 MR. HAVELOCK: Has -- are you aware of BLM doing any  
8 prevention work at the present time?

9 MR. EWING: I -- that would be -- I am not intimately  
10 aware of what BLM is doing with regard to the pipeline at this  
11 time. I think that's a question you ought to ask of them.

12 MR. HAVELOCK: Now you indicated that you did a report  
13 back in May and June with respect to the spill. Are we talking  
14 about what I usually think of as the Skinner Report?

15 MR. EWING: What I indicated was that the RRT was  
16 assembled back in the May/June time frame and we did a self-  
17 evaluation which has not yet resulted in a report, but I think I  
18 indicated that that self-evaluation will probably be a part of the  
19 Coast Guard report, incident specific report that will come out  
20 at some point in time. So, no, what I'm referring to is not the  
21 Skinner Report.

22 MR. HAVELOCK: And that's a report that you -- who's  
23 doing the -- who is preparing that evaluation.

24 MR. EWING: Again, the Coast Guard -- whoever had  
25 responsibility for a particular incident has responsibility for

1 putting together a report. In this case, it was the Coast Guard.  
2 The Coast Guard will have that responsibility.

3 MR. HAVELOCK: So you're saying that the agency EPA is  
4 not undergoing an independent self-evaluation itself, but it is  
5 simply the Coast Guard that is doing this?

6 MR. EWING: What I'm saying is that the RRT did a self-  
7 evaluation. The RRT is -- EPA is one of 13 agencies that's part of  
8 the RRT. I'm saying the RRT did a self-evaluation. The Coast  
9 Guard will use the information that came from that self-  
10 evaluation, I expect, in the incident specific report that they do.

11 MR. HAVELOCK: Who is assigned from EPA to participate  
12 in developing that report?

13 MR. EWING: I -- we have no direct responsibility from  
14 this point forward in developing the report. We'll probably  
15 review it, but the primary responsibility, again, is the Coast  
16 Guard's.

17 MR. HAVELOCK: Did you have an opportunity to observe  
18 the Division of Emergency Services of the state during the spill  
19 response period?

20 MR. EWING: I -- no, I did not have an opportunity to do  
21 an indepth observation of that agency.

22 MR. HAVELOCK: And that's in part because it was not a  
23 part of the regional response team. I mean, you'd see those  
24 agencies regularly?

25 MR. EWING: The Department of Environ -- of Emergency

1 Response, even though they're not a member of the RRT, does  
2 in fact, show up for most of the RRT meetings so we have  
3 regular contact with that agency. Your question, though, I think  
4 is directed more at my observation of them during the spill  
5 incident and my response was no, I did not observe in any detail  
6 their activities during the response incident.

7 MR. HAVELOCK: Have you worked in any other state in  
8 the.....

9 MR. EWING: The state of Washington, yes.

10 MR. HAVELOCK: Did you work on any spill down there?

11 MR. EWING: One spill that comes to mind is the Mobile  
12 spill on Columbia River in about 19, 1983. Yes.

13 MR. HAVELOCK: In '83. Do you have any observations to  
14 make about the differences between the type of response in  
15 terms of agency configuration that occurred in that case as  
16 compared with what occurred in Alaska?

17 MR. EWING: Again, the magnitude of the spill was no  
18 where near the magnitude we're dealing with here. The  
19 regional response team was again the primary response  
20 organization. There you're talking about a four state response  
21 organization -- excuse me, three states. You've got Oregon,  
22 Washington, Idaho that are part of that response team. It  
23 evolved into primarily a state environmental agency, EPA, and  
24 responsible party response. We went quickly to EPA with  
25 systems from the state overseeing the work of the responsible

1 party in clean up.

2 MR. HAVELOCK: Were you involved in the decisions that  
3 involved the use of Correxite by Exxon in the Alaska spill?

4 MR. EWING: Yes.

5 MR. HAVELOCK: Did you evaluate other chemical  
6 dispersants?

7 MR. EWING: I think that there were something on the  
8 order of 1500 or so chemicals, remedies of various sorts that  
9 came to EPA. We immediately commenced a review group at the  
10 Washington, D.C. level, a technical review group to begin sorting  
11 through these various potential remedies. The question of  
12 whether other chemicals actually got to the ground level for  
13 testing. One example of another process that did receive ground  
14 level testing was bio-remediation. It was the use of the fertilizer.  
15 That, in addition to Correxite, in addition to I think there is a BP  
16 product also that was tested on the beaches. There may have  
17 been one other chemical that reached a testing stage over the  
18 course of the summer.

19 MR. HAVELOCK: Well, let me -- is it fair to say that the  
20 reason Correxite was used is that Exxon came in, had the  
21 Correxite, proposed to use it?

22 MR. EWING: That, that, in fact, is a large part of the  
23 reason Correxite did receive the attention it received. I think you  
24 know that any chemical, in order to be used, however, has to be  
25 on the EPA list of approved chemicals. Correxite happened to be

1 on that list, so there's no reason that it should not have been  
2 considered for these.

3 MR. HAVELOCK: I'd heard that there's a prior use of bio-  
4 remediation in southeast Alaska on occasions. Am I correct in  
5 that?

6 MR. EWING: I am not aware of any previous use of bio-  
7 remediation in the state of Alaska.

8 MR. HAVELOCK: I had heard that in California that there  
9 is a transfer of spill response authority to the state from EPA.  
10 Are you familiar with that at all, with the California system?

11 MR. EWING: I'm not familiar with that, but at one time  
12 some of the spill responsibility here in the state of Alaska was  
13 transferred to the State of Alaska from EPA. That agreement is  
14 no longer in force, however.

15 MR. HAVELOCK: Okay. Would you know when that  
16 agreement died or expired?

17 MR. EWING: Probably about 1983 or '84.

18 MR. HAVELOCK: Are there any federal/state agreements  
19 now in which EPA's involved involving response in oil spill in  
20 upland?

21 MR. EWING: No, there's nothing formal in place at this  
22 point in time.

23 MR. HAVELOCK: Apart from the transfer of resources that  
24 would be necessary. What do you see as the pros and cons of the  
25 transfer of authority over spills in the marine environment from

1 the Coast Guard to EPA as a lead agency, 'cause you're always  
2 talking cooperation?

3 MR. EWING: We've talked -- you're talking about the  
4 coastal marine and I think we've talked about resources. I think  
5 you look at the resources of the Coast Guard here in the state of  
6 Alaska, they far exceed those of EPA. If you look at those that  
7 are specific to oil spill, I think it outnumbers about 10 to 1,  
8 maybe more than that. In terms of oil spill specific resources,  
9 you look at the availability of boats and helicopters and that sort  
10 of thing, we have zero, they have fleets available to them. I think  
11 there are many things that argue against EPA having the  
12 responsibility for coastal marine spills and the same things  
13 would argue for leaving that responsibility with the Coast Guard.

14 MR. HAVELOCK: Would you want to give us a few of the  
15 arguments that are, support keeping the Coast Guard in charge?

16 MR. EWING: I thought I just did.

17 MR. HAVELOCK: Well, you said that they had all the  
18 resources. Is that basically a summary of.....

19 MR. EWING: That's -- I think that's the primary reason.  
20 If you have the people, if you have the equipment and they've got  
21 the experience also, it.....

22 MR. HAVELOCK: Do they have the experience, more  
23 experience with oil spills than EPA?

24 MR. EWING: Definitely.

25 MR. HAVELOCK: I have no further questions, Mr.

1 Chairman. Thank you.

2 MR. PARKER: A quick follow up on that area; the Navy  
3 seems to have mobilized more equipment in Prince William  
4 Sound of its own than the Coast Guard did, so why not put the  
5 Navy in charge on that basis?

6 MR. EWING: Well, I think if you go back and look at it  
7 from that point of view, the RRT organization's intended to  
8 make the resources of all agencies available. But I think when  
9 you've got your own equipment and can be in a position to  
10 respond quickly and you've got the people here on site, I think  
11 that puts you in a position to be able to respond more quickly. I  
12 think, as I look back over the responses that the Coast Guard's  
13 been involved in, in the years I've been here, and I think that  
14 they've done a very good job, by and large. I would not be quick  
15 to jerk the responsibility away from them.

16 MS. WUNNICKE: You mentioned earlier that although you  
17 only had one person in Alaska, that you had the ability to call in  
18 coordinators from other areas and that you also had an EPA  
19 SWAT team. And you called them in?

20 MR. EWING: Yes.

21 MS. WUNNICKE: How long did it take for them to arrive?

22 MR. EWING: Probably four days into the spill before we  
23 had people from the various locations in place.

24 MS. WUNNICKE: If it were a spill in internal waters and  
25 you had the responsibility, as the Coast Guard did for the coastal

1 water spill in this event, would that same time frame have  
2 applied before you could get.....

3 MR. EWING: Probably not.

4 MS. WUNNICKE: Why would that be?

5 MR. EWING: Well, the assumption at the outset, and I  
6 think correct assumption, was that it's a Coast Guard  
7 responsibility. It's a coastal spill. They had the responsibility for  
8 going in an assessing what the needs were and once they had a  
9 picture of what their needs were, they came back to the RRT, to  
10 the national response team and indicated what assistance they  
11 could use from EPA. There was a lag time in assessment. Where  
12 it's our responsibility primarily, my person would be there right  
13 away, or I think as soon as he was there and made the  
14 assessment, we'd have people on the way.

15 MS. WUNNICKE: And how long would that take?

16 MR. EWING: Depending on the weather, depending on he  
17 location -- you know Alaska as well as I do. There's no guarantee  
18 that you can get to all parts of Alaska at any given point in time.  
19 You're looking at the potential of delays in terms of days to get  
20 people on scene.

21 MS. WUNNICKE: Thank you.

22 MR. PARKER: Commissioner Wenk.

23 MR. WENK: The -- as I recall, it was the president who  
24 requested a report from Secretary Skinner and Mr. Riley very  
25 soon after the spill. The report has gained a lot of notoriety and

1 I use that term in the best sense. It's been highly  
2 complimented. It puzzles me that it's called a Skinner Report  
3 instead of the Skinner/Riley report. That may sound like a  
4 trivial question, but do you have any feel for why your chief is not  
5 given equal prominence in its identity.

6 MR. EWING: I guess -- the people I deal with, we call it  
7 the Riley Report.

8 MR. WENK: Ahh, great. That's -- I did -- you know, I  
9 wasn't put up to that question, but thank you very much. Now to  
10 go on. I have a hazy recollection, and unfortunately I don't have a  
11 copy in front of me which would have preempted this question,  
12 that there were logos on the front of the report of perhaps some  
13 12 or 14.....

14 MR. EWING: 13 federal agencies.

15 MR WENK: .....13.

16 MR. EWING: Yes.

17 MR. WENK: Is it easy to name some of those from  
18 memory?

19 MR. EWING: Well, if I didn't have my cheat sheet here, it  
20 might not be, but.....

21 MR. WENK: Oh.

22 MR. EWING: .....if you want to know who they are.  
23 Basically, you've got U.S. EPA -- the report was basically put  
24 together by the national response team. It's got Riley and  
25 Skinner's name on it; put together by the national response

1 team which is chaired by EPA. So, EPA, EPA's logo is there,  
2 Coast Guard logo is there; Department of Commerce;  
3 Department of Interior; Department of Agriculture; Department  
4 of Defense; Department of State; Justice; Transportation; Health  
5 and Human Services; Federal Emergency Management Agency;  
6 Department of Energy; Department of Labor.

7 MR. WENK: Okay. Great. Just one or two other brief  
8 questions. That's very helpful because it does lay out the number  
9 of different participants at the federal level that we need to take  
10 cognizance of.

11 MR. EWING: I think there's another point that you should  
12 know. I was in D.C. at the time of the spill. I think within four  
13 hours of the time the spill had occurred, we, in fact, had  
14 assembled people at the D.C. level and within another, I think,  
15 12 hours we had the various agencies assembled, we had the  
16 NRT together within a 12 hour period of time and established  
17 our communication links and were beginning to position  
18 ourselves to provide whatever assistance we needed from the  
19 national level, so things moved along fairly quickly there. I think  
20 that's all documented in the Riley Report.....

21 MR. WENK: Right.

22 MR. EWING: .....that you reference.

23 MR. WENK: It is. One other virtue of the Riley Report is  
24 its emphasis on prevention. Although it was commissioned, I  
25 think, by the President to look at what happened and why it

1 happened, they came to a very early conclusion that it shouldn't  
2 happen again and laid out at least some directions to think about  
3 for prevention. You have mentioned this yourself. So have many  
4 witnesses before this Commission.

5 My question is this: do you know whether the  
6 forthcoming report, which is to elaborate on the original Riley  
7 report, the forthcoming report, which I think you said was being  
8 prepared by the Coast Guard?

9 MR. EWING: It's being prepared again under the -- by the  
10 NRT. The subgroup that's preparing it is chaired by the Coast  
11 Guard.

12 MR. WENK: Okay. Do you know to what degree  
13 prevention is going to be emphasized in that report as compared  
14 to an evaluation of containment contingency planning, clean up,  
15 and so on?

16 MR. EWING: I would be speculating, but I would be very,  
17 very surprised if prevention is not a very dominant part of any  
18 recommendations to go forward. And as I pointed out, you can't  
19 rely totally on prevention, but I think prevention's a lot more  
20 cost effective than response.

21 MR. WENK: So it's your view, still of course without any  
22 firsthand information, that it will deal significantly with  
23 prevention. Do you know of any other study being done by any  
24 other federal agency which underscores prevention?

25 MR. EWING: I think, I think the Government Accounting

1 Office did a fairly review of this particular situation. I listened to  
2 their testimony down in Cordova here about three months ago.  
3 You may have a copy of their report, but I think whether or not  
4 their recommendation's prevention -- I think it was, but they  
5 took a very close look at response and I think the conclusion  
6 that they reached was that even if we'd had all the equipment  
7 available in the world on-scene immediately, that a very large  
8 percentage of the oil still would have escaped, so that again says  
9 we.....

10 MR. WENK: No, but my recollection is the same as yours  
11 and they did underscore the importance of prevention, but to  
12 the best of my knowledge the subsequent material they issued is  
13 an elaboration of the early report that you heard in Cordova. But  
14 it is not a specific study of preventative measures.

15 MR. EWING: Yep.

16 MR. WENK: And so, if I heard you correctly then, though  
17 you speculated on GAO, there is not another major study, to your  
18 knowledge, by any other federal agency on the subject of  
19 prevention?

20 MR. EWING: No.

21 MR. WENK: One final question. In dealing with the issue  
22 of prevention, you've overheard some earlier discussion, I think,  
23 here at the meeting this morning about the Commission itself  
24 looking at two different levels with regard to its own study. One  
25 having to do with a systemic approach to marine oil

1 transportation and the need for stronger operating instructions  
2 for the whole system. The other, no less important, deals with,  
3 to some degree, technical fixes. My question is this: as you have  
4 overhead discussion on the issue of prevention, did you sense  
5 any approach by any of the federal agencies in dealing with what  
6 may be flaws in the entire maritime oil transportation system  
7 that requires attention at higher levels?

8 MR. EWING: I guess I'm not prepared to draw any  
9 conclusions in regard at this time. The one thing that troubles  
10 me most, though, is that we have a very difficult time of  
11 maintaining attention to something like this. Attention is  
12 focused now, but I -- unless we figure out a way to keep agencies  
13 at every level - Congress, legislature included - focused on the  
14 possibility of the importance of prevention and being alert, I --  
15 you know, we will fall into complacency again. And it doesn't  
16 really matter what come up with here if we're not on our toes,  
17 the same kind of thing will happen again.

18 MR. WENK: Thank you very much.

19 MR. PARKER: Earlier, I made a point that the lesson to  
20 be learned from this is the event that did occur, can occur. In  
21 line with that, in a worst case catastrophe at Yukon Crossing of  
22 the pipeline, using 85,000 gallons per minute and assuming  
23 some valve failures, why on the shut off, you know, losing 7, 9,  
24 10 million gallons into the river what -- have you looked at that  
25 catastrophic situation yet.

1 MR. EWING: No, I have not. But, you make a good point.

2 MR. PARKER: Yeah, we'll ask the others with  
3 responsibility for pipeline the same questions as they come  
4 before us, so. Anyone else? John?

5 MR. HAVELOCK: The Regional Response Team, does that  
6 have a permanent staff.

7 MR. EWING: No, it does not.

8 MR. HAVELOCK: And how often does it come together?

9 MR. EWING: Quarterly, generally speaking.

10 MR. HAVELOCK: Yeah, and then it also comes together on  
11 spills?

12 MR. EWING: When there is an incident, it meets as often  
13 as necessary. Daily during the height of the Exxon Valdez  
14 incident.

15 MR. HAVELOCK: With respect to its responsibility, can  
16 you tell us approximately what the division is between response  
17 planning, technology and dispersant review?

18 MR. EWING: Very heavily toward response planning, okay.  
19 Dispersant review, again, what the RRT did, and I think we were  
20 the first RRT in the nation to do it, was to develop a dispersant  
21 use guideline first for Cook Inlet and then for Prince William  
22 Sound. In doing that, we did not review specific dispersants.  
23 That's a function of another group at the national level deciding  
24 what dispersants ought to be on the use list and which ones  
25 shouldn't be.

1           We started with the assumption that there are dispersants  
2           that are approved for use and we went forward as though looking  
3           at this specific water body, where does it make sense to use  
4           dispersants and under what conditions.    The third part to your  
5           question slipped by me, talking about division of responsibilities.

6           MR. HAVELOCK: I was asked about dispersants and  
7           response technology.

8           MR. EWING: In terms of development of response  
9           technology, the RRT does none of that. What we do, basically is  
10          try to be aware of what technology exists and when appropriate  
11          to have some experience with that technology here in Alaska.  
12          But we do not develop technology.

13          MR. HAVELOCK: Do you know -- and you mentioned  
14          earlier at one time there was an agreement with the state. Do  
15          you know why that agreement was not renewed?

16          MR. EWING: I think it came down to a matter of money,  
17          access to money, accountability for the use of money and those  
18          kinds of things.

19          MR. HAVELOCK: Who was saying what about the money?

20          MR. EWING: Well, basically, under the agreement, the  
21          state could assume the on-scene coordinator role. In doing so,  
22          could initiate actions, response actions. I think in doing that  
23          they initiated actions with the assumption that they were going  
24          to be reimbursed out of the fund. I think in a few instances, at  
25          least in one instances the federal government came back and

1 looked at the actions they had taken and concluded that they  
2 should not have been taken and were not reimbursable. I think  
3 that was the primary thing that led to the breakdown of the  
4 agreement.

5 MR. HAVELOCK: Thank you.

6 MR. PARKER: Okay. Thank you Mr. Ewing.

7 MR. EWING: You're welcome.

8 MR. PARKER: Most instructive. We'll take a five minute  
9 break and resume with Mr. Hawkins of the State Department of  
10 Natural Resources.

11 (Off the Record)

12 (On the Record)

13 MR. PARKER: Okay, we'll reconvene. We have a quorum.  
14 I don't know where the rest of those guys are, that ignored the  
15 Chairman's instructions but, whatever. Mr. Hawkins, welcome to  
16 the oil spill Commission.

17 MR. HAWKINS: Thank you Mr. Chairman. For the record,  
18 my name is Tom Hawkins. I'm assistant commissioner of the  
19 Alaska Department of Natural Resources. Your request went to  
20 Commissioner Gorsuch and I'm here to testify and answer your  
21 questions on her behalf. Do you have a preferred format? Do you  
22 look for opening statements and then go to questions or how  
23 would you like to proceed?

24 MR. PARKER: Yeah. Just if you would give your -- you  
25 know, a brief opening statement, however brief you want to

1 make it and we'll go to questions.

2 MR. HAWKINS: The primary thrust of the questions that  
3 the Oil Spill Commission posed to Commissioner Gorsuch had to  
4 do with functions of the mini-cabinet and the activities of the  
5 Commissioner and the Department in the early days of the oil  
6 spill.

7 The first function, or the first thing that occurred to the  
8 Commissioner upon the -- hearing word of the oil spill was the  
9 role -- in the role of the tidelands manager. And consequently,  
10 the first people dispatched by the department to Valdez were  
11 those people with authority to issue tidelands permits for  
12 activity on the tidelands. The officers from both Fairbanks and  
13 Anchorage work for the Division of Land and Water Management.  
14 Also, tideland permits include the permission for anchoring the  
15 tanker after it was offloaded, so that it could be repaired for  
16 heading south. That was the earliest activity of the department  
17 was providing that particular support function in Valdez for the  
18 issuance of tideland use and occupancy permissions.

19 As the response to the spill developed, a number of other  
20 departments/divisions participated in the activities and your  
21 question runs to long term role. The participation by the  
22 Division of Agriculture in revegetation of beach lines is the kind  
23 of long term role that a variety of department/divisions pay. The  
24 Division of Land and Water Management, the Division of Parks  
25 and, to some extent, the Division of Forestry were the primary

1 early responders. That response came in the form of opening  
2 offices in Kodiak, Valdez, Homer and Seward, primarily for  
3 coordination with other agencies and for the issuance of  
4 necessary tideland permits and for the provision of what  
5 information the state had based on its planning and resource  
6 inventory activities as to the values in the area that would be, or  
7 was, effected by the spill.

8 The Commissioner of Natural Resources' role in the mini-  
9 cabinet is as a participant. The mini-cabinet formed to  
10 coordinate the activities of those agencies with a role or  
11 responsibility in response to the oil spill. It met a number of  
12 times in the early going and continued to meet as the  
13 administrative questions were answered about the state's long  
14 term response activities.

15 The needs of the Department of Natural Resources were  
16 met through that particular forum in terms of coordination and  
17 information sharing. And response to administrative questions  
18 and budgeting and finance questions as it had to do with the  
19 hiring of personnel and deploying forces.

20 Are they currently being met? Yes. What about in the  
21 future? If the mini-cabinet forum has a remaining assignment, it  
22 would be in the form of -- it hasn't met most recently and it  
23 would be useful perhaps to debrief and report which agencies  
24 have done what since the assignment and staffing of functions.  
25 So, Commissioner Gorsuch felt that there was a need for an

1 additional meeting to perhaps assess what we've learned and  
2 also to see, to share additional information as to what various  
3 agencies have responded in their roles in the overall process.

4 Finally, what has your relationship been with the local  
5 communities? The various divisions that the Department of  
6 Natural Resources that were deployed in the offices was the first  
7 line of response in those communities. And so, the Division of  
8 Parks personnel and the Division of Land and Water personnel  
9 participated in those local, multi-agency coordinator  
10 committees. And provided permitting action and support to  
11 various community needs. As to a judgement as to the  
12 satisfaction of their needs, you know, it's probably best left to the  
13 recipient. Our sense, though, is that when tideland permissions  
14 were needed, when information, maps and ownership was  
15 needed, those resources were available to the local communities  
16 as they were required.

17 MR. PARKER: Okay. Is DNR establishing any role in the  
18 CERKLA process? Are you going to be involved in that, the  
19 assessment, damage assessment?

20 MR. HAWKINS: DNR does participate with the  
21 Department of Fish and Game. It does provide, with DEC, a  
22 policy discussion and guidance to Commissioner Collingsworth,  
23 who is the CERKLA representative. DNR expects to have a down  
24 stream CERKLA role as the damage assessment and the response  
25 is prepared. Of course, as the manager of the state's tidelands,

1 both in parks and in general tidelands, the department  
2 recognizes the responsibility to be involved in how those carry  
3 out.

4 I know, and I'm not personally involved with the  
5 discussions as to representation, formal representation in the  
6 CERKLA process. And I know that there's been considerable  
7 dialogue amongst the departments of the state and federal  
8 agencies. But, I do know that our access through the existing  
9 state representative has been good.

10 MR. PARKER: Okay, Counsel do you want to go first this  
11 time and we'll go second?

12 MR. HAVELOCK: Mr. Hawkins, I'd to ask you a few  
13 questions about the prevention role the department has. Now as  
14 I understand it, you have the proprietary role of all state lands in  
15 the state. Is that right?

16 MR. HAWKINS: That's correct.

17 MR. HAVELOCK: And do you have a -- do you believe you  
18 have a role in prevention of oil spills that impact, that would  
19 impact those lands?

20 MR. HAWKINS: Yes sir. In fact, that responsibility is both  
21 general and specific. I guess generally, as the manager of state  
22 lands, the constitution provides a variety of directions to the  
23 land manager as to protecting the public values there in. But  
24 specifically, as the manager of state lands, for instances in the oil  
25 and gas leasing program, the idea or the concern about

1 prevention starts before any activities occur on the ground. For  
2 instances, in an oil and gas lease a standard stipulation, and the  
3 preparation of it is required by the lease form, is an oil spill  
4 prevention plan. A second stipulation, and obviously the second  
5 line of defense, is an oil spill contingency or an oil discharge  
6 plan. And so, at the very outset of the search for oil, the idea of  
7 prevention required by stipulations in the leases, the plans  
8 approved by the Department of Environmental Conservation is  
9 part of the overall strategy of managing that particular state  
10 resource.

11 The, I guess, second area of specific attention comes in  
12 the Pipeline Coordinator's office and to the Division of Land and  
13 Water Management who manage that portion of the pipeline.  
14 And the pipeline right-of-way which is located on state land,  
15 which is roughly 1/2 of the 800 miles of the pipeline. And that  
16 is also an involved prevention and response set of requirements  
17 and review processes.

18 MR. HAVELOCK: Is it fair to say that the Pipeline  
19 Coordinating Office does the prevention work with respect to  
20 the TAPS system and its feeder system or does that need  
21 amendment.

22 MR. HAWKINS: Yes, the Pipeline Coordinating Office is  
23 the named party in the pipeline lease for that activity. However,  
24 the Division of Oil and Gas, through its review of pipelines on  
25 leases, and it's review of lease operation permits on leasing areas

1 and the Division of Land and Water on its review of pipelines off,  
2 are also -- are off leases, are also participants in that same  
3 process. They feed information to that office and participate  
4 with that office.

5 MR. HAVELOCK: Do you have any generic prevention  
6 program with respect to spills that's not tied to a lease or  
7 permit for use?

8 MR. HAWKINS: I don't have one at the tip of my tongue. I  
9 don't.....

10 MR. HAVELOCK: So, basically you exercise your authority  
11 through the -- to a permitting system. Is that right?

12 MR. HAWKINS: Yes sir.

13 MR. HAVELOCK: Could you describe what that permitting  
14 system now requires in terms of prevention, prior to any sort of  
15 loss of oil from the TAPS system. That is, I assume you have  
16 some kind of prevention program that relates to inspection,  
17 evaluation, giving of reports and so on with respect to the  
18 conditions of facilities from which oil might leak. Is that right?

19 MR. HAWKINS: In my mind, trying to separate the variety  
20 of oil spill contingencies from the requirement that things be  
21 lined and diked in order to prevent oil spills. And there's both  
22 levels of protection and inspection. And I'm also, the  
23 Department of Natural Resources isn't the only state agency  
24 employed in that particular business, so I guess I'm not quite  
25 able to answer your question as directly as you stated it.

1 MR. HAVELOCK: Well, lets -- I understand you -- there  
2 just wasn't spill up in the field, corrosion related, probably  
3 corrosion related spill, right? Was there any inspection program  
4 that you mandated or undertook that would have picked up the  
5 possibility of that occurring.

6 MR. HAWKINS: No sir, I'm not familiar with an inspection  
7 program focused on that particular piping system.

8 MR. HAVELOCK: How 'bout further down the piping  
9 system. Is there a -- do you have any mandated system or does  
10 some other agency that you're aware of?

11 MR. HAWKINS: I think the Department of Environmental  
12 Conservation has a review process there. The Department of  
13 Natural Resources contingency planning for the spill does not  
14 have an inspection -- pipeline corrosion inspection process  
15 except for through its annual review of pipeline operations. So,  
16 I'm not aware of a detailed corrosion identification system  
17 except for through our interaction with the owner company and  
18 their provision to us of repair and plans for attention and repair  
19 to a difficulty like that.

20 MR. HAVELOCK: In connection with an annual review.....

21 MR. HAWKINS: Yes sir.

22 MR. HAVELOCK: .....of their permit. In connection with  
23 an annual review, do you ask the owner company to provide you  
24 with information regarding the condition of the lines.

25 MR. HAWKINS: Yes sir. In fact, the owner company's,

1 prior to asking, provide routinely information about the line,  
2 about problems with the line, and recommended strategies for  
3 addressing those problems, required construction to address  
4 those problems. As minute as stuck pigs sent down the line for  
5 cleaning our routinely reported through the pipeline coordinator  
6 to the Department. And so we have a good working relationship  
7 with the owner companies as far as being kept apprised of  
8 pipeline problems and remedies to those problems proposed.

9 MR. HAVELOCK: Are they required under the conditions  
10 of the permit to give you all the information they develop in this  
11 regard or can they give you just what they think you need to  
12 have.

13 MR. HAWKINS: The Attorney General, perhaps speaking  
14 more directly if you want on the detailed language, has recently  
15 prepared a response to a series of questions along those lines,  
16 describing exactly what the duties are. But our experience, or at  
17 least my experience, on dealing with the owner company, or  
18 companies, is that we've had access to that information that is  
19 necessary for overseeing those activities. That's never been  
20 really a problem about not being able to find something out.

21 Now, your question went a little bit further than that.  
22 And, perhaps relying on that direct contract language would be a  
23 better way to answer that. My experience is that we've not had  
24 that difficulty, that they've told less than the entire story.

25 MR. HAVELOCK: Do you undertake a technical review of

1       their compliance with prevention safety when you do your annual  
2       reviews?

3               MR. HAWKINS: In coordination with the Bureau of Land  
4       Management's pipeline office, there is technical review of plans  
5       and documents submitted. The Department of Natural  
6       Resources has not been staff in a fashion that makes that  
7       technical review an in-house capability.

8               MR. HAVELOCK: So you rely basically on the BLM review,  
9       technically speaking?

10              MR. HAWKINS: And there -- I mean the Department of  
11       Natural Resources does have professional engineers on its staff  
12       tasked with overseeing pipeline activities. And so we're not  
13       bereft of capability of reviewing those documents ourselves. But  
14       they're often quite extensive and a joint review is useful.

15              MR. HAVELOCK: Do you have an inter-agency agreement  
16       with BLM on the exercise of your prevention functions?

17              MR. HAWKINS: I don't have a copy of such an agreement  
18       with me. However, the entire inspection and monitoring  
19       function is carried out in conjunction with the Bureau of Land  
20       Management, both of pipelines passed, like TAPS, and of  
21       pipelines future, like Northwest and Yukon. And the  
22       coordination of activities between the offices is, depending on  
23       the particular function, is the subject of a variety of agreements.  
24       Most recently, the Bureau of Land Management and the  
25       Department of Natural Resources have been winding up

1 negotiations to open a joint office, not unlike the one that  
2 operated during the construction of the TAPS line. So, there's a  
3 continuous dialogue and I believe it's described in a document,  
4 but I don't have that document with me.

5 MR. HAVELOCK: How 'bout with DEC. Do you have any  
6 set of documents or protocol that describes the interface of  
7 oversight responsibilities between DNR and DEC?

8 MR. HAWKINS: I think the resource agencies, DEC, DNR  
9 and Department of Fish and Game have a variety of MOU's that  
10 deal with their joint activities on the North Slope and dealing  
11 with TAPS. Of course all of those agencies participated in the  
12 pipeline coordinators office. They recently jointly participated  
13 in the preparation of the EIS for the Yukon Pacific proposal,  
14 similarly with the Northwest proposal. And so I believe there  
15 are a variety of documents that inter-related to how those  
16 agencies -- that describe how those agencies inter-relate and act  
17 toward each other. I don't have a specific document in mind for  
18 I think what you are after.

19 MR. HAVELOCK: So you're saying there is no such  
20 documentation, but is it fair to say you're satisfied that the  
21 coordination of function between the two departments works  
22 well, that things are not dropped between cracks, that there is  
23 an adequate setting of priorities and subject matter that is not  
24 disturbed by the division of responsibility between the  
25 department?

1           MR. HAWKINS: Well, whenever you talk about  
2 coordination, your description of it would probably fit at the  
3 enthused end of the spectrum. And, I'd be probably more  
4 accurate to say that there's always a little bit of hubub when  
5 there's multiple agency responsibility. But I think that this is  
6 fairly civilized hubub, given it's importance to the state of Alaska.  
7 And these agencies coordinate with, and deal with each other as  
8 a matter of routine. And I think quite effectively.

9           MR. HAVELOCK: I think you may have been in the room  
10 when the gentleman from EPA was here and testified to pretty  
11 close to a zero level of thought being given to a break on Yukon  
12 Crossing. Do you have better plans than that for responding to a  
13 break in the pipeline, particularly at a major river crossing?

14          MR. HAWKINS: I don't have a specific plan for dealing  
15 with that particular break. I do know, though, that break  
16 scenarios, risk assessment scenarios are the subject of  
17 identification and focus between Alyeska, the Bureau of Land  
18 Management and the State of Alaska. And, a contractor  
19 currently working on a series of those is refreshing that  
20 particular -- I guess, that's sounds -- that's a dramatic instance  
21 that described first by the Chairman, now by yourself. Our  
22 thought is that small spills in particularly sensitive environments  
23 can be as catastrophic as giant spills in the instance that they  
24 describe. And designing the capability to deal with them and  
25 improving the capability to deal with them is the function of an

1 ongoing effort. I know, since the attention to this matter was  
2 raised by the tragedy of the Exxon Valdez, the responsible  
3 federal/state agencies for the pipeline and the Alyeska service  
4 Company made this year's annual review a special exercise in  
5 terms of assessing capability of responding to spills and also  
6 deciding how to act in response to particular spills. And that  
7 effort, which began in May with a series of -- oh, I always have a  
8 problem here -- bi-weekly or is it bi-monthly. Anyway, they  
9 meet every other week, meetings have identified a series of  
10 tasks and or addressing instances like the one you described.  
11 The first action of that group was to re-fly the entire pipeline  
12 corridor and through the aerial photography and overlays of  
13 ownership, identify containment strategies for accidents in a  
14 variety of locations. If it happened here, where would you put  
15 the booms. There's also been an increased number of oil spill  
16 drills by those agencies, participated in by a variety of state  
17 agencies as well as industry representatives.

18 MR. HAVELOCK: Do you, on your annual assessment do  
19 you deliver or do you prepare an assessment report on the  
20 integrity of the line and its problems?

21 MR. HAWKINS: Yes, sit. It comes out in the form of a trip  
22 report in a letter to the company with a list of actions required.  
23 And then, at the regular meetings sheduled for attention to  
24 those is adopted. The extra annual report, or the report since  
25 the Exxon Valdez, which included a variety of investigations

1 from May through September is -- has been discussed at these  
2 bi-weekly meetings, but is also to be the subject of a letter from  
3 the Department to Alyeska within the next few weeks.

4 MR. HAVELOCK: We heard earlier the Department of EPA  
5 say that in the event of a spill on upland, they would be the on-  
6 scene coordinator. Do you have some agreement as to how your  
7 agency, with this responsibility, overlapping responsibility,  
8 would coordinate with EPA in the event of a spill?

9 MR. HAWKINS: I'm not familiar with agreements with the  
10 Environmental Protection Agency. I guess my understanding of  
11 an inland spill is if it's on federal lands the state lead would be  
12 taken by the Department of Environmental Conservation. If it's  
13 on state lands to do with the pipeline, it would -- that authority  
14 would start with the Department of Natural Resources, the  
15 Division of Land and Water Management. But DEC would also be  
16 a component of that. Now, exactly how that would interface with  
17 the EPA taking charge, I'm not aware.

18 MR. HAVELOCK: My -- and it is also, is it not, quite  
19 possible that you could have a leak which affected both state and  
20 federal lands?

21 M.R HAWKINS: Quite possible. In fact, in Alaska state,  
22 federal and private land, particularly native corporation land,  
23 would most likely be affected by almost any spill of consequence.

24 MR. HAVELOCK: How many people do you have that work  
25 on TransAlaska Pipeline system with respect to monitoring the

1 pipeline or the gathering field?

2 MR. HAWKINS: Between the Division of Oil and Gas and  
3 the Division of Land and Water, probably about five people who  
4 number that among their primary responsibilities. The  
5 excitement of keeping track of these large systems, once in  
6 place, wains in legislative funding cycles. And, you know, the  
7 experience of the Department is that when things are being  
8 constructed, and particularly because of the reimbursable  
9 arrangements with the pipeline lease, maintaining a major work  
10 force is easiest. The maintenance of that work force, over time,  
11 particularly when the construction is completed or the initial  
12 permitting is completed, is more difficult and, you know, most  
13 recently the Department's efforts to have additional attention  
14 placed, not because of the particular disaster in Valdez, but  
15 because of heightened national attention to management of the  
16 fields, was a difficult sell to you know a legislature with a number  
17 of competing demands. So, it's -- it seems like a limited work  
18 force. The number of people who participate far outnumbers  
19 that although it's not a primary responsibility. And, it's  
20 unfortunate, but true, situations like the one we face now make  
21 vigilance easier to acquire funding for.

22 MR. HAVELOCK: Have you asked for any increase in your  
23 funding, then, to cover pipeline monitoring for the next three or  
24 four years?

25 MR. HAWKINS: We asked the last couple, three years and

1 we've asked again for the enhancement of capability. We've also  
2 recently the Commission has elevated the state pipeline  
3 coordinator's position to the director level and plans to open a  
4 joint management office with the Bureau of Land Management at  
5 the first of the year. That's in both response to the need for  
6 heightened attention to existing pipelines and also the  
7 applications for new ones.

8 MR. HAVELOCK: Have you separated out DNR's role in  
9 response to this corrosion spill that occurred on the slope  
10 recently? What was your responsibility? Are you doing a  
11 prevention review on that as to why it happened? Are you  
12 satisfied with the agency response?

13 MR. HAWKINS: Well, our prevention role figured most  
14 prominently in the diking and containment devices that were in  
15 place prior to it. And, as far as an after action report to assess  
16 was enough done; were we enough prepared; did we act in a  
17 reasonable fashion, once the situation occurred, I'm not aware  
18 that that's happened yet.

19 MR. HAVELOCK: Well, corrosion unreported is getting to  
20 be more, as the system ages, a rising chronic problem. Is that a  
21 problem that DNR addresses or is that passed off to another  
22 agency?

23 MR. HAWKINS: No, in fact, DNR -- there was  
24 considerable construction corrosion attention that occurred on  
25 the pipeline this past summer and DNR was involved in

1 permitting and reviewing and supporting that action by the  
2 owner companies to improve or upgrade the line.

3 As far as responsibility for the insurance that an  
4 uncorroded pipeline is maintained, I believe the right-of-way  
5 lease on state lands gives that responsibility to the Department  
6 of Natural Resources, and on federal lands to the Bureau of Land  
7 Management.

8 MR. HAVELOCK: Did you ask the owner companies to do  
9 anything that they weren't already proposing to do?

10 MR. HAWKINS: I don't know that. I didn't personally  
11 participate in the plan review.

12 MR. HAVELOCK: Does DNR receive the data from the pigs  
13 that go through the line, section pigs?

14 MR. HAWKINS: We receive all kinds of pig reports. I don't  
15 know whether I would describe it as data. It seems my  
16 experience is more -- I hear earliest about pig problems rather  
17 than pig results, or individual pig reports as to what they -- as far  
18 as generally be apprised by the company about problems they're  
19 facing, we do receive those reports. As far as acquiring technical  
20 pig information, it's available to us. I don't know that we review  
21 it routinely.

22 MR. HAVELOCK: One last question. There's been quite a  
23 discussion here about the use of the Incident Command System  
24 as a method of organizing response to an oil spill. Are you  
25 familiar enough with the ICS to comment on it's application,

1 pros or cons to oil spill?

2 MR. HAWKINS: Well, my comments on it would be pro.  
3 And I'm generally familiar with it, generally as a former director  
4 and a current assistant commissioner at the Department of  
5 Natural resources, specifically as the acting state forester for a  
6 period last year when I participated in the Multi-agency  
7 Coordinating group and became sort of familiar with how ICS  
8 worked on a first hand basis. Also, we've recommended --  
9 during planning exercises with the Division of Emergency  
10 Services, we conducted a large readiness alert during the Brim  
11 Frost exercises last January. And we recommended elements of  
12 the ICS system and the ICS system to that agency.

13 In our experience, whenever you are looking to  
14 coordinate the actions of multiple agencies, everyone needs to  
15 learn the dance steps prior to the incident. And a lot of things  
16 which seem really foolish as far as trying to solve in an  
17 emergency situation, if solved through long hours of hammering  
18 out how pay is going to work and who's going to staff the  
19 information office, and the training and the certification, and the  
20 provision of authorities so that federal people can work on state  
21 problems or state people can work on federal problems is,  
22 requires an animal like the Incident Command System. Initially,  
23 my experience with the Incident Command System was difficult  
24 because in the ranks of folks, personnel working for the Division  
25 of Land and Water Management, since it had originally been the

1 Division of Forest Land and Water Management, among it's ranks  
2 were a variety of people skilled and certified to participate in  
3 ICS, primarily as it works in Alaska for fighting fires. Which  
4 sounds good, except it means that a lot of your folks disappear  
5 for multiple months in the summer time as incidents arise. And  
6 as an agency tasked with achieving a certain number of  
7 objectives, to know that your people are trained makes you feel  
8 good. To have them utilize their training puts you at the  
9 disadvantage of not achieving the objectives actually assigned to  
10 your office.

11 As far as a wider view of the Incident Command System, I  
12 think that it, particularly because it's a federal/state shared  
13 routine, it is a particularly useful function or approach to dealing  
14 with emergencies in Alaska. I note that ICS teams were  
15 deployed, both class I and class II teams, were deployed in a  
16 number of Alaska communities. In fact, I think I even heard in  
17 Seward that the ICS -- there was -- they had ICS day. And the  
18 ICS team that had participated there received -- was fated for a  
19 day for their capabilities. They are employable. They'll work for  
20 any boss and they've worked out routines, whether it be for  
21 logistics of communication or transportation or lodging or food,  
22 that makes it a pretty useful system. I'd be hard pressed to not  
23 support it.

24 MR. HAVELOCK: You have no management system in  
25 place now that can deliver at anything like the effectiveness of

1       that system?

2               MR. HAWKINS: No sir. That's -- I think to be -- I think to  
3       work your way up to be an incident commander is a 15 year  
4       process that requires about a thousand hours of training. And to  
5       develop that sort of capability in -- to have on the shelf is very  
6       difficult unless you've got a routine set up, which of course the  
7       fire system in Alaska is such a routine.

8               MR. HAVELOCK: Thank you Mr. Chairman.

9               MR. PARKER: Thank you. Commissioners? Ed.

10              MR. WENK: Thanks very much, Mr. Chairman. A couple of  
11       brief questions. First, we've had some testimony earlier with  
12       regard to the role of the mini-cabinet and I could imagine your  
13       having had some involvement with them albeit not a regular one.  
14       As I understand it, it sort of meets on call of the chair. My  
15       question is this, to your knowledge would the interest the mini-  
16       cabinet has taken with the incident, are they similarly  
17       concerned with the issue of future prevention?

18              MR. HAWKINS: I think they are, Mr. Chairman and I  
19       believe that's why I stressed, Mr. Chairman, Commissioner  
20       Wenk, I believe that's why I stressed the need identified by  
21       Commissioner Gorsuch for continue meetings of that cabinet.

22              MR. WENK: But, do they have -- I can imagine the mini-  
23       cabinet not themselves personally engaged, is -- they might be,  
24       but is there some clearly identified task group engaged on some  
25       continuing and maybe even full time basis representing an

1 interest by the state of Alaska in the issue of prevention, to the  
2 best of your knowledge?

3 MR. HAWKINS: Yeah, I don't believe that that is a theme  
4 of the mini-cabinet. I think that's a theme of a number of  
5 departments, particularly the resource agencies which are also  
6 members of that mini-cabinet.

7 MR. WENK: Well, I didn't ask the question more broadly.  
8 I have been glancing through my notes at what Mr. Laresche had  
9 said was the responsibility of that oil spill coordinating unit and  
10 he did not list an examination of prevention as one of their  
11 interests, though that might have evolved since he appeared  
12 before us in September. So, let me ask the question a little  
13 more broadly. Do you know -- is there such a unit. Forget the  
14 mini-cabinet, is there such a unit extant today? Can we identify  
15 such a unit? Can we identify who's in charge?

16 MR. HAWKINS: Yes. I'm not aware of a unit as you  
17 describe it, except for as the Departments of Environmental  
18 Conservation, Fish and Game, and Natural Resources deal with  
19 prevention and response to discharge from existing facilities and  
20 activities.

21 MR. WENK: Okay. I'm interpreting your answer and  
22 correct me if I'm wrong, as there not being a conspicuously new  
23 organizational initiative -- I don't mean creation of a new  
24 organization, but some initiative that is woven around the theme  
25 of prevention.

1 MR. HAWKINS: Oh, I think you do misunderstand me. I  
2 described earlier the actions of the right-of-way manager, the  
3 Bureau of Land Management.....

4 MR. WENK: Alright. Excuse me. Let me.....

5 MR. HAWKINS: That's a prevention oriented

6 MR. WENK: Right

7 MR. HAWKINS: .....exercise.

8 MR. WENK: With regard to the pipeline.

9 MR. HAWKINS: Well, I earlier described the actions of  
10 the Division of Oil and Gas and heightened awareness to both oil  
11 spill prevention and oil discharge in its oil and gas leasing  
12 process. And I believe that -- you know I would be guilty of  
13 telling you a fib if I told you that heightened attention to those  
14 particular values had not occurred as a result of the oil spill.  
15 There's been a recognition and I think there's always a  
16 recognition, but once something catastrophic does occur, that  
17 recognition is certainly enhanced. The meetings and attention  
18 focused on it among the state agencies has been gigantic. And  
19 so, you know, as far as the prevention unit being formed, which I  
20 understood the thrust of your question to be, I'm not aware of it.  
21 As far as prevention activities occurring in a variety of locations,  
22 I think its been aggressive.

23 MR. WENK: By individual agencies who are acting  
24 responsibly in connection with their own prescribed  
25 authorities?

1 MR HAWKINS: And many of those authorities overlap, so  
2 they have to.....

3 MR. WENK: And they overlap.

4 MR. HAWKINS: .....deal with each other at the same time.

5 MR. WENK: What I was fishing for was whether there was  
6 some initiative, let's say at the level of the office of the Governor  
7 that would do two things. It would identify this as a priority  
8 concern at the Governor's level and secondly, it would provide a  
9 coordinated mechanism that was, let's say, custom designed to  
10 deal with the prevention issue. Again, I, correct me please if I'm  
11 wrong, what I think I heard you say, and I understood this, is  
12 that each of the agencies and there are a number of them that  
13 have got some sector fragment of responsibility. They all have  
14 responded in their frame of reference. But whether there is  
15 some overall coherence to this effort is not very clear. Fair  
16 enough?

17 MR. HAWKINS: That's -- the question is will all of this  
18 concern lead to something.....

19 MR. WENK: Yeah.

20 MR. HAWKINS: .....And.....

21 MR. WENK: Thank you.

22 MR. HAWKINS: .....my sense is that it will.

23 MR. WENK: Okay.

24 MR. HAWKINS: I think the elevation to the director level  
25 of the pipeline coordinator, for instance, is an indication that

1 people are taking it more seriously. I also think that from all of  
2 the after-action reports that the agencies are preparing now as  
3 to how they responded and what they did and who they did or  
4 who did it, will result -- and certainly that was the  
5 Commissioner's intent when she suggested that there was still  
6 work to be done by the mini-cabinet, by the coordinating forum.  
7 I think that need is recognized and was certainly underlined by  
8 the spill.

9 MR. WENK: Thank you very much, Tom.

10 MR. PARKER: Mike?

11 MR. HERZ: I wanted to ask a couple questions about  
12 habitat protection in sensitive habitats. I wanted to get a sense  
13 of the way in which what I think are the three principle state  
14 agencies that participate in making decisions about identifying  
15 sensitive habitats and coming up with strategies that might be  
16 used to protect them. Your agency, Fish and Game, and DEC, I  
17 would guess are the three principle players. Could you describe  
18 the degree, the process that your agency is involved in and how  
19 you coordinate in such activities.

20 MR. HAWKINS: There's a variety of approaches to it, but I  
21 guess the first approach happens at, when the department  
22 designs an oil lease sale, and through the call for nominations  
23 and through the request for environmental information  
24 determines what areas are most significant in a particular block  
25 of land. Oftentimes, the decision is made that the

1 environmental values at risk exceed the value of recovering the  
2 resource. And consequently, a decision is made to drop an area  
3 from a lease sale. And the habitat function or the habitat  
4 advocate in the process that we go through is the Department of  
5 Fish and Game and its habitat division. It's also a variety of land  
6 management agencies and the Department of Natural Resources  
7 who, through planning process and resource inventory activities  
8 determine where those values are prior to the outset of leasing  
9 activities. So, the first response is to decide that something is of  
10 such value as you ought not to make an area available for lease.  
11 And the state of Alaska has made that decision routinely over the  
12 years.

13 Second, through the agencies, Department of Natural  
14 Resources and the Department of Fish and Game, a number of  
15 stipulations are designed for each lease sale that provide  
16 particular protections for particular values that exist in any  
17 particular, or any specific area that activity's proposed in. And  
18 that could be for the exploration phase, but since a lease, or we  
19 often have hopes that a lease will go not only through exploration  
20 but through development, identifies areas where construction  
21 couldn't occur, for instance. And, as you go down line and  
22 identify activities that might have to occur on a lease, through a  
23 variety of rating systems, different values are avoided, protected.  
24 There's also a routine mitigation strategy of.....

25 MR. HERZ: Let me interrupt you for a second. I think I

1 didn't phrase my question and I wasn't quite as implicit as I  
2 need to be. I was thinking more in terms of contingency plan  
3 process. When habitats I assume are already identified as being  
4 sensitive and ranked in various ways. But there must be some  
5 sort of a process whereby these three agencies, jointly or  
6 through response to the graphs, talk about the strategies are put  
7 forth to protect these habitats and sensitive areas.

8 MR. HAWKINS: Well, the five year oil and gas lease  
9 process which is the routine the state goes through prior to  
10 offering, is the forum for that discussion. The specific spill  
11 prevention plan and oil discharge contingency plan are designed  
12 sale by sale, lease by lease, depending on the values that are  
13 uncovered in the area that's being offered, if an area is offered.

14 MR. HERZ: If a leese, if you lease an area for exploration  
15 and development, then that company must prepare a  
16 contingency plan associated with one or both of those activities.  
17 Is that right?

18 MR. HAWKINS: Right.

19 MR. HERZ: Okay. Part of that plan has got to be some  
20 sort of a strategy for protection of these areas that are  
21 designated as sensitive.

22 MR. HAWKINS: Those values are identified in that  
23 process and the plans are designed to deal with those particular  
24 problems.

25 MR. HERZ: But, I'm thinking in terms not so much of a

1 piece of land that is leased, but rather remote impact from oil  
2 that might be released from that place, from the place that the  
3 lease covers. And that contingency plans are not simply for  
4 protection of the area where the lease takes place. But if you  
5 had a major spill on a production platform, the effects are gonna  
6 be remote as well as local. So, what kind -- what I'm trying to  
7 get a sense of is how in the development of these protection  
8 strategies you coordinate with these other two agencies.

9 MR. HAWKINS: Well, we do coordinate with those other  
10 agencies, primarily of the Department of Fish and Game. If  
11 you're imagining a blow out in Cook Inlet and the Trading Bay  
12 refuge, for instance, these initial decision whether or not to  
13 lease and how to lease and what's gonna happen is that -- is  
14 what'll happen if, is part of that leasing decision. The  
15 identification of those habitats, initially comes through an area  
16 planning process which is a multiple agency effort. About 65  
17 million out of Alaska's acres have been inventoried and  
18 allocations made and dominate allocation by flavor, is habitat.  
19 So, there's sort of before you decide to do anything, a look at  
20 where those values are. So if you decided to do something that  
21 might affect one of those values, you've identified and I'm sure it  
22 would come up in the comment process. Am I getting closer to  
23 what you're after?

24 MR. HERZ: Yeah, and I think that Fish and Game, when  
25 the follow you, will probably be able to give me more explicit --

1       what I'm trying to get a sense of the specific involved in setting  
2       up the strategies that protect areas that been identified as  
3       sensitive.

4               MR. HAWKINS: Since I see the Director of the Division of  
5       Habitat in the audience, I'm sure that you'll get a more informed  
6       response to that.

7               MR. PARKER: Anyone else? Thank you Tom.

8               MS. WUNNICKE: Mr. Chairman, I do have one question.  
9       Getting back to response to the Exxon Valdez, did your agency  
10      experience any administrative procedural problems or funding  
11      problems in terms of responding in the light of your  
12      responsibilities to the Exxon Valdez. I guess what I'm getting at  
13      is whether or not just the administrative procedures and funding  
14      processes are handicapping to any agency responding to an  
15      emergency. Did you have any such experience or could you  
16      comment on that.

17              MR. HAWKINS: Commissioner Wunnicke, the -- when  
18      agencies respond to an emergency, everybody's available and can  
19      go there in the morning. What happens when the emergency  
20      spreads over 900 miles and spreads for months and months and  
21      months is that it's difficult to sustain that initial level of  
22      enthusiasm. I believe that they're, the legislature and the  
23      administration did a remarkable job in funding and furnishing  
24      personnel to take up the fact that it was gonna be a long haul.  
25      I'd be stretching it to say that there wasn't a gap between when

1 everyone agreed that we could do it and before the long term  
2 response capability and the new employees and the personnel  
3 were available and hirable. There was a window in there. And it  
4 wasn't a window that was unstaffed because, people stayed -- did  
5 their jobs. But it was a difficult window because agencies didn't  
6 have the funding. Things they were supposed to do didn't get  
7 done while they were doing things that were more important  
8 right now. And you know, that's probably the sort of thing that  
9 having an Incident Command System with a set up fund for  
10 payment and a set up variety of people that can come from  
11 Fairbanks or Colorado or wherever, would fill a useful role.  
12 Because, initially, I think the first DNR employees were in  
13 Valdez on the 25th and had an office open with a FAX machine, I  
14 guess which is the measurement of executive success, by the  
15 27th. But that sagged a little bit until the machinery provided  
16 fresh faces and funding and support.

17 I - this is a difficult thing to raise, but I would say that, for  
18 instance, the -- talking about the costs of safety is always a risky  
19 proposition, but as we assess our prevention strategies, as we  
20 review what we oughta, what we should've done, and what we  
21 can do, I think we have to be mindful that any expenditure isn't  
22 necessarily the right expenditures. And response, just from a  
23 budgetary standpoint, needs to be measured like insurance is,  
24 with the risks. It's a difficult topic, but having spent most of my  
25 government career testifying in the face of declining budgets, I

1 think it's one that is workable or worthwhile to keep in mind.

2 MR. PARKER: Yeah, I certainly agree. Where's the  
3 coordinator gonna be now that he's promoted, Tom?

4 MR. HAWKINS: The office is gonna be in Anchorage and  
5 the negotiations with the Bureau of Land Management as to --  
6 they're on 7th and we're on 36th, so I'd expect something  
7 around 20th.

8 MR. PARKER: Okay. Well thank you very much. We'll get  
9 into a lengthy discussion of risk management later and, you  
10 know, what's at risk.

11 MR. HAWKINS: Thank you for the opportunity.

12 MR. PARKER: Okay, Frank Rue, Alaska Department of  
13 Fish and Game.

14 MR. ERICKSON: I'm not Frank Rue. This is Frank Rue  
15 here.

16 MR. RUE: This is Greg Erickson.

17 MR. PARKER: Uh, hum. I recognize Greg Erickson.

18 MR. ERICKSON: We're both representing Fish and Game  
19 today. Frank, you wanta.....

20 MR. RUE: Yeah. Mr. Chairman, members of the  
21 committee. I brought -- I'm Frank Rue, Director of Habitat  
22 Division. This is Greg Erickson, Director of the OCR Division.  
23 I'll let him explain the letters to you. It has something to do  
24 with the damage assessment.

25 I have four other staff people with me today who I'd like

1 to have come up and give you sort of a democratic presentation  
2 here. People actually live through the experience of the  
3 response, immediate response and clean up through the  
4 summer, so that when you ask questions, the people who  
5 actually did the work are here. So, what I'd like to do is just  
6 have Greg and I introduce ourselves quickly. And then bring up  
7 the other folks and I'll go through some prepared remarks and  
8 then you all can answer questions -- ask questions. I'll try and  
9 answer them. So, Greg you wanta give a.....

10 MR. ERICKSON: Mr. Chairman, your invitation to  
11 Commissioner Collingsworth indicated that most of the  
12 questions were in the area of response. But, Commissioner  
13 Collingsworth wanted me to express his particular regret that he  
14 wasn't able to be here himself. But, he did ask me to come in  
15 the event that questions arose concerning issues regarding  
16 assessment, damage and impact assessment and restoration.  
17 And I'll be available to do that.

18 The division that I head and am newly appointed -- just  
19 have been on the job now for six weeks, is the oil spill impact  
20 assessment and restoration division, which, as the title implies,  
21 is involved in those tasks, jointly with the federal government in  
22 many cases. And I'll be happy to answer any questions about that  
23 later on. But, for the moment, I think I'll move back to the  
24 audience, with your permission, and come back up later.

25 MR. PARKER: Okay.

1 MR. RUE: Mr. Chairman, with that I guess I'd like to ask  
2 Bruce Baker and Lance Trasky and Claudia Slater to join me up  
3 here and maybe bring some of the materials. And I've my  
4 prepared remarks here that I'll give to the staff, I suppose. I  
5 wasn't sure of the format that you wanted things in so I took the  
6 liberty of preparing some remarks. That way, if I miss anything,  
7 you can read it and see what I was supposed to have said here.

8 MR. PARKER: Thank you for that.

9 MR. RUE: I'm following a format of questions that you all  
10 asked the Commissioner when you wrote and asked us to be  
11 here. The first question was: does the department of Fish and  
12 Game have a role in enhanced oil spill prevention, and what was  
13 it's role prior to the spill in prevention?

14 Actually, before I answer -- going into that question, why  
15 don't I -- I expected that everyone knew the people who just  
16 came up to the table, but let me go ahead and introduce them  
17 just in case some of you don't. This is Lance Trasky, he's the  
18 Regional Supervisor for what we call Region II, or Southcentral.  
19 He was the Department's main contact and coordinator for the  
20 response out of Anchorage and did a lot -- he's sort of been our  
21 linch pin in this whole effort. I was coordinating response  
22 activities out of Juneau, which meant I worried mostly. And  
23 then Bruce Baker is the Deputy Director of the Habitat Division.  
24 He was in Kodiak talking about forest practices the night before  
25 the spill and got stuck by weather in Anchorage and was in

1 Valdez within hours of the spill and remained there for five  
2 weeks, three weeks, and was back again intermittently. And he  
3 was the Department's response coordinator in Valdez for the  
4 first three weeks. Claudia Slater also spent a lot of time. She's  
5 Habitat Biologist with the division in Anchorage. She spent a lot  
6 of time in Valdez and also has been our mainstay in contingency  
7 planning efforts in past years, but also right now. So, with that,  
8 I'll get back to the questions.

9 We feel that Fish and Game should play an important role  
10 in improving oil spill prevention for several reasons. First, we're  
11 responsible for managing the fish and wildlife resources,  
12 habitats, commercial sport and subsistence harvest activity. And  
13 consequently, the Department has a great interest in preventing  
14 oil spills that would impact these resources and the citizens and  
15 industry dependent on them.

16 Second, protection of biological resources and harvest  
17 activities are a major consideration in all spill response action.  
18 And they frequently drive response activities. For instance,  
19 where boom is deployed, prioritizing oiled beaches to be  
20 cleaned, generally are biological calls. Therefore, it's essential  
21 that we provide relevant information on these topics for the spill  
22 response organization..

23 Third, we're located in -- the department staff are located  
24 in coastal communities around the state. These individuals  
25 spend a great deal of time in the field and as a result, along with

1 fisherman and other local residents, are probably the most  
2 knowledgeable state employees about oceanographic and  
3 weather conditions which present a risk to the production and  
4 transportation of oil, as well as the practicality of safely  
5 conducting operations under prevailing conditions. So, I think  
6 we have something to offer there.

7 In the past, Fish and Game has played an important role  
8 in the prevention of oil spills through its review of state and  
9 federal oil and gas leasing programs that Tom Hawkins referred  
10 to earlier. We also review project proposals, oil spill  
11 contingency plans and, through our own authority to regulate  
12 activities in anagemous streams and on state refuges, critical  
13 habitat areas and sanctuaries, what we have a co-management  
14 role with DNR. We work to prevent oil spills. For the past 12  
15 years, the department has consistently identified areas where  
16 there's a substantial risk of spills to fish and wildlife resources  
17 from the exploration, transportation and production of oil.

18 We've produced the Alaska Habitat Management guides  
19 which are -- I've got a copy here. I know a lot of, probably a lot  
20 of you are familiar with them. They display the most current  
21 information on fish and wildlife populations, habitats, harvest  
22 activities and they were used extensively during the Exxon  
23 Valdez oil spill response.

24 We've also produced reports identifying the risk of  
25 hydrocarbon development to fish and wildlife resources and

1 recommendations for minimizing the impact in Cook Inlet and  
2 Norton Sound. And we have copies of those reports here, too.  
3 They were done under the Coast Environment, Energy Impact  
4 Assessment program in '79 and, unfortunately, were fairly  
5 clairvoyant. But they're here as well for your information.

6 We recommend, often recommend, mitigation measures  
7 for state and federal lease sales and things such as seasonal  
8 drilling in the Beaufort, to minimize the risk of oil spills. We  
9 also have recommended things like setbacks from rivers which  
10 have been incorporated in lease proposals, so that if you do have  
11 a spill you're not right next to the river.

12 In Bristol Bay, which I know some of you are very familiar  
13 with, the Department recommended against any state or federal  
14 OCS leasing because of the potential impacts of spills on fish and  
15 wildlife resources and the commercial fisheries. And the state  
16 did follow up on many of those recommendations and  
17 incorporate many of them in the state's leasing strategy. Fish  
18 and Game also conducted, in the 19, the 1974-1976 studies of  
19 the potential impacts of oil and gas development on Kachemak  
20 Bay which resulted in the buy-back of leases in 1976 and the  
21 classification of lower Cook Inlet beaches according to their  
22 sensitivity for receiving and retaining spilled oil. So, these we  
23 see as critical prevention kinds of issues, decisions before the  
24 fact. And in order to continue to enhance our role in spill  
25 prevention, we need to have the funding to allow staff to

1 participate in oil spill contingency plans and response and to  
2 periodically update the Alaska Habitat Management Guides, and  
3 to evaluate the effectiveness of oil and gas lease sale stipulation  
4 designed to minimize spill impacts. For instances, the setbacks  
5 from streams.

6 We are working with DEC to secure some short term  
7 funding for some of the contingency planning that's gonna be  
8 happening immediately, but it's something we're gonna have to  
9 face in the future as all other agencies will. One of the things we  
10 will be considering when we talk about falling budgets and  
11 where we put our priorities is also the magnitude of risk and  
12 impact. While the risk may be low, the impact may be extremely  
13 high and so we need to be ready to deal with that eventuality and  
14 be sure we're aware of it.

15 The third question you all asked was the -- what Fish and  
16 Games role in contingency planning and our role in the  
17 execution of the response. We feel we should have an enhanced  
18 role in both state DEC and the federal EPA and Coast Guard  
19 contingency planning, and the review of non-governmental oil  
20 spill response plans. As we've noted previously, the biological  
21 resources values are a major consideration in spill response  
22 decision and, in Alaska, are usually the primary factor driving  
23 spill response activities. The Department has the responsibility,  
24 the knowledge, the expertise to identify fish and wildlife  
25 populations, habitats, and harvest areas which should have

1 priority protection from a spill. We can provide maps, seasonal  
2 distribution information, the timing of critical life functions, and  
3 population and economic data which are essential to any oil spill  
4 planning process in Alaska. The Department is also most  
5 qualified to assess the impact of spill response techniques on  
6 fish and wildlife resources. And we spend a lot of time on that  
7 issue this summer.

8 Additionally, Department staff are the only state  
9 employees with authority to manage and close commercial,  
10 recreational and subsistence fisheries to prevent contamination  
11 of fish products and human health hazards. So we need to be  
12 involved in that side of the whole spill response issue as well.

13 In order to improve our future spill response actions, I  
14 think a clearly defined inter-agency response organization  
15 should be developed to ensure that all state agencies are drawn  
16 into the process at appropriate points. I think in addition,  
17 training of employees in spill response should be improved so  
18 staff can continue to provide sound, intelligent advice. We  
19 intend to address these issues during the upcoming state and  
20 regional contingency planning program required by Senate Bill  
21 261. We're hoping, as I said, to get an RSA from DC for our  
22 initial participation in that effort and we'll need to continue to  
23 maintain our participation in that through the years and not let  
24 our guard fall. Much of the funding that was devoted to some of  
25 these efforts that are on the table here, is no longer available, as

1 we've all faced budget cuts. So I think in coming years we need  
2 to re-assess that problem.

3 The fourth question you asked was what our role -- what  
4 was our role in the first few days following the spill and what our  
5 long term role is? The first few days, our primary objective was  
6 to assist in protecting fish and wildlife resources and habitats.  
7 To that end, we beat the press to the hotel rooms and a couple  
8 helicopters which we had to stick our neck out on. You asked a  
9 question about funding. We didn't have funding for that, we just  
10 had to -- I called the Governor's office and said, we're gonna  
11 spend \$40,000 in the next two weeks and prayed. And I was  
12 told, go ahead. We think the legislature'll back stop you, but  
13 there's nothing in place to allow us to do that. But we did it.

14 Anyway, we provided information to DEC, the Coast Guard,  
15 and Exxon on fish and wildlife concentration areas, the timing of  
16 critical life phases of key fish and wildlife species. For example,  
17 herring spawning was a major concern early on. Salmon fry out  
18 migration, also a critical concern during the early days of the  
19 spill. Harbour seal pupping areas, as another example, and other  
20 particularly sensitive habitat.

21 We met with representatives of the fishing industry to  
22 hear their concerns and recommendations and benefit from  
23 their intimate knowledge of local environmental conditions, for  
24 instances circulation, currents, and available anchorages. I think  
25 they beat out the NOAA computer projections of where the oil

1 was going by a long ways. I think they're very familiar with the  
2 currents in the Sound. So they're a valuable resources. We  
3 participated in meetings and spill response decisions, for  
4 examples dispersant use, boom deployment, and recover of oiled  
5 wildlife.

6 Our long term role, following the initial response, our  
7 primary activities included assisting the shoreline clean up  
8 planning and also implementing thorough participation --  
9 implementation through participation in meetings and  
10 membership on inter-agency committees, such as the  
11 Interagency Shoreline Cleanup Committees, the MAC meetings,  
12 the Research and Development Committees. We're also going to  
13 be providing oversight and inspection of clean up activities and  
14 had been this summer to promote conformance with established  
15 guidelines and Title XVI permit stipulations. These are the  
16 resource assessment teams, or RATS. I never quite got all the  
17 acronyms right between STATS and RATS. I wasn't sure what  
18 was going on out there. We also were involved in documenting  
19 oil in areas of fish and game responsibility. And those include  
20 anagymous streams in legislatively designated special areas.  
21 We'll continue to do that this winter. We're involved with  
22 coordinating and implementing data collection necessary for  
23 fisheries management decisions, for instances tracking oil and  
24 collecting oil samples. That was critical to many of the decisions  
25 made this summer in closing the fisheries or leaving them open.

1           The fifth question you asked is what has Fish and Games  
2 relationship with the local communities and how has the  
3 department met their needs within our jurisdiction in spill  
4 prevention and response? First, I think it's important to  
5 acknowledge the invaluable contribution that local communities  
6 on the Kenai Peninsula and Kodiak Island Boroughs made to the  
7 Exxon Valdez oil spill planning and response. The local  
8 governments provided the nucleus for response actions in these  
9 districts. And they should be included in all future contingency  
10 planning and spill response efforts. We've also recommended  
11 the coastal districts which are not formal governments, but do  
12 have a role, also be involved in future planning, contingency  
13 planning.

14           Fish and Game has assisted local communities, both  
15 directly and indirectly. Our direct assistance has been provided  
16 through department representations in Valdez, Homer, Kodiak  
17 and to a lesser degree, Seward. The spill response staff at these  
18 locations met with community representatives and attended  
19 local spill response meetings, for instance the MAC meetings, to  
20 ensure that community concerns and recommendations were  
21 addressed. Until formalized communication could be  
22 established, Fish and Game also assisted the Kenai Peninsula and  
23 the Kodiak Island Boroughs by faxing them all the oil spill  
24 information received by fish and game. Just being aware of what  
25 was going on was critical to a lot of people early on. Not

1 knowing is almost worse than knowing, in many cases.

2 Our indirect assistance has been provided by acquiring  
3 the necessary data to make fisheries management decisions,  
4 working with DEC on hatchery protection measures,  
5 implementing a program to evaluate the potential affects of the  
6 spill on subsistence resources.

7 The statutory and regulatory change recommendations,  
8 you also asked about. Really, here we will parrot what the  
9 Governor has been saying all along and I think they're very  
10 important changes and it looks like Congress may actually act on  
11 them. The first one is the Coast Guard should make a thorough  
12 review of tanker designs. It looks like the House passed the  
13 double hull provision, so perhaps that'll become federal law.

14 Second, we feel the Coast Guard licensing requirements  
15 should be revised so that license holders are re-examined more  
16 frequently and information on drug and alcohol violation is  
17 available to prevent giving command of a supertanker to a person  
18 who could be incapacitated.

19 Third, a thorough review should be made of Coast Guard  
20 radar and navigational systems throughout the nation so that  
21 shore-based radar is always available when a tanker is  
22 maneuvering in dangerous or sensitive waters. The Governor  
23 has also recommended that Congress require all tankers to have  
24 equipment and trained personnel on board to deal with large  
25 spills, the moment they happen. And that the national oil spill

1 contingency plan be changed so that the Coast Guard is  
2 automatically put in charge of large spills without waiting to see  
3 if the responsible party, who will ultimately pay the bill, does an  
4 adequate job. In that role, I think the state has to have an  
5 important role in advising the Coast Guard and I believe the  
6 legislation that Congress -- or the House passed provides for  
7 state standards which the Coast Guard would have to follow if  
8 they're adopted, which I think is really important.

9 There also needs to be a worldwide computer inventory of  
10 spill equipment and experts, should be maintained so that  
11 whenever whatever's needed can be put on site without delay.  
12 Computerized data on geographical, meteorological and  
13 oceanographic characteristics of coastal areas are maintained so  
14 that equipment and personnel can quickly be sent to wherever  
15 they will be, do the most good.

16 The Governor also has recommended the entire structure  
17 of contingency planning be re-examined to make sure that the  
18 right equipment and personnel are always available at strategic  
19 locations throughout the country, always fully trained and always  
20 ready to respond at a moment's notice.

21 In the area of emergency funding, Governor Cowper has  
22 suggested a comprehensive look at existing federal funds  
23 available for containment and clean-up. The Congress is  
24 addressing that. Some sort of comprehensive look at the federal  
25 programs available for emergency aid to individuals, important.

1 And comprehensive look at ways to ensure that all claims for  
2 damages by an oil spill will be paid by the responsible party.

3 And finally, you asked, are you comfortable with the re-  
4 structure of the federal/state relationships in spill prevention  
5 and response? And I guess our feeling is that there is  
6 inadequate state control over a spill response. The current  
7 system places the responsibility, the responsible party or the  
8 Coast Guard in charge of spill response. And while we have a re-  
9 -- the Governor has recommended the Coast Guard be put in  
10 charge, we feel that the state agencies need to have a very  
11 significant role in making decisions.

12 Despite the fact that -- I say here, despite the fact that the  
13 effective states bear the brunt of the impacts from a major spill,  
14 Alaska has had limited influence over the EBOS response  
15 decisions. We've largely advised the Coast Guard -- and we think  
16 this has been the single most important hindrance to the state  
17 during EBOS. Our feeling is there's a need for clarification as to  
18 how the state and federal authorities inter-relate and we support  
19 House Bill 1465, which allows states to set standards for clean  
20 up and response, which will direct U.S. Coast Guard activities.

21 I've sort of touched the surface on a bunch of your  
22 questions and if you have -- you know I'd be happy to answer any  
23 questions you have, and as I say, Lance, Bruce and Claudia are  
24 here, so feel free to direct your questions directly to them and,  
25 if I can't answer something, I'll make sure that they do. So, with

1       that, I'll answer questions.

2               MR. PARKER: Thank you, Mr. Rue, for a most exhaustive  
3 run through and doing it very, very quickly too. I -- Counsel, do  
4 you wanta go first, or.....

5               MR. HAVELOCK: Whatever, I don't know that -- I always  
6 have to watch the level of frustration of Commissioners who have  
7 to listen to my questions.

8               MS. WUNNICKE: We'll let you know.

9               MR. HAVELOCK: Alright. Did I -- did we fail to ask you  
10 some question that we should have asked and you're dying to  
11 give us a response to the moment we ask it?

12              MR. RUE: I'm sure they're bunch. Why don't we just go  
13 ahead and ask and we'll -- if we think of anything we'll.....

14              MR. HAVELOCK: Well, I'm asking you to suggest if there's  
15 some questions we missed.

16              MR. RUE: Well, answer Bruce, are there others you'd like  
17 to, I think, address?

18              MR. BAKER: I think the framework is there in what  
19 Frank presented and maybe as you ask specific questions within  
20 that context of his initial presentation, we'll be able to bore into  
21 things a little more.

22              MS. SLATER: I'd like to ask a question that was previously  
23 presented to Tom Hawkins, and that was about problems with  
24 hiring and procurement. And my answer to that question is a  
25 resounding yes.

1 MS. WUNNICKE: Was yes?  
2 MS. SLATER: Yes. We had.....  
3 MS. WUNNICKE: I was gonna ask you that later, after  
4 Counsel got through.  
5 MS. SLATER: I think that there's a real need to put into  
6 place some administrative procedures that are more responsive  
7 to an emergency and a long-term emergency situation such as  
8 we experienced here. Our efforts have been hampered, I think,  
9 a fair amount because we just haven't been able to get the  
10 equipment and the people and the supplies that we need in a  
11 timely manner.  
12 MS. WUNNICKE: And even if you'd had the funding, were  
13 there also delays in getting the people on board just through the  
14 hiring.....  
15 MS. SLATER: Yes.  
16 MS. WUNNICKE: .....procedures.  
17 MS. SLATER: Yes. I would say procurement and hiring  
18 both.  
19 MR. RUE: I think even more so that, one of the problems  
20 was that there are not people that are trained to deal with this  
21 sort of thing simply are not available. They're not available in  
22 this state. And what happened is we were finally able to get  
23 some capable people, but they had to be trained. And I think  
24 what's needed in the future is a call up list of people who've been  
25 through this. People all over the country that we have a list, that

1 the state has a list of the people. When you have a spill, you have  
2 your nucleus here that's available to respond the first day. Sure,  
3 we don't mind sending our staff down there the first day or  
4 anything else. But you have to expand so rapidly that you need to  
5 be able to get on the phone that day and offer this guy this place  
6 and job. You have to know that he can go into Homer, he can set  
7 up and know what to do. And to be really effective that's  
8 something that we'll have to do and hopefully will do. They don't  
9 have to be on the staff all the time. You don't have to pay 'em all  
10 the time, but they have to be there. Otherwise, we're gonna be  
11 in the same that we were in this time.

12 MR. PARKER: Let's put it this way. If zero tolerance had  
13 not been operating would we have had to have a fishing season in  
14 Cook Inlet and Kodiak, as well as handle the spill, could you have  
15 done it.

16 MR. RUE: I think it probably would have been very  
17 difficult, although many of the decisions that the Commercial  
18 Fishing Division was making about zero tolerance were the kind  
19 -- they were doing test fisheries and those sorts of things they  
20 would've been doing during the fishing season anyway, so I guess  
21 you'd want them to answer that question. But, as Tom Hawkins  
22 said, there are lots of things we didn't do this summer with our  
23 existing staff, we should be doing. They're important things we  
24 were told by the legislature to do and, because we were  
25 responding to the spill and didn't do these other things, we

1       were frustrated.

2               MR. BARKER: I personally think that the state should  
3 look hard at a core staff of people that devote most of their lives  
4 to this. In the off season, that is the non-spill season, they can  
5 be the ones working on contingency plans. They can be the  
6 ones that are gonna maintain the kinds of expertise lists that  
7 Lance is talking about. But I think that if you look around you at  
8 the types of organizations that deal with public disasters of  
9 various kinds, you'll see that the most effective ones are the  
10 most military or that is the most structured in their makeup. As  
11 you go away from the armed forces, you look at police  
12 organizations, municipal fire departments. You go a step from  
13 there and you're looking at emergency medical teams, you're  
14 looking at fire overhead teams, or forest fire suppression. And  
15 although that sort of a sequence from the very, very structure  
16 military sort to a highly structured civilian kind of an  
17 organization, there are some common threads in there from one  
18 degree another. They're well organized. They're well  
19 disciplined. They're well funded. And there are, perhaps as  
20 important as anything, there are some thoroughly prepared, well  
21 understood procedural or institutional mechanisms in place so  
22 that everybody knows what their role is. And I think that after  
23 spending three weeks in Valdez I feel very strongly about there  
24 being a need for a better organizational structure that people can  
25 plug into right away. You don't have to waste precious time

1 trying to figure out what this agency's role is relative to another  
2 or how you involve the fishermen or how you involve the local  
3 communities. I think that needs to all be part of the tiered or  
4 hierarchical contingency planning. It's not just a matter of  
5 where the booms is or where the skimmers are and that sort of  
6 thing, but you need to have that institutional structure lined out  
7 at every level of contingency planning as well.

8 MR. HAVELOCK: Do the Incident Command System  
9 respond to that?

10 MR. BARKER: As I was listening to the discussion earlier,  
11 it seems to be the kind of thing that might be useful. I'm not  
12 thinking right now of people that you'll bring on to take care of  
13 the physical implementation of -- well, certain physical aspects  
14 of the implementation, I'm thinking more of the core people  
15 that are well trained in the disciplines. They can pull the thing  
16 together rather quickly.

17 Fire overhead for forest fire management might be an  
18 example. You may recruit people from Seattle or Ohio to work  
19 on a fire, but there's a certain intra-structure, organizational  
20 intra-structure that you have in place at all times and its around  
21 that expertise and capability that you organize the forces you  
22 need to get the numbers up where they need to be.

23 MR. HAVELOCK: I was noticing a number of you making  
24 notes on Mr. Hawkins testimony. I was wondering if there was  
25 any amplication that any of you want to add to that from the top

1 of your head.

2 MR. RUE: I have one thing I think that would be good.  
3 Claudia if you could describe the questions that were asked about  
4 the -- how sensitive habitats are identified in the contingency  
5 planning process, maybe Claudia you could talk a little bit about  
6 Prince William Sound and what was and wasn't available.  
7 Perhaps you could amplify on that question.

8 MS. SLATER: Yeah, sure. We've been involved in the  
9 TAPS in a number of different projects that identify particularly  
10 sensitive or productive habitats. The regional guides project was  
11 not an oil spill contingency plan effort, but certainly one valuable  
12 of that project, that information has been the contingency  
13 planning. Other documents that we have done for Cook Inlet  
14 and Norton Sound specifically look at potential risk of  
15 hydrocarbon exploration and development and resources in  
16 those regions and the types of impacts can result from those  
17 activities and the types of mitigation measures that are available  
18 to avoid or mitigate that.

19 The resource information in these documents are specific  
20 to the areas that are covered. Much of the other information in  
21 terms of the types of impacts associated with development or  
22 pollution events or whatever are applicable throughout Alaska  
23 and many other areas as well. Another pre-spill contingency  
24 planning effort that we were involved in was department review  
25 and comments on these environmental sensitivity index maps

1 that are done by a contractor to NOAA. And what they did in the  
2 case here of Prince William Sound -- it was started with the  
3 information in the regional guide and then they came to us -- I  
4 think the guides information data collection ended in about '85.  
5 And then they came to us in '88, I think it probably was and  
6 asked us to give them any additional information to update the  
7 guide's information and so we did that and we reviewed their  
8 initial draft of it, provided them with other comments and Fish  
9 and Wildlife Service did the same thing for -- this particular  
10 series of maps right here, for Prince William Sound is probably  
11 the most up to date compilation of key fish and wildlife  
12 information that was available for that region and it, fortunately  
13 that product was finished just, I don't know, weeks or perhaps a  
14 matter of a couple of months before the spill occurred.

15 Other contingency planning efforts that we're involved in,  
16 the department has been a participant in the Alaska Regional  
17 Response Team dispersant working group and coming up with  
18 the dispersant guidelines for Cook Inlet and Prince William  
19 Sound. Of course, Fish and Wildlife resource values and harvest  
20 activist were an important component in the development of  
21 those guidelines. We were also involved in the development of  
22 the Wildlife Protection guidelines which were also incorporated  
23 into the U.S. Coast Guard's Alaska region contingency plan along  
24 with the dispersant guidelines. And a large focus of that is what  
25 do you do in the event such as the Exxon Valdez when you have a

1 lot of oiled wildlife? How do you recover them? How do you  
2 clean them? How do you rehabilitate them? What facilities are  
3 available for that? What equipment is necessary? Who are the  
4 people with expertise in those fields that we can draw upon?  
5 That type of thing.

6 And then we have also been involved in some specific  
7 contingency plan review. Our most recent being the '89 update  
8 of Alyeska's contingency plan. And then we certainly hope to get  
9 funding through DEC to make a significant contribution to the  
10 state contingency planning effort. And we have submitted an  
11 RSA detailing specifically what we believe we could contribute  
12 and would like to contribute to that effort. And hopefully  
13 enhance the oil spill response preparedness through that effort  
14 in the future.

15 MS. WUNNICKE: There are two instances that just come  
16 to mind. We were talking earlier with the gentleman from the  
17 Environmental Protection Agency about the Regional Response  
18 Team. And the state has one member on a multi-member  
19 response team and that's -- the state's represented by the  
20 Department of Environmental Conservation. Yet I understood  
21 you to say that you had been part of the working group that  
22 agreed to the dispersant guidelines.

23 MS. SLATER: Right. Basically, the way that works is that  
24 the regional response team will have staff members from the  
25 various agencies participate and work in the group meeting. It

1 kind of a working group sub-tap. it's under the RRT. What we  
2 do is we will coordinate with our divisions and so forth and  
3 come up with our agency recommendations, fold that into a  
4 unified consensus on recommendations with is then presented  
5 to the RRT for their approval and adoption.

6 MS. WUNNICKE: I guess, Mr. Chairman, what I'm leading  
7 up to is, and I had asked the EPA man the same question,  
8 whether there was any merit in the state having more than one  
9 representative on something like the Regional Response Team.  
10 Another example of that, the horse and rabbit stew kind of  
11 situation, i guess. It has to do with the CERKLA trustees  
12 situation, where you have a number of federal members and Fish  
13 and Game represents the state of Alaska in terms of state  
14 representation. Is there any merit in having more than one state  
15 representative in that kind of organization also?

16 MR. BARKER: I'd like to answer if I could, just take that  
17 back a step. Because -- and talk about how one member worked.  
18 However the one representative can work and then, since  
19 Claudia's a member of that she may want to add to that. But, I  
20 think by and large we found that with the exception of some key  
21 dispersant use decisions, that by April 5th it had become  
22 apparent that the regional response team was largely a briefing  
23 mechanism for agency representatives in Juneau and Anchorage  
24 and that the real decision that were taking place in Valdez on an  
25 operational basis were a result of sort of, a number of

1       adhocrocies. And this is genuinely the way it would work.  
2       perhaps at 9 or 10 or 11 o'clock at night local fishermen that  
3       had a lot of wherewithall to make things once Exxon got  
4       material into the airport, for example, would meet perhaps with  
5       DEC, with some Exxon people, possibly with Fish and Game, and  
6       decisions would be made for the next morning. There may --  
7       this structure was a very dynamic one. It -- I was just making  
8       some notes as I was listening before, and it was about the 27th,  
9       three days after the spill that there was a new organizational  
10      structure that was developed. And it was between the Coast  
11      Guard and the State and others and it consisted basically of an  
12      operations committee and a planning committee. And it wasn't  
13      too many days after that before it became evident that needed to  
14      evolve still further. And one of the things that a number of us -  
15      Admiral Nelson, Fish and Game, the division of Emergency  
16      Services, we, the three of us pushed very -- advocated very  
17      strongly for a system whereby, for example, there would be a  
18      clearly stated inventory of equipment that was one already on  
19      line; two it was onhand, but not deployed; and three, it was on  
20      order. Similarly, we all press very hard for criteria that would be  
21      used to determine exactly where, what the hierarchy of  
22      priorities for deployment of people and material and equipment  
23      was so that you avoided the situation where you sort of  
24      responding to squeaky wheels. And it took awhile for that  
25      system to finally get into gear. And I think it's that experience

1 that prompted my earlier suggestion that those institutional  
2 mechanisms be all ironed out before hand and I think the RRT  
3 did that to a degree on the kinds of subjects that it dealt with,  
4 but there was so many other operational things that didn't seem  
5 like they'd been addressed in a lot of detail and Claudia needs to  
6 correct me if I'm wrong on that.

7 MS. SLATER: No, I would agree with that. The only thing  
8 I wanted to add to that is that as it sits right now, although you  
9 have many federal agencies that are members to the RRT, the  
10 vote right now basically is EPA in the state of Alaska. Now, I just  
11 learned recently that apparently there was proposed changes to  
12 the national contingency plan regulation, I believe, that would  
13 give Department of Commerce and Department of Interior a  
14 vote, along with EPA. And I believe the comment period on that  
15 is up, but similar to the situation that you referred with respect  
16 to the damage assessment, I could see where that would create  
17 cause for concern if you end up with a body where a state,  
18 whether that state be Alaska or whatever, they is just  
19 outnumbered right when you get there. So -- and I'm not sure if  
20 that change is going to be implemented. It was in the register  
21 and the comment period is up and I don't know beyond that  
22 what the status is

23 MR. HERZ: Mr. Chairman. While you were talking a bit  
24 about sensitive habitat mapping and work you have done in the  
25 Sound, I've been trying to get a sense of the degree to which

1 that resource information was used in ways to protect  
2 environments and habitats before the oil got there. I mean we  
3 heard a great deal about cleanup, but one of the key issues, it  
4 seems to me, one of the reason we want this sensitive habitat  
5 information is so that you can get there and maybe deploy  
6 something, a boom to deflect or whatever. Can you talk a little  
7 bit about the degree to which the habitat mapping exercise and  
8 the identification of these sensitive habitats allows you to deploy  
9 stuff and save habitat that otherwise have been oiled or oiled  
10 more seriously.

11 MS. SLATER: Well, the main way that we have been  
12 involved with that in the past is through the contingency plans  
13 that have been submitted to the state. And they would identify  
14 their proposed response plan. We might comment on that. I  
15 think one element of the upcoming state contingency planning  
16 effort that we can contribute to very significantly is just that.  
17 We've got a lot of information, some of the most current that's  
18 available on where those habitats and resources are located. And  
19 I would like very much for Fish and Game to work with DEC to  
20 develop the state response strategy for various regions round the  
21 state. I think, really, although I don't think it's essential to your  
22 question, I do have to go back. I think our primary goal though  
23 in that to date has really been through our participation in lease  
24 sale planning and project review because we will comment on  
25 the timing of lease sales, on the integration of lease sales,

1 specific stipulations that we would like implemented. And, to  
2 date, I think our major contributions in that arena has been  
3 through that avenue rather than through specific development of  
4 a contingency plan of strategy, which would then be pre-  
5 determined and ready to roll. I think that's something that we  
6 need to focus more attention on and coming up with a set of  
7 (indiscernible).

8 MR. HERZ: This afternoon we're gonna hear from our  
9 consultants who have done the oil spill modelling work. One of  
10 the things that led us to ask him to do this work was to get a  
11 sense of spills in areas and of spills in various areas, where the  
12 oil's gonna go, at what rate and so on. And part of that question  
13 is, in my thinking early on, was to be able to anticipate so that  
14 we can deploy. And my question was, in the Exxon Valdez  
15 incident was the information that's in the maps that you just  
16 passed out, used and -- or can you give some examples of  
17 deployment of booms or activities that saved, protected, reduced  
18 damage to habitats because you had this information.

19 MR. BARKER: Yeah, I think the answer is absolutely yes,  
20 Commissioner. And there, for example, were important marine  
21 mammal fallouts that were identified beforehand and their  
22 relative importance within the Sound was known before hand as  
23 a result of the work that Claudia had mentioned earlier. There  
24 were anadormous fish streams that were know, although we  
25 found in the post spill days that we've come up with another 140

1 or so that we didn't know about before. But it just shows a need  
2 to sort of build the data base as we go along here. But -- and  
3 there was a lot of knowledge of the kinds of fish and wildlife  
4 resources that would have been impacted had a westerly wind  
5 component nudged the oil to the east in Prince William Sound  
6 over toward the Hawkins cutoff between Hinchinbrook and  
7 Hawkins Island. So, -- and that's just in the Sound. I mean, I  
8 think Lance could give examples over toward Kodiak where the  
9 same thing occurred.

10 I think in the case of this spill, however, the magnitude of  
11 it was just so overwhelming that, for example, before you could  
12 start worrying about which were the highest priority salmon  
13 streams to protect, you found yourself doing a last ditch effort to  
14 protect Chami Lagoon which is a naturally producing fishery in  
15 three hatcheries. So you were, I mean I was sort of shocked at  
16 how fast we had to get down to the essence of the thing in the  
17 case of the hatcheries, for example. I think that the other thing  
18 that came out of all of this -- another thing that came out of all  
19 this is that while we're all strongly advocating the notion of a  
20 hierarchy of contingency plans, we have to allow for a lot of  
21 contingencies that you can't anticipate. That, again, is a reason  
22 for building a very strong institutional decision making  
23 processes, because there are all sorts of things that the best  
24 plans never anticipated. I mean, not only are you dealing with  
25 the risk in terms of modelling, but you're talking about the

1 magnitude of a biological consequences that Frank alluded to and  
2 then you're talking about what your capability is under any level  
3 of preparedness and then your talking about just variables that  
4 come up. I mean if the wind's pounding from one direction, you  
5 got a whole set of problems to deal with the next day and the  
6 next week and if it shifts the other direction, you've got a whole  
7 different set of things you have to deal with that may or may not  
8 have been dealt with adequately in the most detailed  
9 contingency plan that was lined out before hand.

10 MR. HERZ: One interpretation of what your saying is,  
11 once again, it underscores the futility of the response; that once  
12 it's out there, particularly in the magnitude of these catastrophic  
13 events, there isn't very much that you can do. Therefore, the  
14 sensitive habitat identification and mapping and prioritizing that  
15 you do has it's principle value in trying to prevent leasing  
16 activities to take place in areas of the highest value, because you  
17 can't protect them once the spill occurs?

18 MR. BARKER: No, that's not what I'm trying to say. No. I  
19 think that it all is very valuable. All I'm trying to indicate is  
20 there are contingencies that develop within such a massive spill  
21 that are hard to deal with. I think Commissioner Kelso of the  
22 Department of Conservation is probably stated as best we can.  
23 That is that had certain response levels been implemented, the  
24 results would have been far different than they were. I think  
25 that's probably the correct answer to that.