

MAINE STATE LEGISLATURE

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**STATE OF MAINE
115TH LEGISLATURE
FIRST REGULAR SESSION**

**Progress Report of the
COMMISSION TO STUDY
MAINE'S OIL SPILL
CLEANUP PREPAREDNESS**

November 1991

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In particular, the Commission would like to thank the following for their participation in presentations before, and discussions with, the Commission:

Fred Hurley - Director, Resource Management, IFW
Penn Estabrook - Deputy Commissioner, DMR
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Lt. Mike Humphries - USCG Marine Safety Office, Portland
Lt. Susan Woodruff - USCG Marine Safety Office, Portland
Tim Hendrix - Director of Operations, Portland Pipe Line Corporation
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Jeff Pidot - Deputy Attorney General, Chief, Natural Resources
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Linda O'Leary - American Waterways Operators

The staff would like to take this opportunity to thank David Sait and Mary James of the DEP, and Lt. Mike Humphries and Lt. Susan Woodruff of the USCG, for their constant help. But most of all, the staff wishes to thank all the members of the Commission for their dedication and devotion to the serious discussion and consideration of the issues examined by the Commission.

EXECUTIVE SUMMARY

The Commission

The Commission to Study Maine's Oil Spill Cleanup Preparedness was re-established by the Maine Legislature in 1991 to continue the work outlined by the 1990 Commission at the end of 1990. Public Laws of 1991, Chapter 530 gave the Commission authority to continue its work until June 30, 1992.

The Commission was required to review the federal Oil Pollution Act of 1990 (OPA '90) and the regulations adopted under it, and make recommendations for changes in Maine statutes and agency rules to be consistent with federal requirements. The Commission was charged with reviewing requirements of the federal fund, as well as examining the Maine Coastal and Inland Surface Oil Clean-up Fund to ensure consistency and ability to use the federal fund. The Commission was required to determine if the state fund should be split, and whether a permanent advisory committee should be established to oversee the fund.

The charge to the Commission for 1991-1992 included several monitoring responsibilities. The Commission was required to monitor the development of: the State Marine Oil Spill Contingency Plan; a sensitive area identification system; and a wildlife rehabilitation plan. The Commission was also charged with monitoring progress on navigational risk assessments and spill prevention measures, formation of response organizations, and safety problems of recreational boats operating in the vicinity of petroleum product carriers and tank vessels. The charge included a review of needed additional response vessels and equipment, and monitoring the acquisition of those vessels and equipment.

Chapter 530 required the Commission to recommend resource protection priorities, or recommend a mechanism to establish them. The Commission was also required to look into establishing a computerized spill trajectory tracking and forecasting system.

Finally, the Commission was charged with examining the effect the State's current unlimited liability standard has on the potential for oil spills in Maine waters.

The Commission members are: Rep. Susan Farnsworth (chair); Sen. Harry Vose; John G.T. Anderson (fisheries biology); Sidney Bahrt (public member); Jane Arbuckle (coastal wildlife habitat); Stephen M. Dickson (coastal geology); Don Grant (public member); Cyrus Hamlin (naval architecture); Milton F. Huntington (petroleum industry); Jeffrey H. Kaelin (sardine industry); James Lemmon (public member); David T. Look (oil-spill technology); Wallace R. McGrew (petroleum industry); David Norton (lobster industry); Alan M. Prysunka (DEP); and Capt. Granville Smith (pilot). The representative of the aquaculture industry resigned and that position was not filled in time to contribute to this progress report. William Altvater will fill this position.

The Commission met 5 times through the fall of 1991 to develop recommendations pursuant to its charge. This report represents the Commission's actions through November 1, 1991, and includes recommendations for legislation. This report is, however, an interim progress report, as the Commission will continue its work through the end of June, 1992.

Overview

The Commission found that although some changes are slow to come about, most notably the new and updated federal regulations, the EXXON VALDEZ incident and the federal Oil Pollution Act of 1990 have spurred many improvements in spill prevention and response planning. The improvements recommended by the Commission a year ago, having been generally supported by the Legislature, have also started the State on the right track to prevent and plan for oil spills. The oil industry has begun to put in place local and regional response capabilities should a spill occur. These efforts need to continue.

The commanding officer of the U.S. Coast Guard Marine Safety Office responsible for coastal areas of Maine and New Hampshire, established a Port Safety Forum in the late spring of 1990 to address response capacity shortfalls, and safety and prevention efforts in major ports in Maine and New Hampshire. This forum, composed of representatives of coastal pilots, clean-up contractors, terminal operators, tank ship and barge companies, environmental groups, educational and academic organizations, and New Hampshire and Maine environmental regulatory agencies, has been meeting since that time to define actions to increase port safety and improve oil spill prevention and response capabilities. Where possible, the Port Safety Forum and the Commission have supported each other's efforts, and have shared resources with the goal of more successfully preventing spills in Maine and New Hampshire waters.

Findings

Building on the foundation of the Commission's 1990 work, the Commission makes the following findings.

General

Development of the state marine oil spill contingency plan, a sensitive area identification system and wildlife rehabilitation plans have been hampered by delayed funding approval, caused in part by the State shutdown in July, resulting in slow starts to the projects;

Spill Response Organizations

There has been significant investment by the private sector in response organizations, with the incorporation of Clean Casco Bay, Inc., and the establishment of the Marine Spill Response Corporation to augment existing response capacity;

Maine Coastal and Inland Surface Oil Clean-up Fund

Lack of proposed federal regulations under the federal Oil Pollution Act of 1990 make it difficult to compare federal requirements with state provisions. This is particularly true with regard to the federal Oil Spill Liability Trust Fund and how it may affect the Maine Coastal and Inland Surface Oil Clean-up Fund.

The Maine Coastal and Inland Surface Oil Clean-up Fund has not reached maximum funding, although the balance will increase as the Portland Pipe Line Corporation's volume increases as projected in the next few years. The majority of the claims paid from the Fund have not been for marine or open water spills, but for spills that occur above ground, and for resulting groundwater contamination.

Prevention

Recommendations by the Ad Hoc Vessel Operations Committee of the Port Safety Forum will help to reduce the risk of oil spills in Maine waters. However, there are still areas this group needs to address.

Several provisions of Maine law relating to spill prevention measures are inadequate, inappropriate or redundant. These include:

- No penalty provision for failure to take a licensed marine pilot when required;
- A requirement that the Department of Environmental Protection receive a copy of every vessel contingency plan for ships within state waters, even though the U.S. Coast Guard is charged with receiving and approving each plan; and
- The requirement that the state Marine Oil Spill Contingency Plan must be adopted by rule by the Board of Environmental Protection. It must be annually updated and these updates must also be adopted by rule. This becomes very cumbersome for amending a document that must remain current.

Navigational risk abatement exercises have strong merit in working to reduce the risks for an oil spill within Maine waters; the effort spearheaded by the Portland Pipe Line Corporation to examine the risks for their crude oil carriers coming into Portland Harbor was exemplary.

While financial assurance requirements for oil terminal facilities may be worth further State examination, it is not appropriate to ask small facilities to meet the current \$350 million liability limit under federal law. OPA '90 allows a decrease in this limit based on risk to the environment and volume of throughput but appropriate levels have not been specified.

Increasing numbers of recreational boaters in commercial shipping lanes poses a great threat to public health and safety. The issue requires actions in numerous other fields with the support of many other groups outside the oil transportation field.

The State of Maine should not be developing and acquiring the expertise to regulate many aspects of vessel movements or barge traffic.

The Commission encourages the work of the Port Safety Forum in looking at ways to encourage the development of on-going training programs for fishermen to provide services in response to a spill.

Spill Tracking

It would be premature for the State to invest scarce resources in a computerized spill trajectory tracking and forecasting system at this time. Those resources are better used now by identifying what GIS information gaps exist, and then collecting that information to enter into the GIS. NOAA, in conjunction with the Coast Guard, has an excellent spill tracking and forecasting system, plus the experts to run it. Duplication of those efforts at this time is not feasible.

Oil Spill Advisory Committee

An ongoing advisory committee of people with diverse backgrounds is needed to track and make recommendations on ongoing developments, issues and requirements in oil spill prevention, planning and response.

Unlimited liability

The Commission heard testimony and discussed the question of how Maine's unlimited liability law affects the potential for an oil spill in Maine. It is recognized that the federal fund, allowing for up to \$1 billion in payments for a single spill, would not fully cover a catastrophic spill such as the EXXON VALDEZ. Total damages from the EXXON VALDEZ are estimated at over \$4 billion; Exxon settled for \$2.2 billion. The Commission members have learned far more about the ramifications of Maine's unlimited liability law than ever before, but feel more information would be helpful in making a decision about whether Maine's law should be changed. Several areas of information that could be compiled and explored for the Commission's use were identified, although other issues are also important: Insurance for vessels and facilities, chances of a spill in Maine waters from Eastport through the Piscataqua River, whether other unlimited liability states are experiencing problems, quality of ships still serving Maine ports, how well the financial responsibility laws are working, what the adequacy of the federal fund seems to be in relation to other spills and whether there are other options to increasing the pool of good ships willing to come to Maine ports besides capping liability.

The Commission also finds that the law is inconsistent in dealing with the liability of responsible parties when it comes to reimbursing the Maine Coastal and Inland Surface Oil Cleanup Fund. The Commissioner of DEP is directed to seek reimbursement for studies and for collection costs, but the statute laying out the liability of a responsible party does not mention those specific costs. In addition, the statute is not clear that the studies to be paid for from the Fund are specifically related to a particular spill, and include damage assessment costs.

Sensitive Areas

Maine's sensitive area identification system on the State's Geographic Information System is an important first step for providing the tools for decision-makers to use during an oil spill. However, it will be several years before the system is fully functional.

The NOAA Environmental Sensitivity Index (ESI) maps produced in 1978, are a good starting point on which the State's sensitive area identification system can be modeled. The Commission has amended the ESI listing so that it better reflects important Maine resources.

Resource protection priorities can help both spill response decision-makers and the agencies developing data for the sensitive area identification system to decide what resources are important to

protect during an oil spill and what resources should be mapped first. The Commission has developed an initial priority list that will serve as the basis for further refinement.

Recommendations

The Commission makes the following recommendations.

Maine Coastal and Inland Surface Oil Clean-up Fund

A majority of the Commission voted not to split the fund, recognizing inequities to the major contributor, provided that the current fee and cap remain the same. The Commission declined to make a recommendation in the event that the Joint Standing Committee on Audit and Program Review does vote to regulate above ground storage tanks.

One member of the Commission voted to split the fund at this time citing the need to better recognize the needs of the coastal area and the marine environment.

Prevention

The Commission recommends encouraging and monitoring the efforts of the Ad Hoc Vessel Operations Committee of the Port Safety Forum in its work to reduce the risk of oil spills in Maine waters. Specifically, the Commission has been interested in the committee's recommendations on tug escort policies and the regulation of barges.

The Commission recommends Maine law be amended to:

- Provide a penalty for vessels failing to engage a licensed marine pilot when required;
- Repeal a requirement for the Department of Environmental Protection to receive a copy of every vessel contingency plan. A vessel will instead be required to have a copy on board that DEP can inspect; and
- Repeal a requirement that the marine oil spill contingency plan be adopted by rule. Licensees and interested parties will be notified of significant changes and may request a public hearing.

The Commission recommends that the U.S. Coast Guard undertake and encourage industry to undertake navigational risk abatement exercises for the major harbors supporting oil traffic in Maine.

The Commission recommends tabling the issue of financial assurance requirements for oil terminals until the federal government specifies decreased limits of liability under OPA '90.

Spill Trajectories

The Commission recommends continued support for the GIS, including the efforts to complete the data base and to continually update the information. The Commission recommends that DEP, IFW,

DOC and DMR continue cooperation and integration of computer systems with NOAA, including the sharing of information and data. The Commission recommends that the state agencies develop a similar relationship with MSRC as its capabilities mature. The Commission recommends that the state agencies, the Commission, and eventually the Advisory Committee continue to monitor computerized spill trajectory tracking and forecasting systems, and continue to explore the need for the State to develop its own capabilities.

Oil Spill Advisory Committee

The Commission recommends that a 14 member Oil Spill Advisory Committee be established within the Department of Environmental Protection. This committee should track ongoing developments within the oil spill prevention, planning and response fields.

Oil Spill Liability

The Commission believes that making a recommendation on Maine's unlimited liability laws at this point would be premature. The Commission therefore recommends that more information be collected and the Commission continue its discussions. Once in existence, the Advisory Committee should continue to monitor the issue of liability for oil spills under Maine law, no matter what changes may be made.

The Commission recommends that the statutes governing the state Fund be amended to clearly state that responsible parties are liable for the costs of studies related specifically to the spill they have caused, and any collection costs associated with the damages and clean up costs.

Sensitive Areas

The Commission recommends that financial support for the sensitive area identification system be continued so that this tool can be developed and available during a spill. The data base should be developed using the modified NOAA ESI listing as included in Appendix J. The Commission recommends coordination with MSRC, spill response organizations and other industry sources of information.

The Commission has developed an initial priority list that should be refined as the system is further developed. The priorities are to determine whether a resource can be protected, how vulnerable it is to damage, how easy it is to replace and how important is the resource ecologically and socially. These priorities must remain flexible at this time. Maine law should be amended to repeal the requirement that the Board of Environmental Protection adopt these priorities by rule (38 MRSA §546-B, sub-§2).

I. Introduction

The devastating spill of 11 million gallons of crude oil in Prince William Sound when the EXXON VALDEZ ran aground has had major effects on the marine oil transport industry and its regulation. In 1990, Congress passed the Oil Pollution Act of 1990, requiring major changes in the industry.

A. History of The Commission to Study Maine's Oil Spill Clean-up Preparedness

In 1989, the US Coast Guard reviewed personnel and response equipment available in the Portland area and estimated that they had the capacity to deal with a spill of 5000 bbl of oil. However, the maximum potential spill was over 500,000 bbl of oil. In response to this finding and a general public concern for oil spill preparedness, the Maine Legislature in 1990 passed Public Law 1989, Chapter 868 "An Act to Enhance the Ability of the State to Respond to Oil Spills." That Act established a 15-member Commission to Study Maine's Oil Spill Clean-up Preparedness. The Commission met over a 5-month period in 1990 and recommended two pieces of legislation to the Legislature. These bills were passed with few modifications as discussed below. An extensive report was also published by the Commission discussing the background and reasoning behind their recommendations.

1. An Act Regarding Liability for Persons Responding to Oil Spills - (LD 74, PL 1991, c. 380)

This bill defines certain terms and phases, makes explicit the right of terminal operators to recover damages from a vessel that has spilled oil if the terminal ends up paying damages, and grants additional immunity to oil spill responders.

Committee Amendment "A" (H-360) corrects a definition and amends the provisions extending limited immunity for responders to conform with federal law and several other states' laws. The person responsible for the spill is liable for damages for which the responder is immune.

2. An Act to Improve Marine Oil Spill Prevention, Planning and Response - (LD 77, PL 1991, c. 454)

Part A of this bill continued the Commission to Study Maine's Oil Spill Clean-up Preparedness and was added as an amendment to LD 246.

Part B of this bill requires increased oil spill response planning by the Department of Environmental Protection (DEP) and other state agencies. A major portion of this bill set up the hardware and personnel to do sensitive area mapping of the Maine coast to be included in the State's Geographic Information System. Specifically, part B:

- a. Clarifies the relation between the DEP and the Maine Emergency Management Agency in the event of an oil spill emergency;
- b. Requires annual inspections and drills at licensed oil terminals;
- c. Requires vessels and facilities to file federally required contingency plans with the DEP;
- d. Requires the DEP to prepare a state marine oil spill contingency plan, including a worst-case scenario;
- e. Requires the DEP to develop a computerized, geographic information system-based sensitive area identification and protection plan, including guidance for protection priorities;
- f. Requires the Department of Inland Fisheries and Wildlife to develop a wildlife rehabilitation plan;
- g. Authorizes allocations of up to \$350,000 per year for sensitive area data management and mapping;
- h. Maintains a temporary 1¢ per barrel fee increase on oil coming into the State. This brings the total fee to 4¢ per barrel. This fee is used to support the Maine Coastal and Inland Surface Oil Clean-up Fund. Although initially recommended by the Commission that the temporary fee increase not lapse, delays in the legislative process allowed a lapse for 5 months.;
- i. Gives the DEP additional authority to collect overdue reimbursements to the Maine Coastal and Inland Surface Oil Clean-up Fund; and
- j. Returns \$500,000 within the next 5 years from the Ground Water Oil Clean-up Fund to the Maine Coastal and Inland Surface Oil Clean-up Fund.

The Committee Amendment (H-339) alters the original bill in several important ways. It primarily amends the fiscal note to give DEP more oversight over system development and to contract out digitization efforts. Six positions are funded in this bill: 2 permanent DEP, 2 temporary DEP, 1 permanent DMR, 1 permanent IF&W. The amendment also did the following.

- a. The language to extend the Commission to Study Maine's Oil Spill Clean-up Preparedness is removed. (It is added as an amendment to LD 246.)
- b. Language is added to require the DEP to exercise more oversight and coordination over data management efforts.

- c. A requirement for training personnel for wildlife rehabilitation following an oil spill is removed so that a plan is in place before any training occurs.
- d. The authority for allocations for sensitive area mapping is repealed after fiscal year 1994-95.
- e. Personnel and equipment expenses are included in state expenses to be reimbursed by a person responsible for an oil spill.
- f. Attorneys hired by the DEP will be reviewed by the Attorney General.
- g. The effective date of the fee increase for oil transfers is postponed to May 1, 1991 and the marine oil spill contingency plan development and adoption are postponed.
- h. The fee on per barrel transfers of oil lapses to 3¢ per barrel on July 1, 1994.
- i. The allocation section is amended to more accurately reflect the scope of work required.

A Senate amendment (S-266) makes the effective date of the fee increase July 1, 1991 to avoid any retroactivity of fee collections.

3. An Act Assuring Clean Waters in Maine - (LD 246, PL 1991, c. 530)

The Committee Amendment (H-331) replaced the original bill with Part A of LD 77 to continue the Commission to Study Maine's Oil Spill Clean-up Preparedness until June 30, 1992. This amendment:

- a. Extends the allocation of existing funds for the Commission until June 30, 1992. The bill does not allocate any new funds for the Commission;
- b. Requires the Department of Environmental Protection to provide reports to the Commission by June 30, 1991, and quarterly thereafter, on:
 - (1) Its progress in rulemaking;
 - (2) The state marine oil spill contingency plan;
 - (3) The sensitive area identification and protection system;
 - (4) The wildlife rehabilitation plan;
 - (5) The possibility of a Gulf of Maine oil spill compact; and

- (6) The availability of oily debris disposal facilities; and
- c. Requires the Commission to report to the Legislature by November 1, 1991, on:
 - (1) The progress of the new federal, state and industry response initiatives;
 - (2) The relationship between the new federal fund and the existing Maine Coastal and Inland Surface Oil Clean-up Fund; and
 - (3) Any recommendations for further state legislative or administrative action.

A Senate amendment (S-390) adds two more members to the commission: a licensed marine pilot and an additional public member.

B. The 1991 Commission to Study Maine's Oil Spill Clean-up Preparedness

Public Law 1991, chapter 530 reestablished the Commission for the 1991 interim so that it could continue to track changes in the oil transportation industry, federal regulation and major oil spill planning and prevention efforts. This report documents the work of the 1991 Commission and provides recommendations and proposed legislation for the Second Regular Session of the 115th Legislature.

The Commission's charge for the 1991 interim was to:

1. Track implementation of the federal Oil Pollution Act of 1990 and regulations promulgated under it, and recommend to the Legislature and the Board of Environmental Protection any appropriate statutory or regulatory changes;
2. Review opportunities and constraints of the federal Oil Spill Liability Trust Fund and review and recommend changes to Maine law to incorporate the availability of response money and damage compensation from the federal fund;
3. Review expenditures and the priority for expenditures of the Maine Coastal and Inland Surface Oil Clean-up Fund and make recommendations to the Commissioner of Environmental Protection and the Legislature on how the fund should be spent. The commission shall also consider the establishment of a permanent advisory committee for this purpose. In making these recommendations, the commission shall consider the advisability of establishing separate coastal and inland surface funds;
4. Monitor the development by the Commissioner of Environmental Protection of any marine oil spill contingency plan;
5. Identify needed additional response vessels and equipment and monitor the progress of the Department of Environmental Protection in obtaining them;
6. Monitor any development of a sensitive area identification system by the State;
7. Recommend resource protection priorities or a mechanism to establish them;
8. Evaluate and consider the establishment of a computerized spill trajectory tracking and forecasting system;
9. Monitor development of any wildlife rehabilitation plan developed by the State;
10. Monitor the progress of the United States Coast Guard and the Department of Environmental Protection on navigational risk assessments and spill prevention measures, including the use of tugboats;

11. Encourage and monitor formation of response organizations by the oil terminal operators in each major port area;
12. Study the impact of the State's present unlimited liability standard on the potential for oil spills in Maine waters; and
13. Monitor the safety problems of public boating in the vicinity of oil vessels.

The Commission was composed of representatives from the petroleum industry, the environmental field, the fishing industry, the general public and the Legislature.

The Commission members and their organization or area of expertise were: Rep. Susan Farnsworth (chair); Sen. Harry Vose; John G.T. Anderson (fisheries biology); Sidney Bahrt (public member); Jane Arbuckle (coastal wildlife habitat); Stephen M. Dickson (coastal geology); Don Grant (public member); Cyrus Hamlin (naval architecture); Milton F. Huntington (petroleum industry); Jeffrey H. Kaelin (sardine industry); James Lemmon (public member); David T. Look (oil-spill technology); Wallace R. McGrew (petroleum industry); and David Norton (lobster industry); Alan M. Prysunka (DEP); and Capt. Granville Smith (licensed Maine pilot). The representative of the aquaculture industry resigned and that position was not filled in time to contribute to this progress report. William Altvater will fill that position.

The Commission met 5 times through the fall of 1991 to develop recommendations pursuant to its charge. This report represents the Commission's actions through November 1, 1991, and includes recommendations for legislation. This report is, however, an interim progress report, as the Commission will continue its work through the end of June, 1992.

II. Oil Spill Prevention and Response Efforts Since the 1990 Commission

Much has happened in terms of oil spill prevention and planning since the 1990 Commission made their recommendations in November, 1990. This section outlines these changes.

A. Agency updates

Four state agencies received personnel and funds through Public Law 1991, C. 454, "An Act to Improve Marine Oil Spill Prevention, Planning and Response."

1. The Department of Environmental Protection (DEP)

The DEP has filled the Environmental Specialist IV and one of the Environmental Specialist II positions created under Chapter 454 (L.D. 77). Registers of qualified applicants have been requested from the Bureau of Human Resources for the remaining positions (the Information Systems Manager and one ES II).

The inventory of oil spill response equipment available within the state is being updated for the state's Marine Oil Spill Contingency Plan. About 50% of the companies surveyed have provided equipment lists to date. This information will be reviewed to determine what additional equipment is needed. Several meetings have been held with representatives of the U.S. Coast Guard and New Hampshire to discuss preapproval criteria for use of dispersants. Oil dispersant guidelines and agreements from other states and jurisdictions are being collected and reviewed.

The sensitive area identification and protection system is under development. The coastal USGS 1:24,000 quadrangles for the coast of Maine from Bar Harbor south to Kittery have been received from the contractor. The quadrangles from Bar Harbor north to Canada are expected within two months. These quadrangles reside on the state Geographic Information System (GIS) computer. DEP will begin to combine these quadrangles over the next couple of months to create a continuous map of the coast. There are no contracts outstanding for sensitive area mapping at this time. A request for proposals for digitizing the MGS marine environments maps should be issued in November. The DEP will be working with IF&W and DMR over the next couple of months to determine exactly what data from their agencies must be digitized.

Discussions have been held with Environmental Science Research Institute (ESRI) on how to program the application. ESRI created and maintains a computer software package called ARC/INFO and did extensive GIS work for both the EXXON VALDEZ and the Persian Gulf oil spills. ESRI may assist DEP in the design of the oil spill computer programs application. Steve Lehmann of NOAA, has been assisting the DEP in conceptualizing the application design to make sure that the application will be consistent with the oil spill applications, tools, and maps that the Coast Guard and NOAA currently utilize.

A Sun Microsystems Sparc II workstation server has been purchased and testing is underway to connect IBM PCs to the Sun workstation to run the application over the DEP PC-based local area network. DEP also has been working with the Office of Information Services to assist in connecting the state GIS facility to the state network.

2. The Department of Inland Fisheries and Wildlife (IF&W)

The IF&W has two major tasks associated with the implementation of the recently enacted legislation to improve marine oil spill prevention, planning, and response. These tasks include: (1) the development of a wildlife rehabilitation plan, and (2) the development of the wildlife component of a sensitive area information system.

A request for proposals to develop a plan for rehabilitating oil spill-damaged wildlife was advertised, and a meeting was held on October 10 to brief prospective bidders on the scope of the plan and to answer any questions they may have. Two proposals were received by the October 24 deadline and are currently being reviewed. The contractor selected to formulate the plan will be expected to: (1) submit a outline of the plan scope and approach with identification of all pertinent agencies and personnel to be involved in plan development and implementation by November 15, 1991; (2) submit a first draft reflecting input from all pertinent agencies by January 15, 1992, and (3) submit the complete plan by March 15, 1992.

IF&W's Habitat Project Leader has begun to assess the status of the IF&W's marine wildlife information and consider alternative approaches to the development of the wildlife component of the sensitive area information system. Preliminary discussions have taken place with appropriate staff in the Department of Conservation's GIS and the DEP. A Biologist I position has been established and is anticipated to be filled by mid-November, to assist with the development of the sensitive area information system. The GIS work station has been ordered and should be available by the end of November. IF&W's staff will be meeting with personnel from the Department of Conservation, GIS Office and the DEP in early November to begin working out the technical aspects associated with the development of the system.

3. The Department of Marine Resources (DMR)

The position authorized by PL 1991, c. 454, has been filled as of September 23, 1991. Since that time, the individual has completed a review of available information relating to marine resources; has participated in several Oil Spill Preparedness

Commission and subcommittee meetings; and has made recommendations to the subcommittee on features to be considered in addition to those included in the NOAA Environmental Sensitivity Index.

The staff assigned to this project has attended the Northeast ARC/INFO Users conference in Portland to upgrade training in applied macro language. Further training and direct application to project objectives will follow at the GIS center at the Department of Conservation.

A Sun Microsystems workstation has been ordered to supplement the equipment available at the DOC GIS center. Delivery is expected by January 1, 1992.

4. The Department of Conservation - Geographic Information System (GIS)

Two work stations and two disk packs have been ordered and are expected soon. 68 of 90 coastal basemaps are complete and stored at the Office of GIS. The basemaps include the coastline, roads, streams, rivers, ponds, and administrative boundaries. The remaining maps are in production and need to have only quality assurance and control checks. FY 92 work programs are complete and include "all other" funds for agencies to begin compiling and digitizing thematic layers. Some layers are available for Casco Bay. The application software will be developed on a track parallel to data development. This will provide almost immediate, though limited, capability with additional capability added in increments as thematic layers are digitized. The GIS group is at least one quarter behind schedule due to the events surrounding the enactment of the FY 92-93 budget.

B. Clean Casco Bay, Inc.

Clean Casco Bay, Inc. (CCB) was incorporated in May, 1991 to fill the identified gap between available spill response resources in Casco Bay and the response effort to be provided by the Marine Spill Response Corporation. Its area of interest includes Casco Bay and Northern Saco Bay. It joins the Penobscot River Oil Pollution Abatement Committee and the Portsmouth Harbor Oil Spill Committee as response organizations covering Maine waters. See discussion of Oil Spill Response Organizations in section III.

C. Marine Spill Response Corporation (MSRC)

The Marine Spill Response Corporation (MSRC) has been formed by the oil industry to provide a national supply of equipment and personnel for spills that are beyond local response capacity. They estimate that size to be 5000 barrels (210,000 gallons) of oil. They will be instrumental in the industry's response to the new federal

requirement that vessels and terminals have response plans that identify the resources to remove a worst-case discharge. MSRC is funded by the Marine Preservation Association (MPA), a not-for-profit corporation with over 20 members. Oil companies, shippers and receivers of oil pay dues according to the volume of oil they handle. Currently, at least 4 Maine terminals are affiliated with members of MPA. MSRC has 5 regional response centers, each to be equipped for a spill of 9 million gallons. These resources can be combined during a spill to cover up to 45 million gallons. MSRC also has 5 or 6 staging areas for equipment storage in each region. Portland, Maine is one staging area. MSRC plans to house \$10 million worth of response equipment here including a 208-foot response vessel in Portland Harbor together with 13,300 feet of boom and four vacuum skimmers.

D. Portland Pipe Line Corporation Oil Spill Contingency Plan

The federal Oil Pollution Act of 1990 requires contingency plans for both vessels and facilities. The Portland Pipe Line Corporation (PPLC), operating a major oil terminal in Portland Harbor, has already adopted a comprehensive marine oil spill response plan for Portland Harbor and Casco Bay. Under Maine law, a licensed facility is liable for oil discharges in Maine waters by vessels on their way to or from the licensed facility. PPLC's plan therefore covers spills in the open waters of the harbor and Casco Bay.

The PPLC Marine Response Plan specifies the responsibilities and lines of communication in the event of a spill. It provides information necessary for technical and procedural response in Portland Harbor and Casco Bay. The Plan includes lists of necessary and available equipment, personnel and other resources. The Plan also lists environmental data, to be updated as necessary. Guidelines are included to aid in spill response planning and response operations.

The Plan is not seen as a final effort, but rather the foundation of a dynamic data-gathering and technological response process. PPLC held a two-day training session in August to distribute the Plan and its contents to the PPLC response teams, the Coast Guard, the DEP, the Commission and other interested parties. PPLC also held a "table-top" exercise in October, putting its response teams and the plan through a spill simulation drill.

E. U.S. Coast Guard Port Safety Forum

The Commanding Officer of the Marine Safety Office for Maine and part of New Hampshire established a Port Safety Forum in the late spring of 1990 to address response capacity shortfalls, safety and prevention efforts in major ports in Maine and New Hampshire. This forum, composed of representatives of coastal pilots, clean-up contractors, terminal operators, tank ship and barge companies, environmental groups, educational and academic organizations, and

New Hampshire and Maine environmental regulatory agencies, has been meeting since that time to define actions to increase port safety and improve oil spill prevention and response capabilities. Four working groups (navigation, petroleum terminal operators, spill prevention and response information and port operations) met as part of the Forum to refine 50 initial recommendations developed by the Forum.

To date the Port Safety Forum has accomplished the following:

1. Encouraged the development of Clean Casco Bay, Inc., and the expansion and integration of other spill organizations;
2. Facilitated the development and adoption of harbor transit visibility restrictions;
3. Facilitated the development of voluntary tanker screening measures by facilities;
4. Developed port entry risk analyses for Casco Bay, the Piscataqua River, and Penobscot Bay;
5. Encouraged facility response contingency plans;
6. Recommended changes to the Navigational Buoyage System; and
7. Validated the Local Contingency Plan.

Ongoing issues to be reviewed include:

1. Specific recommendations concerning the necessity for tug escorts of tank ships and tank barges, and the extent to which these vessels should be escorted while transiting the port area;
2. Evaluating the use of chemical countermeasures, including dispersants;
3. Developing recommendations on widening or replacement of the presently extremely narrow Sarah M. Long Bridge in Portsmouth, NH;
4. Developing recommendations for the replacement of the "Million Dollar Bridge" in Portland/South Portland;
5. Encouraging voluntary personnel training and response exercises;
6. Implementation of the Oil Pollution Act of 1990 regulations and developing recommendations relating to the conversion of the Local Contingency Plan to an Area Contingency Plan;
7. Supporting the implementation of Clean Casco Bay, Inc. (CCB);

8. Integrating the Marine Spill Response Corporation (MSRC);
9. Expanding the Portsmouth Harbor Oil Spill Committee (PHOSC) and the Penobscot River Oil Pollution Abatement Committee (PROPAC);
10. Coordinating with terminal operators and helping to develop and further their recommendations;
11. Investigating and encouraging the development of on-going training programs for fishermen to provide volunteer services in response to a spill; and
12. Continuing the Port Safety Forum.

The U.S. Coast Guard has expressed interest in expanding the Port Safety Forum membership and reconstituting it so that it will serve as a Port Area Committee mandated under OPA '90.

F. Oil Pollution Act of 1990

After nearly 20 years of failed attempts, comprehensive oil spill legislation was passed unanimously in both houses of Congress. On August 18, 1990, the Oil Pollution Act of 1990 was signed into law. This Act significantly changes oil spill prevention, response, liability and damage assessment. How those changes will take place may depend on federal regulations, which are still being developed. Several of the provisions most pertinent to the Commission's work are summarized here; see part VIII of this report for a discussion of liability.

The United States Coast Guard has established two separate offices to oversee the implementation of the requirements of OPA '90. The National Pollution Funds Center is responsible for developing and administering the OPA provisions covering the Oil Spill Liability Trust Fund and the vessel financial responsibility requirements. The OPA 90 Office is responsible for overseeing and coordinating the various studies, regulations and reports required by OPA '90.

1. Oil Spill Liability Trust Fund

OPA '90 established the Oil Spill Liability Trust Fund that is available to pay up to \$1 billion in response and damage costs for an oil spill within the United States. Response and removal expenses must have been incurred consistent with the National Contingency Plan. Third parties damaged by an oil spill must first seek compensation from the responsible party. Only after the responsible party has denied liability or the claim has been pending before the responsible party for 90 days without resolution may the third party present the claim to the Fund. Litigation may be instituted against a responsible party, but no

claim can be approved by the Fund while litigation is pending to recover for the same claim. States may receive up to \$250,000 from the Fund in emergencies without first presenting the claim to the responsible party.

Regulations establishing claims procedures and governing the use of the Fund and how and under what conditions states may access the Fund are being developed, with an initial completion date of fall or winter of 1991.

2. Vessel Financial Responsibility Requirements

OPA '90 requires that the responsible party for any vessel over 300 gross tons, using any place subject to the jurisdiction of the United States establish and maintain evidence of financial responsibility equal to the maximum amount of liability the responsible party would be subject to under the Act (assuming no gross negligence or willful misconduct involved). The same requirements apply to the responsible party for any vessel using the waters of the exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States. Vessels that violate the financial responsibility requirements may be denied access to U.S. ports and waters, seized, detained, forfeited and sold. Requiring evidence of financial responsibility provides assurance that compensation for removal costs and damages will be available up to the limit of liability if that vessel is found responsible for an oil spill.

The Coast Guard has developed draft regulations governing financial responsibility for vessels. They are currently being issued in the Federal Register as Advanced Notice of Rule Making.

3. Vessel regulations

The Oil Pollution Act imposes new vessel requirements in three areas. There are vessel personnel provisions governing issuance and revocation of licenses and certificates for merchant mariners, making information about the mariner's substance abuse problems available to licensing authorities. It also requires the Coast Guard to establish rules covering other vessel staffing requirements. The other two areas are vessel construction and vessel equipment. All newly constructed tank vessels must have double hulls; existing single hull tankers will be phased out beginning in 1995; and by 2010, all vessels over 5,000 gross tons with single hulls cannot operate until they are converted to double hulls.

The Coast Guard has issued a notice of proposed rule making on the use of auto pilot on tankers. The project is now being reviewed by the Office of Management and Budget for publication clearance. The Coast Guard is currently reviewing

additional information about structural and operational tanker requirements of equal or greater protection than double hulls. The report is estimated to be submitted to Congress in the summer of 1992. A final rule on double hull requirements is expected in December of 1991. A notice of proposed rule making on tank overfill warning devices is scheduled for May of 1992. Regulations regarding thickness of plating on tankers are still in the formative stage.

4. Strike teams and equipment

The federal Oil Pollution Act of 1990 establishes three Coast Guard strike teams (formerly called "strike forces" under the Clean Water Act), and a National Response Unit (NRU) based in Elizabeth City, North Carolina. The NRU will maintain a comprehensive, computerized inventory of oil spill removal resources, personnel and equipment available worldwide and within areas designated for contingency plans. This information will be available to the public.

The three strike teams have been established in California, Alabama and New Jersey. The strike teams are designed to quickly transport response equipment and highly skilled spill response experts to the site of a spill, and to assist and advise the on-scene coordinator.

The Coast Guard has selected 19 sites at which response equipment will be positioned, or "prestaged." The equipment includes booms, skimming systems, portable barges to hold recovered oil, and associated equipment. Congress appropriated \$19 million for FY 1991 and \$14 million for FY 1992 for the prestaged equipment. The sites include locations in Alaska, California, Connecticut, Florida, Hawaii, Louisiana, Massachusetts, Michigan, Missouri, Oregon, Puerto Rico, South Carolina, Texas, Virginia and Washington.

5. Tanker and facility response plans

OPA '90 requires every operator of a facility or tank vessel to prepare and submit a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance. A "worst case discharge" means, in the case of a vessel, a discharge in adverse weather conditions of its entire cargo; and in the case of a facility, the largest foreseeable discharge in adverse weather conditions. The plans must be consistent with the National Contingency Plan and Area Contingency Plans, and identify and ensure the availability of personnel and equipment to remove, to the maximum extent practicable, a worst case discharge.

The Coast Guard is responsible for developing regulations for response plans for vessels and transportation-related onshore facilities. The Coast Guard published an Advanced Notice of Proposed Rule Making in August, 1991, and the comment period closed on October 16, 1991. The Environmental Protection Agency will develop regulations for response plans for non-transportation related onshore facilities. The Secretary of the Interior will promulgate regulations for the response plans for off-shore facilities, pipelines and deepwater ports.

G. The Department of Environmental Protection's Chapter 600 rules.

DEP has hired Townsend Environmental to draft a revised version of its regulations dealing with oil terminals and marine oil transport. A preliminary report prepared by Townsend highlights issues for Maine and contains information on statutory authority and regulations for Maine and several other states. The report is currently being updated. It is expected that rules will be drafted during the winter of 1992 and that the final rule will be adopted by the end of the fiscal year.

III. Oil spill response organizations

Oil spill response organizations have existed in various parts of the country for many years. They were typically formed as an economical measure by groups of oil facilities in the same area. The facilities would voluntarily pool equipment, personnel and other resources to respond to any event affecting any of the facilities. Oil spill response organizations have been formed as cooperatives, partnerships, joint ventures, associations or simply committees. Newly formed organizations are preferring to organize as nonprofit corporations because of the flexibility offered, the limited liability of both members and directors, and the tax benefits. In addition, more response organizations are being established as entities separate from the facilities they serve, with separate employees, equipment and funding to carry out their purpose of spill response readiness.

In apparent response to the lack of realistic and effective planning evidenced by the EXXON VALDEZ, the federal Oil Pollution Act of 1990 transfers much of the responsibility for planning and spill readiness to the individual vessels and facilities. The system of planning includes a national response unit, Coast Guard strike teams (formerly strike forces), Coast Guard District Response Advisory Teams, Port Area Committees, area contingency plans and individual vessel and facility response plans. Although there is still emphasis on the federal removal requirements, the main oil spill response burden remains on the private sector. The new legislation makes the need for oil spill response organizations all the more obvious.

Currently, there are three organized oil spill response organizations covering parts of Maine: The Penobscot River Oil Pollution Abatement Committee (PROPAC), based in Bucksport; Clean Casco Bay, Inc. (CCB), located in Portland-South Portland; and the Portsmouth Harbor Oil Spill Committee (PHOSC), based in Portsmouth, New Hampshire on the Piscataqua River. Representatives of the organizations spoke before the Commission on September 27, 1991 and discussed the specific areas of interest, members, capabilities and available equipment.

A. Penobscot River Oil Pollution Abatement Committee

PROPAC was established in the early 1970's, primarily as a result of the M/V TAMANO oil spill in Portland Harbor. Its purpose is to promote and foster abatement of pollution in the Penobscot River and the Penobscot River Estuary caused by discharge of petroleum products into those water bodies. PROPAC has two types of members, "voting members" and "associate members." The voting members are the petroleum terminals in the Penobscot Bay area: Webber Energy; Webber Tanks; Colebrook Energy; Mobil; Barrett Paving; Dead River; Sprague Energy, Irving Oil; and Tenco Services. Associate members include Champion International and the Bangor and Bucksport Fire Departments.

PROPAC response policy is spill containment in and around its terminal areas, while the spill clean-up is to be done by private contractors. PROPAC will respond to spills caused by those other than members, such as gas stations, cargo vessels, railroads and trucks. The cooperative does not have the capability to respond to spills off-shore.

PROPAC spill response capacity was estimated during the Penobscot Bay Oil Spill Response Exercise in 1990 (PenBay 90) at 25,000 gallons. Booming equipment is available in Searsport, and additional equipment is available in Bucksport and Bangor. Spill drill normal response time is 1-2 hours during daytime work hours, and 2-6 hours during nights and weekends within the area of interest.

The PROPAC equipment list is included in Appendix E.

B. Clean Casco Bay Inc.

CCB was incorporated in May, 1991 as a nonprofit corporation. Its purpose is to supplement and improve existing oil spill response efforts in Casco Bay and Northern Saco Bay. It is anticipated that all oil terminal operators in Portland Harbor will become members of CCB by the time it is operational in 1993. CCB and MSRC will be operational at roughly the same time, greatly increasing the response capacity in Portland Harbor.

CCB will purchase and maintain oil spill response vessels and equipment, coordinate training, organize "on-call" independent contractor personnel resources, organize vessels of opportunity, ensure that CCB is integrated into the contingency plans for the area and the individual terminals and coordinate with all other spill responders. Approximately \$3,000,000 will be used for the purchase of vessels and equipment.

CCB plans a response capacity of up to 5,000 barrels (210,000 gallons), and is focussing on a response time of 2-6 hours, depending on the location of the spill and the speed of vessels. CCB will actually rely on local contractors to be the first to respond, with CCB coming in for larger spills, and the Marine Spill Response Corporation responding to spills larger than 5,000 barrels. (MSRC will respond when the local capacity is reached.)

The CCB equipment list and map of area of interest are included in Appendix E.

C. Portsmouth Harbor Oil Spill Committee

PHOSC was formed in 1967. Its members are the terminals on the Piscataqua River, all located on the New Hampshire side. They include Mobil, two Sprague Energy terminals, Public Service of New Hampshire, Northeast Petroleum and C3. Affiliate members include the Portsmouth Naval Shipyard, the United States Coast Guard, the New Hampshire Department of Environmental Services and two members from the University of New Hampshire.

A special circumstance the Portsmouth Harbor Oil Spill Committee faces is the extremely fast current of the Piscataqua River. The focus is emergency response to at least contain the spill. All members are capable of some in-house response, and most private contractors have a response time of 1-2 hours.

Despite the fact that all the terminal members are located in New Hampshire, the cooperative is working with the Maine DEP and the New Hampshire DES to map areas on both sides of the river which should be protected in the event of a spill. The response capacity is around 25,000 gallons.



IV. Maine Coastal and Inland Surface Oil Clean-up Fund

One of the Commission's charges was to review expenditures and the priority for expenditures of the Maine Coastal and Inland Surface Oil Clean-up Fund and to make recommendations on how the fund should be spent. The Commission also was charged with considering the advisability of establishing separate coastal and inland surface funds.

A. Background information

The Maine Coastal and Inland Surface Oil Clean-up Fund has been financed through a fee of 3 cents per barrel on crude oil or petroleum products assessed on all over water transfers and the first transfer of petroleum products coming into the state by truck or rail. From August 1, 1990 through February 1, 1991 this fee was increased to 4 cents per barrel to fund additional equipment purchases. The fee was again increased to 4¢ per barrel on July 1, 1991 until 1994. Reimbursements of clean-up costs and third party damage claims paid by the State are also paid into the fund, but in March, 1990, approximately \$2.5 million was outstanding. The fund is capped at \$6 million and fee collections are suspended when this amount is reached. This cap has not been reached since the early 1980s, and the fund has had an average balance of about \$3.5 million. On June 30, 1991, the fund had reached \$4,695,967.98. Part of this increase is due to the higher fees, while part of it is due to the higher volume of crude oil imported by the Portland Pipe Line Corporation.

From 1985 to 1990, income to the fund has averaged \$1.34 million annually, while expenditures have averaged \$1.37 million. This is primarily due to the cost of response to inland spills, as well as groundwater clean-up from the years before creation of the groundwater fund. Twenty positions are paid for out of the fund, but these persons must deal with the large number of inland spills as well as coastal spills. A 20-year summary of revenues and expenses is included as Appendix J in the Commission's 1990 report.

B. Splitting the fund

The issue of splitting the Maine Coastal and Inland Surface Oil Clean-up Fund was briefly discussed by the Commission last year. The members recommended a closer look at the issue again this year.

The Commission has been interested in this issue because most of the spill response activities and expenditures go toward inland spills - petroleum spills from anything other than a registered underground storage tank. The fund's major contributor (>50%), the Portland Pipe Line Corporation, does not distribute petroleum throughout the state. Thus, they are paying for many spills not related to the product they import rather than increasing preparedness or response for coastal activities.

The Commission heard a proposal developed by Al Prysunka of the Department of Environmental Protection that would split the fund into separate coastal and inland funds. This proposal is currently under consideration by the Joint Standing Committee on Audit and Program Review as part of their efforts to regulate above ground tanks. It included a \$250 registration fee on above ground tanks and additional personnel to administer a regulatory program for above ground tanks. Above ground tank spills and all inland spills would be cleaned up with monies from the inland fund. Coastal spills and activities would be exclusively covered under a coastal fund. Portions of the assessment on petroleum products would be diverted to each fund.

The Commission felt that it was not within its mandate to make recommendations on the regulation of above ground storage tanks and declined to comment on this proposal. If the fee remains at 4¢/bbl and the cap at \$6 million, the Portland Pipe Line Corporation told the Commission it would recommend not splitting the fund at this time.

FINDING. The Maine Coastal and Inland Surface Oil Clean-up Fund has not reached maximum funding, although the balance will increase as the Portland Pipe Line Corporation's volume increases as projected in the next few years. The majority of the claims paid from the Fund have not been for marine or open water spills, but for spills that occur above ground and groundwater contamination, if that is the ultimate result.

RECOMMENDATIONS. A majority of the Commission voted not to split the fund, recognizing inequities to the major contributor, provided that the current fee and cap remain the same. The Commission declined to make a recommendation in the event that the Joint Standing Committee on Audit and Program Review does vote to regulate above ground storage tanks.

One member of the Commission voted to split the fund at this time citing the need to better recognize the needs of the coastal area and the marine environment.

V. Oil Spill Prevention Efforts

The Commission agreed that oil spill prevention is the most effective oil spill strategy. The Commission's 1990 report outlines some of the concerns of the Commission as well as the traditional jurisdiction of the state. The 1991 Commission was charged with monitoring the progress of the US Coast Guard and the Department of Environmental Protection on navigational risk assessments and spill prevention measures, including the use of tugboats.

The Commission discussed spill prevention measures over the course of several meetings. Topics for discussion came from three sources: the October 2, 1991, US Coast Guard's Draft Port Safety Forum report (PSF); a draft report developed by a consultant (Townsend) for the Department of Environmental Protection that is helping to update rules for oil terminal facilities that included an overview of actions taken at the federal level and by other states and suggested recommendations appropriate for state action; and concerns expressed by Commission members.

A. Vessel movements

The Commission discussed the issues of tugboat escorts, towing packages on vessels, restrictions in bad weather and developing a VTS or call system for major harbors. With the exception of reviewing the use of tugboat escorts, the Commission felt these issues were either difficult for the State to enforce or outside state jurisdiction.

A preliminary recommendation of the Commission was to encourage the Department of Environmental Protection to explore the area of tug escort practices and requirements. It reflected a concern that perhaps it was in Maine's interest to further review standard operating procedures and the potential for decreasing risk with the increased use of tugs. However, recent developments within the Port Safety Forum's Ad Hoc Vessel Operations Committee convinced Commission members to amend their recommendation to monitoring that group's further progress. The Ad Hoc Vessel Operations Committee has made preliminary recommendations aimed at safer operating procedures that outline tug assistance practices. It is anticipated that the recommendations developed by this group will be incorporated into the US Coast Pilot.

B. Regulation of barges

The regulation of barges has traditionally been under the purview of the US Coast Guard. Barges in bulk oil service are inspected by the US Coast Guard. The requirements are outlined in 46 CFR subchapter D. In addition to rigid construction standards the US Coast Guard requires regular dry dock, internal and safety inspections. After satisfying these requirements, the vessel may operate under conditions specified in the Certificate of Inspection.

Additionally, federal regulations require Pilots aboard all inspected coastwise seagoing tank barges, regardless of size. Tug/barge combinations greater than 10,000 gross tons require a federally licensed First Class Pilot. First Class Pilots are not required on tug/barge combinations smaller than 10,000 gross tons. Instead, a licensed Master, Mate or Operator may serve as a pilot provided the person has met certain proficiency requirements, including 12 round trips as an observer over the route to be traversed.

The Townsend report recommended that Maine review the area of barge regulation and potentially regulate certain activities. The Commission felt that it would be difficult for the State to enter this area of regulation. They agreed to monitor the Port Safety Forum's progress in this area particularly safety measures advanced by the Ad Hoc Vessel Operations Committee.

C. State Pilot Licensing Requirements

A minor issue that surfaced during discussion of state pilot licensing requirements is that currently foreign vessels and American vessels with a draft of more than 9 feet are required to take a pilot when entering or leaving a Maine port. If a pilot is not taken, the vessel must pay the fee for a pilot but there is no penalty provision (38 MRSa section 86). The US Coast Guard brought to the Commission's attention that Maine does not have a penalty provision for not taking a pilot. The Commission agreed to include an amendment to enact a penalty provision for this offense in their recommended legislation (see Appendix B).

D. Vessel, Facility and the State Marine Oil Spill Contingency Plans

Two issues surfaced under discussion of the issue of contingency plans. First, under current Maine law, the Department of Environmental Protection must receive from every vessel entering state waters a copy of their oil spill contingency plan required under OPA '90 (38 MRSa section 546, subsection 6). The US Coast Guard is required to approve each plan and review by DEP would be duplicative. The Commission agreed that the duplication is not necessary, and recommends amending the law to delete the requirement for a vessel to submit its plan, requiring instead that a vessel have their oil spill contingency plan available for review by DEP.

The second issue concerns the state marine oil spill contingency plan. DEP expressed concern that the entire plan must be adopted through the rulemaking process (38 MRSa section 546-A). The department argued that the plan is not a regulatory tool, does not contain enforceable restrictions and several aspects of the plan need to change frequently such as phone numbers, equipment lists, contacts, etc. The content of the plan is specified in legislation and the commissioner is required to hold a public hearing as part of

developing the plan. DEP asked that the plan be exempt from the rulemaking requirement. The Commission agreed to recommend amending this provision. Instead, the Commission would like licensees and interested parties to be notified of major changes and have an opportunity to request a public hearing.

A minor change to the state marine oil spill contingency plan is recommended by the Commission. That change involves including oil spill response organizations in the list of organizations with roles and responsibilities to be spelled out in the plan (38 MRSA section 546-A, subsection 3, paragraph B).

These changes are included in the Commission's legislative recommendations in Appendix B.

E. Navigational Risk Abatement

In 1990, the Portland Pipe Line Corporation undertook a navigational risk abatement exercise for their crude oil tankers entering Portland Harbor. They brought in a group of people with very specialized knowledge of marine navigation and vessel operation from their affiliate companies and walked through various scenarios for potential accidents. The Portland Pipe Line Corporation then established voluntary guidelines for pilots to observe when bringing in these tankers.

Both the DEP and the US Coast Guard feel there are strong merits to this type of exercise. The Commission's 1990 report (p.46) recommended that the DEP retain a consultant to advise them on navigational risk assessments and on navigational preventive measures, however this has not happened.

The US Coast Guard has asked that the Commission not make specific recommendations in this area at this time. They will work on this issue through the auspices of the Port Safety Forum and they are particularly interested in looking at Penobscot Bay and the Piscataqua River. The Commission felt that this was appropriate.

F. Financial Assurance Requirements for Oil Terminals

The definition of oil terminal facility in Maine is anyone with more than 500 bbl of storage capacity for oil. Currently, Maine law vests terminals with ultimate liability for any oil spills within state waters but there are no requirements through licensing that they have the financial capability to do so. Under Maine law, there is no specified cap on their liability. Several other licensed activities in the state are required to prove financial capability such as hazardous waste facilities and commercial landfills.

Although federal law holds oil terminals responsible for up to \$350 million per spill there are no requirements that they certify coverage. Discussions with US Senate Committee staff suggest there were two basic reasons for this:

1. There are 500,000 terminals in the U.S. and this task would have been overwhelming; and
2. The federal definition also includes small facilities (those that have more than 200 bbl capacity) that are not necessarily substantial risks.

The Oil Pollution Act of 1990 allows a decrease in the \$350 million liability limit to take into account variations in size, throughput, proximity to sensitive areas and discharge history. The liability limits may be dropped as low as \$8 million per facility.

The Townsend report recommended that Maine adopt financial assurance requirements for terminals. The Commission discussed the pros and cons of this suggestion and decided to table this recommendation pending rules from the federal government that defined the liability limits for smaller facilities. It was argued that many small facilities do not have the capacity to do \$350 million in damage and could not afford the insurance coverage to meet this requirement.

G. Recreational Boaters

Public Law 1991, Chapter 530 charged the Commission with monitoring the safety problems of public boating in the vicinity of oil vessels. The Commission agrees that this is a growing problem that can have unfortunate consequences, and the Commission expressed concern about this issue. However, this issue requires actions in numerous other jurisdictions and fields. The Commission does not feel that the members have the expertise nor the purview to develop solutions for the problem. The Commission did agree that educating recreational boaters might improve the situation and would be more cost-effective and less controversial than other solutions discussed, such as licensing.

H. Miscellaneous Issues

The Commission discussed various other issues for oil spill prevention such as requiring an English-speaking crew member on the bridge while a vessel is in state waters, requiring specific vessel screening measures and the development of harbor specific safety committees. However, requiring these was felt to be not needed, inappropriate for the State to do or not a high priority at this time, respectively.

FINDINGS. The Commission finds that recommendations by the Ad Hoc Vessel Operations Committee of the Port Safety Forum if adopted and followed by industry will help to reduce the risk of oil spills in Maine waters. However, there are still areas this group needs to address.

The Commission finds that several provisions of Maine law relating to spill prevention measures are inadequate, inappropriate or redundant. These include:

- No penalty provision for failure to take a licensed marine pilot when required;
- A requirement that the Department of Environmental Protection receive a copy of every vessel contingency plan for ships within state waters, even though the U.S. Coast Guard is charged with receiving and approving each plan.
- The state Marine Oil Spill Contingency Plan must be adopted by rule by the Board of Environmental Protection. It must be annually updated and these updates must be adopted by rule. This becomes very cumbersome for amending a document that must remain fairly fluid.

The Commission finds that navigational risk abatement exercises have strong merit in working to reduce the risks for an oil spill within Maine waters and finds that the effort spearheaded by the Portland Pipe Line Corporation to examine the risks for their crude oil carriers coming into Portland Harbor was exemplary.

The Commission finds that while financial assurance requirements for oil terminal facilities may be worth further State examination, it is not appropriate to ask small facilities to meet the current \$350 million liability limit under federal law. OPA '90 allows a decrease in this limit based on risk to the environment and volume but appropriate levels have not been specified.

The Commission finds that the issue of increasing numbers of recreational boaters in commercial shipping lanes poses a great threat to public health and safety. The issue requires actions in numerous other fields with the support of many other groups outside the oil transportation field.

The Commission finds that the State of Maine should not be developing and acquiring the expertise to regulate many aspects of vessel movements or barge traffic.

RECOMMENDATIONS. The Commission recommends that it continue to encourage and monitor the efforts of the Ad Hoc Vessel Operations Committee of the Port Safety Forum in its work to reduce the risk of oil spills in Maine waters. Specifically, the Commission has been interested in the Committee's recommendations on tug escort policies and the operating practices of barges.

The Commission recommends Maine law be amended to (see Appendix B for proposed language):

- Provide a penalty for vessels failing to engage a licensed marine pilot when required;
- Repeal a requirement for the Department of Environmental Protection to receive a copy of every vessel contingency plan. A vessel will instead be required to have a copy on board that DEP can inspect; and
- Repeal a requirement that the marine oil spill contingency plan be adopted by rule. Licensees and interested parties will be notified of significant changes and may request a public hearing.

The Commission recommends that the U.S. Coast Guard undertake and encourage industry to undertake navigational risk abatement exercises for the major harbors supporting oil traffic in Maine.

The Commission recommends tabling the issue of financial assurance requirements for oil terminals until the federal government specifies decreased limits of liability under OPA '90.

VI. Spill Trajectory Tracking and Forecasting

In 1990, the Commission recommended that DEP evaluate the cost and feasibility of and consider establishing a computerized spill trajectory tracking and forecasting system after the sensitive area maps are in place. The legislation reestablishing the Commission directed the Commission to evaluate and consider the establishment of a computerized spill trajectory tracking and forecasting system.

Computerized spill tracking systems can illustrate on a computer screen where the boundaries of an oil spill are and can forecast where the spill will move next. The systems are useful for planning on which areas to focus protection based on currents, tides, wind direction and type of oil. The programs can also determine which response efforts are effective in various situations. Tracking and forecasting systems, if meshed with environmental sensitivity data, can also direct first response efforts to the most critical or protectable areas. Use of a computerized system is invaluable in spill response drills. There are various computer models available, and they vary in complexity to match the needs and resources of those interested in the programs.

Limitations of computerized spill trajectory tracking and forecasting systems are the amount of accurate data needed to establish the basic program for a given area, and the need for accurate, up-to-the-minute data about the spill and the spill environment at the time of the spill. Basic programs are available which would allow the initiation of a tracking and forecasting program without all the necessary data regarding a particular locale, based on general assumptions of tides, currents and oil movements. As additional information is collected, the output is adjusted to reflect the accurate data. There is also a need, with most programs, to have experienced persons available to run the programs and to interpret both the data being entered and the information provided by the program. Some systems are easier to use, but the capabilities are not as expansive.

The National Oceanic and Atmospheric Administration (NOAA) and the US Coast Guard working together have developed modeling and simulation capabilities that can be applied to anywhere in the United States. It is envisioned that the NOAA model will be able to mesh with the state Geographic Information System (GIS) and make use of the digitized information collected by states for use in the tracking program. A trajectory model developed by NOAA should be ready and available to states in two years. NOAA representatives hope that the states do not get too far ahead of the federal system in order to avoid duplication and incompatibility of systems.

Christopher Kroot, computer specialist for DEP, reported that it is important to know that it would take a considerable amount of time for the State to build its own model to reach the level of the model NOAA currently has on-line. Also, the experts necessary to operate spill trajectory tracking and forecasting systems include those running the programs and those collecting the on-scene information and relaying to the program. It was suggested that the State should work on developing all

data, focussing on identified higher risk areas, and then send the information to NOAA; developing a trajectory and forecasting model will not be useful until the baseline data has been collected and entered into the GIS.

FINDING. The Commission finds that it would be premature for the State to invest scarce resources in a computerized spill trajectory tracking and forecasting system at this time. The Commission believes that those resources are better used now by identifying what GIS information gaps exist, and then collecting that information to enter into the GIS. The Commission also finds that NOAA, in conjunction with the Coast Guard, has an excellent spill tracking and forecasting system, plus the experts to run it. Duplication of those efforts at this time is not feasible.

RECOMMENDATION. The Commission recommends continued support for the GIS, including the efforts to complete the data base and to continually update the information. The Commission recommends that DEP, IF&W, DOC and DMR continue cooperation and integration with NOAA of the state's GIS and the federal spill tracking efforts, including the sharing of information and data. The Commission encourages the state agencies to develop a similar relationship with MSRC as its capabilities mature. The Commission recommends that the state agencies, the Commission, and, eventually, the Advisory Committee continue to monitor computerized spill trajectory tracking and forecasting systems, and continue to explore the need for the State to develop its own capabilities.

VII. Oil Spill Advisory Committee

The devastating effect of the EXXON VALDEZ disaster has had ramifications throughout the marine oil transport industry. There are several efforts currently ongoing that the State of Maine needs to continue to monitor. Some of these changes are outlined in section II of this report.

The Commission felt that because of the dynamic nature of this area of regulation at both the state and federal levels, many issues still need to be monitored and addressed. Specifically, the Commission felt an advisory body within the Department of Environmental Protection should be established with the following duties:

1. Track implementation of and regulations relating to the Federal Oil Pollution Act of 1990 and recommend to the Legislature any statutory changes or to the board any regulatory changes that may be appropriate. Specifically, the committee should review contingency plan requirements, opportunities and constraints of the federal Oil Spill Liability Trust Fund and oil spill prevention measures.
2. Monitor the adequacy of the federal Oil Spill Liability Trust Fund in light of information on the potential risks and costs of an oil spill and the State's exposure and liability under the Fund.
3. Monitor the effects of the state's oil spill liability laws on oil spill prevention ;
4. Review expenditures and the priority for expenditures of the Maine Coastal and Inland Surface Oil Clean-up Fund and make recommendations to the commissioner on how the fund should be allocated;
5. Review the commissioner's program for identifying areas sensitive to oil spills in the marine environment and the development of resource protection priorities;
6. Review and comment on the state marine oil spill contingency plan;
7. Monitor oil spill planning and prevention activities by industry, oil spill response organizations and the United States Coast Guard;
8. Monitor the commissioner's assessment of adequate oil spill response equipment and vessels for the state;
9. Review the implementation of a plan for rehabilitation of wildlife resources including:

- a. Training programs and opportunities for volunteers and state and federal personnel; and
 - b. Preliminary agreements or identification of treatment centers or facilities;
10. Monitor scientific, engineering and technical advances in oil spill response and prevention techniques and make recommendations on their use; and
 11. Review and monitor issues for oil spill prevention and response and recommend to the Legislature any statutory changes or to the board any regulatory changes that may be appropriate.

The Commission also felt a 14-member body representing a diverse group of interests would best serve as this advisory committee. Each member brings a particular expertise to their discussions, and helps broaden their base of knowledge.

VIII. Oil Spill Liability

Because the federal Oil Pollution Act specifically reserves to the states the ability to set their own limits for liability for oil spills, there are potentially two layers of liability laws that apply to each state. Maine has had a scheme of oil spill liability laws in place since 1970, and they have not been altered by the federal legislation.

A. Summary of OPA '90 liability provisions.

1. Liability in general; strict liability; joint and several liability

OPA '90 provides that each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the specified removal costs and damages that result from the incident.

The owners and operators of vessels or facilities from which oil is discharged are subject to strict, joint and several liability. The same liability exists for a substantial threat of discharge of oil.

2. Liability of responsible party

Liability covers "removal costs" and "damages".

(a) "Removal costs" means:

· the costs of removal that are incurred after a discharge of oil has occurred; or

· in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

("Remove" or "removal" means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.)

(b) "Damages" are the following:

(1) Natural resources damages (governmental or Indian claimants only);

(2) Real or personal property damages (any claimant who owns or leases the property);

(3) Diminished subsistence use of natural resources (any claimant who so uses resources without regard to ownership or management of the resources);

(4) Revenues - loss of taxes, rents, etc. (governmental claimants only);

(5) Lost profits and earning capacity (any claimant); and

(6) Public services - costs of providing increased or additional services (governmental claimants only).

3. Exceptions to strict liability:
 - discharges permitted by a permit issued under federal, state or local law;
 - discharges from a public vessel; and
 - discharges from an onshore facility covered by the Trans-Alaska Pipeline Authorization Act.

4. Defenses to liability:
 - (a) Complete defenses:
 - an act of God;
 - an act of war; or
 - an act or omission of a third party.

Limitation on complete defenses. No defense if the responsible party fails or refuses:

- to report the incident;
- to cooperate and assist in removal activities; or
- to comply with Clean Water Act.

- (b) Defense as to particular claimant:
 - no liability to the extent the incident is caused by the gross negligence or willful misconduct of the claimant.

5. Liability limits

- (a) Limitations on liability (limits apply to removal costs and damages):

- (1) Tank vessels:
 - the greater of \$1,200 per gross ton, or
 - \$10 million for a tanker over 3,000 gross tons, or
 - \$2 million for a tanker less than 3,000 gross tons

- (2) All other vessels:
 - the greater of \$600 per gross ton or \$500,000

- (3) Offshore facilities (except deepwater ports):
 - all removal costs plus \$75 million

- (4) Onshore facilities and deepwater ports:
 - \$350 million

- (b) Liability limits do not apply if:

- (1) the spill was caused by the gross negligence or willful misconduct of the responsible party;

- (2) the spill was caused by the violation of an applicable federal safety, construction or operating regulation by the responsible party; or

- (3) the responsible party fails or refuses:
 - to report the incident as required by law;
 - to provide all reasonable cooperation and assistance; or
 - without sufficient cause, to comply with an order issued under the Federal Water Pollution Control Act or the Intervention on the High Seas Act.

- (c) Adjusting limits of liability:

- (1) All limits are subject to adjustment in accordance with the Consumer Price Index

- (2) Liability limits for onshore facilities may be lowered by the President to no less than \$8 million for any class or category of facility, taking into account a series of factors
 - (3) Liability limits for deepwater ports and associated vessels may be lowered by the Secretary of Transportation to no less than \$50 million generally by rule
 - (d) Liability limits do not affect interest due on claims.
6. Claims procedure:
- (a) Claims first presented to responsible party or the responsible party's guarantor (with certain exceptions)
 - (b) If not paid within 90 days, claimant may:
 - go to court against responsible party or guarantor, or
 - present claim to the Fund (federal)
7. States are not preempted from:
- (a) imposing any additional
 - liability or requirements with respect to discharges or threatened discharges of oil; or
 - liability or requirements with respect to removal activities; or
 - (b) imposing or determining the amount of any fine or penalty (whether civil or criminal) for any violation of law with respect to a discharge or threatened discharge

B. Summary of Maine liability provisions

1. Liability in general; strict liability; joint and several liability

Under Maine statute, the discharge of oil is prohibited into or upon any coastal waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, or into or upon any lake, pond, river, stream, sewer, surface water drainage, ground water or other waters of the state or any public or private water supply or onto lands adjacent to, on, or over such waters of the state.

2. Liability of responsible party

- (a) Any person, vessel, licensee, agent or servant, including carriers, who permits or suffers a discharge, is liable to the State of Maine for:
 - (1) all disbursements made from the Fund for:
 - removal of the oil;
 - abatement of pollution;
 - remedial measures;
 - third-party claims; and
 - arbitration costs; or
 - (2) other damage incurred by the State

There is no limit on liability for oil spills under the Maine law.

- (b) Responsible party liable for any removal costs, damages, civil liabilities and penalties that a responder is relieved of through limited immunity.

3. Vicarious liability of facility licensee

Licensee is liable for acts and omissions of its agents and servants, and for the actions and omissions of carriers destined for the licensee's facilities from the time the carrier enters Maine waters to the time it leaves Maine waters.

- Licensee may recover in a civil action from the carrier for the acts and omissions of the carrier.

4. 3rd-party claims covered

- (a) Claims made by 3rd parties are compensable if they directly or indirectly result from discharge of oil. Claims covered are:

- (1) damages to real estate or personal property; or
- (2) loss of income

- (b) Claims procedure:

Present claim to commissioner of DEP (not to person causing discharge) within 6 months.

- If agreement on damage claim, payment from fund.
- If cannot agree as to amount of damage claim, Board of Arbitration decides. Review by Superior Court for abuse of discretion only.

All claims must be stated in one application (per claimant)

- (c) Fund is the exclusive remedy for damage claims arising under this subchapter.
- (d) Awards do not include amount of settlement with or federal court judgment against person causing discharge.

5. Removal responsibilities.

Any person discharging or suffering the discharge of oil in the manner prohibited by the law shall immediately undertake to remove that discharge.

6. Additional fines and penalties against responsible party

Responsible party is not subject to any fines or civil penalties if that party:

- (a) reports and removes the discharge, and
- (b) reimburses within 30 days of demand the DEP for Fund disbursements made for:
 - removal of the oil
 - abatement of pollution
 - remedial measures

A chart outlining the status of the liability laws in the coastal states is included as Appendix G.

The uses of the Maine Coastal and Inland Surface Oil Clean-up Fund are summarized below. Included in the summary are the disbursements for which the commissioner can seek reimbursement from a responsible party, and the disbursements for which a responsible party is liable, as defined by statute, to reimburse the State.

State Fund used for: (§551, sub-§5)	Commissioner will seek reimbursement in connection with a prohibited discharge for: (§551, sub-§6, ¶A)	Person who causes discharge is liable for disbursements from the Fund for: (§552, sub-§2)
• Administrative expenses, personnel expenses and equipment costs of commissioner to enforce subchapter. (§551, sub-§5, ¶A)	no	no
• All costs, including without limitation personnel and equipment expenses, involved in the removal of oil, the abatement of pollution and the implementation of remedial measures. (§551, sub-§5, ¶B)	yes (If not paid within 60 days of demand, may result in a penalty of not more than twice the total amount of reimbursement requested.) (sub-§6).	yes (also §551, sub-§6, ¶B)
• Research and development. (§551, sub-§5, ¶C)	no	no
• 3rd party claims. (§551, sub-§5, ¶D)	yes	yes (also §551, sub-§6, ¶B - including claims in excess of \$15,000)
• Costs of arbitration and arbitrators. (§551, sub-§5, ¶E)	yes	yes (also §551, sub-§6, ¶B)

State Fund used for: (§551, sub-§5)	Commissioner will seek reimbursement in connection with a prohibited discharge for: (§551, sub-§6, ¶A)	Person who causes discharge is liable for disbursements from the Fund for: (§552, sub-§2)
• Costs of insurance by the State to extend or implement the benefits of the fund. (§551, sub-§5, ¶F)	no	no
• Costs for studies of environmental impacts of discharges, up to \$50,000 each year. (§551, sub-§5, ¶H)	yes	no
• Costs for the collection of overdue reimbursements. (§551, sub-§5, ¶I)	yes	no

Reimbursement by a licensee may be waived by the BEP if the discharge was the result of:

- an act of war
- an act by government
- an act of God

(§551, sub-§7)

Note the inconsistency between the commissioner's duty to seek reimbursement from a responsible party for costs of studies and costs of collection of overdue reimbursements, and the statutory requirement that the responsible party make those payments. See Findings and Recommendations at the end of this Part of the Report.

C. Liability issues

The Commission devoted a large part of its October 30, 1991 meeting to hearing presentations and discussing issues involving liability for oil spills. Several guest speakers traveled from out of state, including one from Norway, to Augusta to present to the Commission their view of Maine's unlimited liability law and its potential effects on spill prevention and the risk of spills along the Maine coast.

1. The following persons spoke in favor of changing Maine's current unlimited liability law.

Phil Cooney, Legal Counsel to the **American Petroleum Institute**, Washington, D.C., presented his statement on the negative impacts of unlimited oil spill liability under Maine law. He believes changes are warranted now because the current commercial and legal climate bears little resemblance to the climate that existed in 1969 when Maine passed its oil spill law. He cited the 1991 conclusions of the Alabama Spill Response Task Force: Unlimited liability statutes tend to keep the well capitalized shippers out of the area, leaving it to others to take the risks.

Mr. Cooney explained the federal laws in existence before OPA '90. Federal admiralty laws in general governed the responsibilities and liabilities of vessel owners and operators, preempting the states. The 1851 federal Limitation of Liability Act set limits on liability which facility owners and shippers believed applied, despite many states' unlimited liability laws. The preemptive effect of the 1851 Act had been upheld in federal court. OPA '90 repealed all limits set by the 1851 Act, other statutes and case law, and set new limits at the federal level, while opening the door to states to set their own - or no - limits on liability for oil spills.

Mr. Cooney stated that the federal limits on liability are set high enough to foster the greatest degree of environmentally protective conduct on the part of petroleum transporters and facilities, without exposing them, however, to the risk of unlimited, and therefore uninsurable, liability.

Mr. Cooney then provided several cases of shippers and petroleum companies reducing or eliminating shipments of petroleum because of the unlimited liability laws in certain states. As affecting Maine specifically, he cited 3 companies (Chevron Corp., Maritrans and Texaco Marine Services) that drastically reduced deliveries to Maine. [Maritrans and Texaco stopped shipments in July 1990, prior to OPA '90 effective date.] He asserted that a very serious problem is the unavailability of insurance for the vessels when liability is unlimited.

Mr. Cooney also placed reliance on new construction and operating standards for oil-transporting vessels. He cited the new Marine Spill Response Corporation as a key response agent in catastrophic spills. MSRC has decided to establish a staging area in Portland, so vessels, equipment and other resources will be available quickly for a spill in Maine.

Mr. Cooney closed by urging Maine to further enhance the confidence in strong protection efforts by repealing the unlimited liability laws, and adopting limits to match the federal law.

Stephen A. Van Dyck, Chairman and Chief Executive Officer, **Maritrans Operating Partners L.P.**, Philadelphia, PA also spoke before the Commission. Mr. Van Dyck is also the president of one of the "P&I clubs" which provide pollution insurance for vessels. Maritrans currently has \$250 million in assets, and it has gross revenue of \$150 million annually for carrying oil. This year, it used 100% of its profits to stage spill drills, provide training for spill response and improve vessel safety.

Mr. Van Dyck explained that Maine is not an important part of Maritrans business, and that his vessels come to Maine rarely. He said Maritrans comes to Maine only when it has to because the process the company is subjected to if something goes wrong will not guarantee Maritrans a reasonable outcome, even if it is not their fault.

Mr. Van Dyck stated that prevention is the key, and that the most important aspect of prevention is responsible operators. Mr. Van Dyck felt that Maine should encourage good operators, such as Maritrans, to come to Maine by capping liability. He noted that unlimited liability is only theoretical because a company can be held liable only to the extent of its assets, which may be less than the damages. Unlimited liability, he said, encourages single vessel companies. Mr. Van Dyck said that the federal law is already burdensome, and that the caps on liability under OPA '90 are lost if they violate any construction, operating or safety standard.

Colin P. Binns, Manager, Federal Government Affairs, Marine Transportation Department, **BP Oil**, Cleveland, Ohio, next addressed the Commission. BP owns and operates a terminal in Portland with an annual throughput of approximately 200 million gallons. BP also charters vessels to bring petroleum products into the state.

Mr. Binns stated that to attract responsible operators to do business in Maine in the aftermath of the EXXON VALDEZ, Maine needs to have liability limits. He said the old

assumption that \$400 million in insurance would cover any spill was proven completely wrong in Alaska. Without limits, he asserted that the risk of operating in Maine is too high for responsible companies to accept. He asked the question, if responsible operators are avoiding Maine, who is filling the gap?

Mr. Binns stated that limiting liability does not remove incentives that a vessel operator has to avoid oil spills. Any significant spill, even when fully insured, will strain a firm's management capabilities and financial standing. He said that limiting liability does not leave the State without compensation in the event of a spill, since the federal law requires insurance on vessels up to the liability limit. For damages above the threshold, Maine and its citizens can access the oil company-funded federal liability fund, which has at least \$1 billion available for any incident.

Mr. Binns said the states of Maine, Alaska, Washington and California - all with unlimited liability provisions - have experienced the loss of several quality operators in the past two years. Because a number of quality barge operators have refused to bring cargoes of residual fuels into Maine, BP has been forced to cut back on its residual fuel sales to Maine. He said that former customers have turned to foreign suppliers willing to take the risk to bring the fuel to Maine.

Mr. Binns also spoke about the unique feature in Maine law imposing vicarious liability on the terminal for the damages caused by vessels coming to or leaving the terminal. He said this provision works against the concept of spill prevention because it places liability on those with no control over a vessel's operations or its oil handling procedures. Because the federal law now has strict financial responsibility requirements, he asserted that Maine no longer needs to protect against uninsured vessels by providing all vessels with free insurance - courtesy of the terminal operators.

Mr. Binns concluded by urging Maine to adopt liability limits consistent with the OPA '90 limits, and to eliminate the terminal operator liability for vessel operators.

Dag Roemmen, General Manager - Chartering Department, **Anders Wilhelmsen & Co. AS**, Oslo, Norway gave the Commission the perspective of a shipping business. Anders Wilhelmsen is also in the cruise line business, and in off-shore oil production. In the shipping end of the business, the company owns some ships and charters others. One of the ships brought 525,000 barrels of crude oil to Portland on October 27, 1991.

Mr. Roemmen's company chartered three ships early in 1990 before OPA '90 was passed. The charter contract requires the owner to trade worldwide, although, since OPA '90, the owner no longer wants to come to Maine. Mr. Roemmen said they will continue to call on Portland until the charter runs out in a couple of years. Portland is the only U.S. port their ships call on, and he asserted that the unlimited liability laws will cause the company to no longer call in the United States. The ships Anders Wilhelmsen has been sending to Maine are "combination carriers," which bring oil to Maine, then take a cargo of dry goods back across the Atlantic. These combination carriers usually have something akin to double hulls, although there has been no double hull requirement.

Mr. Roemmen said that the unlimited liability laws will cause the pool of quality ships to decline. As companies invest in the better, double hull ships, he asserted that fewer will choose to risk their expensive ships - and their entire companies - to come to Maine.

Tim Hendrix, Director of Operations, **Portland Pipe Line Corporation**, Portland, Maine also made a formal presentation to the Commission. He stated that an important part of prevention includes assurance of the quality of the vessels coming to Maine terminals.

Mr. Hendrix explained how the EXXON VALDEZ spill brought an enlightened awareness of the massive liability for an oil spill and true extent of unlimited liability to ship owners and operators. He said that after assessing exposure resulting from tanker operations, some companies have determined that they do not want to put their entire fleets and companies at risk, especially when there are alternative business opportunities available in areas that allow for reasonable limitations on liability. Mr. Hendrix stated that they know that some of the companies refusing to carry crude into Maine are the larger, well run companies and are of the type that the Pipe Line shippers would use given the opportunity.

Mr. Hendrix said the Portland Pipe Line Corporation screens each and every vessel which has been chartered by one of the Pipe Line shippers. While good, better and premier ships are still available, the company's experience is that they are fewer in number. He asserted that there is a pool of quality vessels which are not available to come to Maine.

Mr. Hendrix said that the quality ships still in the pool take the unlimited liability laws into account when making choices about moving cargo. If the ships have an option about which cargo to move, he said Maine's law will work against the choice of moving into Maine waters.

Mr. Hendrix commented on a statement made at a previous Commission meeting that unlimited liability may lead to better operation of vessels calling in Maine waters. Given the current and future status of oil spill prevention measures, liability laws and clean up activities, and based on the Pipe Line's information and experience, he said the company believes that the Maine unlimited liability law is only leading to having a smaller pool of qualified vessels available to the Pipe Line shippers.

Mr. Hendrix then provided a list of 15 ship owners and operators that do not call on Maine by choice. The number of vessels owned or operated by these companies was listed at 305. The list is included as Appendix H.

Edward E. Bulmer, President, **Sprague Energy Corporation**, Portsmouth, New Hampshire, also made a presentation to the Commission. Sprague has been in the energy supply business in New England for over 120, and has been supplying fuel oil, heating oil and coal to industry and consumers in Maine for over a century. The company operates one terminal in Searsport, two in Bucksport, one in Portsmouth (NH) and one in Newington (NH). Sprague handles approximately 7 million barrels of petroleum products coming into Maine each year. Mr. Bulmer appeared as a member of the Maine Oil Dealers Association, and specifically represented other Maine oil terminal operators similar to Sprague, such as Central Maine Power, Webber Tanks and Northeast Petroleum.

Mr. Bulmer said that Sprague has focussed much attention, time and money on spill prevention and control. The company is investigating membership in the Marine Protection Association and the Marine Spill Response Corporation, is active in spill organizations and forums, and aggressively rates and screens vessels to ensure that only "good" vessel operators call at their docks.

Mr. Bulmer stated that there is a host of well-operated vessels that Sprague never has the opportunity to screen, because the operators have determined that it is not prudent to assume a risk for which they cannot obtain insurance. He mentioned a partial list, including: Amoco, Bouchard, Chevron, Conoco, Elf, Palm, Texaco and World Wide Shipping. He said that even the good ships that continue to come to Maine will always choose a non-Maine voyage if given a choice, and will almost always expect a premium to come to Maine. He believes that increasing the pool of good vessels will increase competition and the State can benefit from the market pressures that would help ensure that carriers demonstrate conscientious operations and maintain spotless records.

Mr. Bulmer explained that if Maine adopted the federal liability limits, more flexibility and added protection would be available in Maine. The OPA '90 liability limits are significantly increased from earlier liability levels, but he asserted that these limits still allow carriers to maintain insurance and remain viable. In addition to the mandatory insurance coverage for vessels, he mentioned the \$1 billion federal fund as a backup to cover spill costs that exceed vessel losses. He said that unlimited liability no longer makes sense, given the federal scheme of regulation and compensation. It is the belief of the terminal operators that changing the unlimited liability laws would be a major factor in decreasing the probability of an oil spill on the coast of Maine.

2. The next three persons spoke in favor of retaining unlimited liability for oil spills in Maine.

Kevin Brubaker, Assistant Policy Director, **Save the Bay**, Providence, Rhode Island, spoke to the Commission about his organization's, and the State of Rhode Island's, experiences after the grounding of the **WORLD PRODIGY** in July, 1989. The ship went aground in Narragansett Bay on glass flat seas, spilling 245,000 gallons of #2 fuel oil. The spill was immediately federalized. The cargo was fairly light, so what could not be recovered evaporated. The shellfish industry was shut down for several weeks, which was significant because one-third of all the commercially harvested clams in the U.S. come from Narragansett Bay. Newport, which depends on tourism, was affected by the spill. It could have been much worse, however. Weather conditions were ideal and the clean up began immediately. Estimates are that the clean up costs and damages are approximately \$3.5 million.

The spill occurred before OPA '90, and Rhode Island had no state law governing oil spills. The state attorney general introduced legislation that included unlimited liability. Mr. Brubaker noted that although Rhode Island did not pass their oil spill law until 1990, the end result is very similar to Maine's current law, enacted 20 years ago.

Mr. Brubaker focussed on three points in arguing why Maine should keep its unlimited liability laws. First, one theory in the environmental movement is to let the free market work, and remove the subsidies for pollution. He asserted that limited liability for oil spills effectively subsidizes oil spills, which, in effect, encourages oil spills.

Mr. Brubaker made his second point by explaining that the issue is not whether the costs of spills and damages exist - we all know they do - but, rather, who is going to pay those costs.

The appropriate answer, said Mr. Brubaker, is that the polluter pays. Otherwise, he asserted that the persons injured are the ones who will have to bear the costs.

Mr. Brubaker's third point was that 18 of the 24 coastal states have unlimited liability laws. In addition, he said, Sen. George Mitchell (D-Maine) went out on a limb to give the states the flexibility they have now. Mr. Brubaker told the Commission to use it well.

Curtis Moore, attorney at law, former U.S. Senate staff to Environment and Public Works Committee, McLean, Virginia next spoke to the Commission. He said that Maine law has remained the same for 20 years, but what has changed is the federal law, insurance is harder to get and oil imports are up. Mr. Moore pictured Maine as starting the fight nationally with the oil industry in 1969, and the only recourse the industry had was to go to Washington, D.C. In 1990, the federal law, he said, finally shifted the focus back to the states.

Mr. Moore said California recently reviewed its oil spill legislation, and reaffirmed its commitment to strict, joint and several liability without limits. Although there are attempts to change the Maryland unlimited liability law, he said there is strong opposition to such a change.

Mr. Moore went on to say that the Maine law does not really provide for "unlimited" liability, because it is limited by the amount of actual damage the spiller causes. It seems unlimited, he said, because the amount of damage can be so high. He asserted that if liability is limited, as under the federal law, the damage above the cap does not just go away, but it is not paid for by the spiller.

The questions, said Mr. Moore, is not whether it's fair to dump all the costs for the EXXON VALDEZ on Exxon, but whether it is fairer to burden Exxon rather than the person injured. Alaska has unlimited liability laws. Mr. Moore cited the state law as a factor in inducing the \$2.2 billion settlement by Exxon. He said the AMOCO CADIZ spill, which occurred over 12 years ago, is still in the courts, while the EXXON VALDEZ case has been settled in under three years. The difference, said Mr. Moore, is Alaska's unlimited liability law which encourages settlement.

Mr. Moore briefed the Commission on the history of oil spill legislation. After the Santa Barbara oil spill in 1969, the Secretary of the Interior established the standard of strict liability for all outer continental shelf oil production. In 1973, Exxon and other oil companies lobbied Congress for uniform

oil spill liability by preempting state activities. Environmentalists were late-comers to the fight against preemption, said Mr. Moore; it has always been the states leading the issue of non-preemption. After the EXXON VALDEZ, he said, Congress had to act, and, politically, at least, it could not limit Exxon's liability to less than the already expended costs.

Mr. Moore closed by saying that if all these bad things are going to happen because of unlimited liability, why haven't they already happened? If shippers are getting out of the business, that is good, he asserted, because you don't want bad shippers in Maine waters.

Jeff Pidot, Deputy Attorney General and Chief, Natural Resources Division, **Maine Department of the Attorney General**, Augusta, Maine, was the final speaker on the agenda. He noted that unlimited liability is not a new issue, and that the attorneys general in Maine have consistently supported it for the past 20 years.

Mr. Pidot listed four reasons why unlimited liability is appropriate. First, he described the conveyance and handling of oil, especially on the sea, as inherently dangerous. People engaging in inherently dangerous activities are routinely held strictly liable for any damage resulting from those activities. The second reason Mr. Pidot cited is that not limiting liability is one way to ensure that those who do have control over the activity do all they can to prevent spills. Maine's laws on this subject have been upheld by the Maine Supreme Judicial Court against constitutional and other challenges. Mr. Pidot's third reason is that the imposition of unlimited liability is a fundamental and effective mechanism, employed throughout our legal system, for making sure that persons who are responsible for harm must pay for restitution. He mentioned that individuals have no limit on what they may be required to pay for the damage they cause, for example, by driving a car. Fourth, Mr. Pidot saw irony in the fact that the oil industry is seeking an artificial limit on their liability when there is no limit protecting the rest of society in the conduct of our everyday affairs.

Mr. Pidot said that although it is a positive development that there is now a relatively large federal trust fund in addition to the State's fairly small fund, that fact is ultimately beside the point on the issue before the Commission: Who pays when these limited funds are used up or not available? Because we know the federal trust fund is not large enough cover the costs of a single catastrophic spill, Mr. Pidot said, it is clear

someone will have to pay for the excess damage. Mr. Pidot again found it ironic that large oil producers and shippers do not want to expose their corporate treasuries to full liability for a spill, but they do want to expose Maine's treasury.

Mr. Pidot believes the answer to statements about vessels hiding behind weak corporate shells to avoid full liability is to require meaningful proof of financial responsibility, as well as of the highest possible standard of care and technical capability.

Mr. Pidot closed by noting that Maine's Congressional delegation was instrumental in ensuring that state laws were not preempted by OPA '90. He hopes Maine will not now be swept away by industry arguments, and stay the course that has worked for Maine for 20 years.

FINDINGS. The Commission heard testimony and discussed the question of how Maine's unlimited liability law affects the potential for an oil spill in Maine. It is recognized that the federal fund, allowing for up to \$1 billion in payments for a single spill, would not fully cover a catastrophic spill such as the EXXON VALDEZ. Total damages from the EXXON VALDEZ are estimated at over \$4 billion; Exxon settled for \$2.2 billion. The Commission members have learned far more about the ramifications of Maine's unlimited liability law than ever before, but feel more information would be helpful in making a decision about whether Maine's law should be changed. Several areas of information that could be compiled and explored for the Commission's use were identified, although other issues are also important: Insurance for vessels and facilities, chances of a spill in Maine waters from Eastport through the Piscataqua River, whether other unlimited liability states are experiencing problems, quality of ships still serving Maine ports, how well the financial responsibility laws are working, what the adequacy of the federal fund seems to be in relation to other spills and whether there are other options to increasing the pool of good ships willing to come to Maine ports besides capping liability.

The Commission also finds that the law is inconsistent in dealing with the liability of responsible parties when it comes to reimbursing the Maine Coastal and Inland Surface Oil Cleanup Fund. The Commissioner of DEP is directed to seek reimbursement for studies and for collection costs, but the statute laying out the liability of a responsible party does not mention those specific costs. In addition, the statute is not clear that the studies to be paid for from the Fund are studies specifically related to a particular spill, and includes damage assessment costs.

RECOMMENDATIONS. The Commission believes that making a recommendation on Maine's unlimited liability laws at this point would be premature. The Commission therefore recommends that more information be collected and the Commission continue its discussions. Once in existence, the Advisory Committee should continue to monitor the issue of liability for oil spills under Maine law, no matter what changes may be made.

The Commission recommends that the statutes governing the state Fund be amended to clearly state that responsible parties are liable for the costs of studies related specifically to the spill they have caused, and any collection costs associated with the damages and clean up costs. These proposed changes are included in Appendix B.

IX. RESOURCE PROTECTION PRIORITIES

A. Background

Sensitive areas are locations that have valuable natural or cultural resources or that are specifically susceptible to damage from oil spills. One of the major findings of the 1990 Commission was that sensitive area information for Maine's coast was outdated, inaccessible and in hard copy form. A major component of the Commission's 1990 legislative package established a mapping system on the state's Geographic Information System (GIS) to identify sensitive areas in the event of an oil spill. That system is being developed by the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife, the Department of Marine Resources, the Maine Geological Survey and the Department of Conservation's Division of Geographic Information System.

The agencies involved are currently defining what data is needed and gathering what data is available for inclusion in this data base. It will be digitized and combined with other data to be used by decision-makers during an oil spill. This will serve as an important oil spill response tool once it becomes operational. Allocations from the Maine Coastal and Surface Oil Clean-up Fund must continue to support this important effort.

During an oil spill, priorities must be set for what is and is not protected. Resource protection priorities are determined during an oil spill at the spill by the On Scene Commander with what information is readily available. Traditionally, decision-makers look at what is sensitive and what can be protected. No other states specifically identify protection priorities, however, they may identify specific shorelines that are more sensitive than others.

One of the duties of the Commission established under Public Law 1991, Chapter 530, was to recommend resource protection priorities or a mechanism to establish them. A subcommittee of the Commission met several times over the course of the study to develop a listing of priorities and to help the Department of Environmental Protection define what information should be collected as part of the GIS mapping effort. Dr. John Anderson chaired the subcommittee, with Sid Bahrt, Jane Arbuckle, Steve Dickson, Al Prysunka and Jeff Kaelin making significant contributions. The Subcommittee presented their findings to the full Commission on October 30 for their review and approval. This section is the product of their efforts.

B. Priorities

The following list is a first cut at developing priorities for what is important to the State. It is an initial effort for defining resources and parameters for inclusion in the GIS. The Commission has developed them to be used as an initial tool in this process. These priorities should be further refined as the sensitive area system is developed.

These resource protection priorities should be considered not only by on-site decision-makers during a spill but also by technical people within the various natural resource agencies that are charged with developing the data base available during a spill to help guide decisions for what information is collected first and what is included in the data base.

An overriding concern that is not discussed in this hierarchy is the concern for public health and safety. If human lives are threatened during an oil spill the following hierarchy is of secondary importance.

1. Ability to protect

This should be the first consideration. If a particular resource cannot be protected, responders should waste no time in attempting to protect it. For example, booming a resource during heavy seas is futile.

Deciding whether a resource can be protected is primarily an on-site decision although background information on booming experience and response information as well as biological information such as a feeding range can be helpful. Biological information should be incorporated into the data base. The ability to protect a resource includes weighing the cost-effectiveness of the effort both in terms of dollars and lost opportunities to protect other resources. It means putting limited response resources where they will work most effectively.

2. Vulnerability

How vulnerable is a particular resource to damage? This includes effects on many species. It requires expert advice to get a general sense of this information. A rocky headland recovers more quickly than a salt marsh and is less vulnerable to long-term damage.

3. Replaceability

How easy is it to replace a particular resource? Two categories of replacement should be considered under this heading, they are presented here without ranking as two distinct categories:

- a. Economic replacement - Can a loss be reasonably compensated through the Maine Coastal and Inland Surface Oil Clean-up Fund or the Federal Oil Spill Fund? Or would a loss carry ramifications beyond actual replacement of the resource, facility or goods? An example from the EXXON VALDEZ disaster illustrates this point. Responders worked to save several salmon hatcheries near the spill not because of the value of the salmon in the facilities but because the salmon there were released and support an offshore fishery. The loss of an age class in that fishery and no salmon returning in subsequent years to spawn would have had severe ramifications up and down the Alaskan coast.
- b. Physical restoration - How long would it take a particular resource or population to recover? If a population can recover without interference within 10 years it may not warrant extensive response efforts. However, if a population can not recover for 100 years or more this resource then becomes a higher priority for protection.

4. Ecological significance

How important ecologically is this resource? This would be measured in terms of rarity, overall biomass, diversity, productivity or major contributions to the food chain.

5. Social significance

How important is the resource to society. This includes economic and aesthetic concerns as well as other less tangible types of significance. For example, is the oil about to hit a popular and well-used beach.

Appendix I graphically displays the decision matrix represented by these priorities.

One member of the Commission disagreed with some of the assumptions of the resource protection priority list. Jeff Kaelin, representing the sardine fishery felt that short-term economic impacts (the loss of salmon in an aquaculture pen or the contamination of an intake pipe for a seafood processing plant for example) should be given the highest priority because of the stress of lost income and employment. He discounts the availability of reimbursement for property damage or lost wages from either the federal or state funds because of the potentially long time frame that compensation could take. However, Mr. Kaelin believes that the balancing of short-term economic effects and sensitive areas will only occur in very limited areas of the coast so economic loss should be given a higher priority.

The Commission felt that as this system is further developed, the Oil Spill Advisory Committee proposed in the Commission's legislation may want to encourage regional advisory committees to help define regional priorities.

The subcommittee also felt that both the DEP and the US Coast Guard should be kept up to date by people working in the field on the status of transient populations. For example, some populations of birds may move considerably from year to year and may affect response considerations.

C. Resources to Map

A list to identify and prioritize information for the sensitive area data base is included in Appendix J. This list will help the DEP define what information should be included in the data base and what DEP should focus on getting first. Subcommittee members recognized that this list would not be the final definitive list for the data base but would serve instead as a starting point to be refined in the coming years.

The Commission agreed to use NOAA's Environmental Sensitivity Index (ESI) maps as a starting point for their list of sensitive resources. This list is in use by responders currently and is in a format that they are comfortable with. The subcommittee has edited the list to include important resources specific to Maine. It is important to realize that at this point this list is not a damage assessment tool but the basis for emergency decision-making. It does not include all the resources possibly at risk from a spill, but instead focuses on resources that responders may be able to protect.

D. Rulemaking requirement

Current law requires the Board of Environmental Protection to adopt resource protection priorities by rule (38 MRSA §546-B, sub-§2). The Commission finds that these priorities are still in the initial stage of development and need to remain fluid through the development of the GIS data base. They recommend that this subsection be repealed from current law. The Commission's proposed legislation reflects that change (see Appendix B).

FINDINGS. Maine's sensitive area identification system on the state's Geographic Information System is an important first step for providing the tools for decision-makers to use during an oil spill. However, it will be several years before the system is fully functional.

The NOAA Environmental Sensitivity Index (ESI) maps are a good starting point on which Maine's sensitive area identification system can be modeled. The Commission has amended the ESI listing so that it better reflects important Maine resources.

Resource protection priorities can help both spill decision-makers and the agencies developing the data to decide what resources are important to protect during an oil spill. The Commission has developed an initial priority list that should be refined as the system is further developed. The priorities are to first determine whether a resource can be protected, how vulnerable it is to damage, how easy it is to replace and how important is the resource ecologically and socially.

RECOMMENDATIONS. The Commission recommends that financial support for the sensitive area identification system be continued so that this tool can be developed and available during a spill. The data base should be developed using the modified NOAA ESI listing as included in Appendix J. The Commission recommends coordination with MSRC, spill response organizations and other industry sources of information.

Resource protection priorities should be further refined as the sensitive area identification system is further developed. These priorities must remain flexible at this time. Maine law should be amended to repeal the requirement that the Board of Environmental Protection adopt these priorities by rule (38 MRSA §546-B, sub-§2).



APPENDIX A

APPROVED	CHAPTER
JUL 8 '91	530
BY GOVERNOR	PUBLIC LAW

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

—
H.P. 161 - L.D. 246

An Act Assuring Clean Waters in Maine

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Commission to Study Maine's Oil Spill Clean-up Preparedness has reviewed the State's ability to respond to marine oil spills and has found that the response capability does not exist for a catastrophic oil spill along the Maine coast; and

Whereas, the federal Oil Pollution Act of 1990, Public Law 101-380, 104 Stat. 484, went into effect on August 18, 1990; and

Whereas, there are major efforts under way to address marine oil spill prevention, planning and response by others, including the United States Coast Guard, the Canadian Coast Guard, the Portland oil terminal operators and the industry-sponsored Marine Spill Response Corporation; and

Whereas, there is a need for a continuing advisory body to monitor and evaluate these efforts, to study the effect of the federal law and to explore the relationship between the federal fund and the Maine Coastal and Inland Surface Oil Clean-up Fund; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. Commission reestablished; membership; appointments. The Commission to Study Maine's Oil Spill Clean-up Preparedness is reestablished and is composed of the following 17 members:

1. One Senator appointed by the President of the Senate;
2. One member of the House of Representatives appointed by the Speaker of the House of Representatives;
3. Three members representing the marine fisheries interest, including the lobster industry, aquaculture industry and sardine industry, appointed jointly by the President of the Senate and the Speaker of the House of Representatives;
4. Three members representing the general public appointed jointly by the President of the Senate and the Speaker of the House of Representatives;
5. The Commissioner of Environmental Protection or the commissioner's designee;
6. Two members representing the petroleum industry appointed by the Governor;
7. One member familiar with oil spill technology appointed by the Governor;
8. One naval architect appointed by the Governor;
9. One member with expertise in coastal geology appointed by the Governor;
10. One member with expertise in fisheries biology appointed by the Governor;
11. One member with expertise in coastal wildlife habitat appointed by the Governor; and
12. One member who is a licensed state pilot or a licensed merchant marine officer appointed by the Governor.

Any vacancies on the commission must be filled by the original appointing authority.

Sec. 2. Meetings. The first meeting of the commission must be held by June 30, 1991, called by the Chair of the Legislative Council or the chair's designee. The commission shall select a legislative member as chair.

Sec. 3. Duties. The commission shall meet and hold a public hearing as needed to review Maine's oil spill clean-up preparedness. Specifically, the commission shall:

1. Track implementation of the federal Oil Pollution Act of 1990 and regulations promulgated under it, and recommend to the Legislature and the Board of Environmental Protection any appropriate statutory or regulatory changes;

2. Review opportunities and constraints of the federal Oil Spill Liability Trust Fund and review and recommend changes to Maine law to incorporate the availability of response money and damage compensation from the federal fund;

3. Review expenditures and the priority for expenditures of the Maine Coastal and Inland Surface Oil Clean-up Fund and make recommendations to the Commissioner of Environmental Protection and the Legislature on how the fund should be spent. The commission shall also consider the establishment of a permanent advisory committee for this purpose. In making these recommendations, the commission shall consider the advisability of establishing separate coastal and inland surface funds;

4. Monitor the development by the Commissioner of Environmental Protection of any marine oil spill contingency plan;

5. Identify needed additional response vessels and equipment and monitor the progress of the Department of Environmental Protection in obtaining them;

6. Monitor any development of a sensitive area identification system by the State;

7. Recommend resource protection priorities or a mechanism to establish them;

8. Evaluate and consider the establishment of a computerized spill trajectory tracking and forecasting system;

9. Monitor development of any wildlife rehabilitation plan developed by the State;

10. Monitor the progress of the United States Coast Guard and the Department of Environmental Protection on navigational risk assessments and spill prevention measures, including the use of tugboats;

11. Encourage and monitor formation of response cooperatives by the oil terminal operators in each major port area;

12. Study the impact of the State's present unlimited liability standard on the potential for oil spills in Maine waters; and

13. Monitor the safety problems of public boating in the vicinity of oil vessels.

Sec. 4. Reports by Commissioner of Environmental Protection. The Commissioner of Environmental Protection shall report to the commission on the following activities.

1. The Commissioner of Environmental Protection shall report to the Commission to Study Maine's Oil Spill Clean-up Preparedness by June 30, 1991 and quarterly thereafter until June 30, 1992 on the progress of the department in:

A. Revising its rules on marine oil spills;

B. Developing a state marine oil spill contingency plan; and

C. Developing a sensitive area identification and protection system.

2. The department, in consultation with the Gulf of Maine Council on the Marine Environment, shall pursue a response agreement or compact with the other states and provinces on the Gulf of Maine and report to the commission by June 30, 1991 on its progress.

3. The commissioner shall report to the commission by June 30, 1991 on the availability of facilities for disposal of oily debris from a major oil spill.

4. The commissioner shall study and report to the commission by September 1, 1991 on the possibility of additional state oil spill prevention actions, such as vessel movement restrictions, shipboard inspections and more stringent operating requirements for terminals. The commissioner shall retain an experienced consultant to advise the commissioner on navigational and terminal risk assessment to support this effort.

5. The commissioner shall, in connection with development of the state marine oil spill contingency plan, review and report to the commission by September 1, 1991 on its needs for specific response equipment, including booms, skimmers, sorbents, pumps, barges, dispersants and other spill control products, taking into account equipment that is or will be available from other sources. The report must also specify the steps the department has taken to provide the needed equipment.

Sec. 5. Reports by Department of Inland Fisheries and Wildlife. The Department of Inland Fisheries and Wildlife shall report to the Commission to Study Maine's Oil Spill Clean-up Preparedness by June 30, 1991 and quarterly thereafter until June 30, 1992 on the progress of the department in developing a wildlife rehabilitation plan.

Sec. 6. Report. The commission shall develop and submit a report and recommendations, together with any recommended legislation, to the Joint Standing Committee on Energy and Natural Resources and the Office of the Executive Director of the Legislative Council by November 1, 1991. The commission is dissolved on June 30, 1992.

Sec. 7. Staff assistance. The commission may request staff assistance between sessions of the Legislature from the Legislative Council. Any staff assistance required by the commission while the Legislature is in session must be provided by the Department of Environmental Protection.

Sec. 8. Reimbursement. The public members of the commission are entitled to legislative per diem and expenses for the days of attendance at commission meetings upon request from the Executive Director of the Legislative Council. The Executive Director of the Legislative Council shall administer the budget of the commission.

Sec. 9. PL 1989, c. 868, §18, under that part designated "LEGISLATURE" in that part relating to "Commission to Study Maine's Oil Spill Clean-up Preparedness" is amended by amending the 3rd to 12th lines to read:

Provides funds for the per diem, travel, consultants and related expenses of the Commission to Study Maine's Oil Spill Clean-up Preparedness. Unexpended funds allocated in fiscal year 1989-90 and fiscal year 1990-91 for the Commission to Study Maine's Oil Spill Clean-up Preparedness must be carried forward to fiscal year 1991-92. These funds allocated pursuant to Public Law 1989, chapter 868, section 18 must be used for the purpose of this new study

and must be carried forward
until the commission expires
on June 30, 1992. Any
unexpended funds lapse to the
Maine Coastal and Inland
Surface Oil Clean-up Fund
upon completion of the study.

Sec. 10. Allocation. The following funds are allocated from the
Maine Coastal and Inland Surface Oil Clean-up Fund to carry out
the purposes of this Act.

1990-91

LEGISLATURE

**Commission to Study Maine's Oil Spill
Clean-up Preparedness**

Personal Services	\$2,805
All Other	(2,805)

Provides for the transfer of
funds from the "all other"
line item to the "personal
services" line item to allow
for the payment of per diem
authorized by this Act.

**LEGISLATURE
TOTAL**

\$-0-

Emergency clause. In view of the emergency cited in the
preamble, this Act takes effect when approved.

APPENDIX B

Be it enacted by the State of Maine as follows:

Sec. 1. 5 MRSA §12004-I sub-§24-A is enacted to read:

24-A. <u>Environment:</u>	<u>Oil Spill</u>	<u>Expenses and</u>	<u>38 MRSA</u>
<u>Natural Resources</u>	<u>Advisory</u>	<u>Legislative</u>	<u>§551-A</u>
	<u>Committee</u>	<u>per diem</u>	

Sec. 2. 38 MRSA §86 is amended to read:

§86 Vessels required to take pilot

Every foreign vessel and every American vessel under register, with a draft of 9 feet or more, entering or departing from any port or harbor within the waters described in section 86-A shall take a pilot licensed under this chapter. ~~In case of refusal to take such pilot, the master, owner, agent or consignee of any such vessel shall pay the established pilot fee as if a pilot had been employed.~~ Any master, owner, agent or consignee that fails to take a pilot licensed under this subchapter is subject to a civil penalty not to exceed \$5000 per day, payable to the State. This penalty is recoverable in a civil action.

Sec. 3. 38 MRSA §546, sub-§6 is amended to read:

6. Vessel response plans. Every tank vessel, as defined under 56 United States Code, Section 2101, shall ~~file with the department~~ have available for inspection by the commissioner or an agent of the commissioner a copy of any oil discharge response plan required to be submitted to the President of the United States under the federal Oil Pollution Act of 1990, Public Law 101-380, Section 4202, 104 Stat. 484, ~~or a statement that a plan is not required under federal law.~~

Sec. 4. 38 MRSA §546-A, sub-§3, ¶B is amended to read:

B. A clear definition of the roles of the department, the oil industry, oil spill response organizations and the United States Coast Guard in various circumstances, as well as the roles of other state agencies including the Maine Emergency Management Agency;

Sec. 5. 38 MRSA §546-A, sub-§5 is amended to read:

~~5. Revision. By January 1, 1992, the board shall adopt by rule a state marine oil spill contingency plan based upon the preliminary plan developed by the commissioner under subsection 1.~~ The commissioner shall at least annually review and make recommendations to revise the plan, ~~and the board shall act on these recommendations by rulemaking, and shall notify all licensees and interested parties requesting to be notified of any changes to the plan. Licensees and interested parties may request a public hearing on changes to the plan by submitting a written request to the Commissioner signed by at least 5 persons.~~

Sec. 6. 38 MRSA §546-B, sub-§2 is repealed.

Sec. 7. 38 MRSA §551, sub-§5, ¶H is amended to read:

H. Sums, up to \$50,000 each year, which have been allocated by the Legislature on a contingency basis in accordance with section 555 for payment of costs for damage assessment for specific spills and site-specific studies of the environmental impacts of discharges a particular discharge prohibited by section 543 that may have adverse economic effects and occur subsequent to such an allocation, when those studies are determined necessary by the commissioner; and

Sec. 8. 38 MRSA §552, sub-§2 is amended to read:

2. **State need not plead or prove negligence.** Because it is the intent of this subchapter to provide the means for rapid and effective clean-up and to minimize direct damages as well as indirect damages and the proliferation of 3rd party claims, any person, vessel, licensee, agent or servant, including carriers destined for or leaving a licensee's facility while within state waters, who permits or suffers a prohibited discharge or other polluting condition to take place ~~shall be~~ is liable to the State of Maine for all disbursements made by it pursuant to section 551, subsection 5, paragraphs B, D, and E, H and I, or other damage incurred by the State. In any suit to enforce claims of the State under this section, to establish liability, it ~~shall~~ is not be necessary for the State to plead or prove negligence in any form or manner on the part of the person causing or suffering the discharge or licensee responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge or other polluting condition and that the discharge occurred at facilities under the control of the licensee or was attributable to carriers or

others for whom the licensee is responsible as provided in this subchapter or occurred at or involved any real property, structure, equipment or conveyance under the custody or control of the person causing or suffering the discharge.

Sec. 9. 38 MRSA §551-A is enacted to read:

§551-A. Oil Spill Advisory Committee

The Oil Spill Advisory Committee, as established in 5 MRSA, section 12004-I, subsection 24-A, shall advise the department in carrying out the policies and purposes of this subchapter.

1. Membership. The Governor shall appoint the chair of the committee. The committee consists of 14 members.

A. Three members representing the marine fisheries interest, including the lobster industry, aquaculture industry and sardine industry, two appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives;

B. Three members representing the general public, one appointed by the President of the Senate and two appointed by the Speaker of the House of Representatives;

C. Two members representing the petroleum industry appointed by the Governor;

D. One member familiar with oil spill technology appointed by the Governor;

E. One naval architect appointed by the Governor;

F. One member with expertise in coastal geology appointed by the Governor;

G. One member with expertise in fisheries biology appointed by the Governor;

H. One member with expertise in coastal wildlife habitat appointed by the Governor; and

I. One member who is a licensed state pilot or a licensed merchant marine officer appointed by the Governor.

2. Terms. All members are appointed for staggered terms of 3 years. The Governor shall appoint two members for initial one-year terms, three members for initial two-year terms and three members for initial three-year terms. The Speaker of the House shall appoint one member for an initial one-year term, one member for an initial two-year term and one member for an

initial three year term. The President of the Senate shall appoint one member for an initial one-year term, one member for an initial two-year term and one member for an initial three year term. A vacancy must be filled by the same appointing authority which made the original appointment. No member may serve more than 2 consecutive 3-year terms.

3. Compensation. Members are entitled to compensation as specified in Title 5, section 12004-I, subsection 24-A.

4. Quorum. A quorum is 8 members of the committee. An affirmative vote of the majority of the members present is required for any action. Action may not be considered unless a quorum is present.

5. Chairperson. The Governor shall appoint a person to serve as chair of the Committee.

6. Meetings. The committee shall meet at least 4 times per year unless the committee decides not to hold a meeting. The committee shall meet at any time at the call of the chair.

7. Staff support. The commissioner shall provide the committee with staff support.

8. Duties. The committee shall:

A. Track implementation of and regulations relating to the Federal Oil Pollution Act of 1990 and recommend to the Legislature any statutory changes or to the board any regulatory changes that may be appropriate. Specifically, the committee shall review contingency plan requirements, opportunities and constraints of the federal Oil Spill Liability Trust Fund and oil spill prevention measures.

B. Monitor the adequacy of the federal Oil Spill Liability Trust Fund in light of information on the potential risks and costs of an oil spill and the State's exposure and liability under the Fund.

C. Monitor the effects of the State's oil spill liability laws on oil spill prevention ;

D. Review expenditures and the priority for expenditures of the Maine Coastal and Inland Surface Oil Clean-up Fund and make recommendations to the commissioner on how the fund should be allocated;

E. Review the commissioner's program for identifying areas sensitive to oil spills in the marine environment and the development of resource protection priorities;

F. Review and comment on the State marine oil spill contingency plan;

G. Monitor oil spill planning and prevention activities by industry, oil spill response organizations and the United States Coast Guard;

H. Monitor the commissioner's assessment of adequate oil spill response equipment and vessels for the State;

I. Review the implementation of a plan for rehabilitation of wildlife resources including:

(1) Training programs and opportunities for volunteers and state and federal personnel; and

(2) Preliminary agreements or identification of treatment centers or facilities; and

J. Monitor scientific, engineering and technical advances in oil spill response and prevention techniques and make recommendations on their use; and

K. Review and monitor issues for oil spill prevention and response and recommend to the Legislature any statutory changes or to the board any regulatory changes that may be appropriate.

Statement of Fact

This bill is proposed by the Commission to Study Maine's Oil Spill Clean-up Preparedness and represents their interim recommendations.

Sections 1 and 9 establish an ongoing Oil Spill Advisory Committee within the Department of Environmental Protection. New federal legislation, industry efforts and increased oil spill prevention planning make ongoing review of Maine's policies and legal framework essential.

Currently, foreign vessels and American vessels with a draft of 9 feet or more are required to take a licensed marine pilot into certain waters. If a pilot is not taken, the vessel must pay for one. Section 2 removes this provision and institutes a penalty for vessels that do not take a required pilot.

Sections 3, 4 and 5 revise procedures and requirements for the State's Oil Spill Contingency Plan and the Department of Environmental Protection's review of federally-mandated vessel contingency plans.

Section 6 repeals a requirement that the Board of Environmental Protection adopt by rule resource protection priorities to be used during a spill. The Commission has developed preliminary priorities and feels that these may change over time as information is developed for oil spill response on the State's Geographic Information System.

Section 7 clarifies that certain allocations from the Maine Coastal and Surface Oil Clean-up Fund are for damage assessment and environmental assessment for specific spills.

Section 8 clarifies that a person causing a discharge is liable to the State for disbursements made from the Maine Coastal and Surface Oil Clean-up Fund for spill-specific studies and for collection fees.

2581NRG

APPENDIX C

COMMISSION TO STUDY MAINE'S OIL SPILL CLEAN-UP PREPAREDNESS

(Re-established by Chapter 530, P.L. 1991)

MEMBERSHIP

Revised September 30, 1991

Appointments by the Governor

Wallace R. McGrew, President Portland Pipe Line Corp. P.O. Box 2590 South Portland, Maine 04106	Petroleum Industry
Milton F. Huntington, Executive Director Maine Petroleum Association 283 Water Street Augusta, Maine 04330	Petroleum Industry
David T. Look, President Seacoast Ocean Services 37 Custom House Wharf Portland, Maine 04101	Oil-Spill Technology Expert
Stephen M. Dickson, Marine Geologist 15 Elm Street Augusta, Maine 04330	Coastal Geologist
Cyrus Hamlin 18 Dane Street Kennebunk, Maine 04043	Naval Architect
John G.T. Anderson College of the Atlantic Bar Harbor, Maine 04609	Fisheries Biologist
Jane Arbuckle RR 2, Box 2340A New Gloucester, Maine 04260	Coastal Wildlife Habitat Expert
Capt. Granville I. Smith Portland Pilots, Inc. 48 Union Wharf Portland, Maine 04101	Licensed State Pilot

Appointment by the Senate President

Senator Harry L. Vose
Route 191, General Delivery
Meddybemps, Maine 04657

COMMISSION TO STUDY MAINE'S OIL
SPILL CLEAN-UP PREPAREDNESS

Appointment by the Speaker of the House

Representative Susan Farnsworth
19A Winthrop Street
Hallowell, Maine 04347

Joint Appointments by the Senate President and Speaker of the House

William Altvater
Altvater, Inc.
Eastport, Maine 04631

Aquaculture Industry
(Appointed late October
has not participated to date)

Jeffrey H. Kaelin
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Public Member

Ex Officio

Al Prysunka
Department of Environmental Protection
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Telephone: 289-7688

Designated by the Commissioner
of DEP pursuant to statute

Staff

Gro Flatebo and Peggy Reinsch, Office of Policy and
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APPENDIX D

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Edison Drive
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APPENDIX E

PROPAC RESPONSE EQUIPMENT INVENTORY (9-20-91)

BANGOR:

Webber Energy:

200'- 18" Spill Dam Boom
300'- 29" I&T Spill Boom
- Sorbent Boom
- Sorbent Pads
- Skimmer Pump diesel-Trailer mounted
- Personal Protection Equipment
- Rope, anchors misc. hardware
Contact- Jerry LaPointe Tel.# (207)942-5501

Bangor Fire Department

1-16' Damariscotta Boat w/60HP- on trailer
Marine Radio Equipped
Contact-Bangor F.D. Tel.# (207)942-6335

Webber Tanks-Brewer

1-1000' 24" Spill dam boom on trailer w/
14' Alum. boat
Contact-John Alley- Tel.# (207)989-7770

Sprague-Brewer

1-1000' 29" ITT Spill Boom
Contact-Ron Patterson-Tel.# (207)469-7946

BUCKSPORT:

Webber Tanks:

1000'- 24" Spill dam boom on trailer w/
14' Alum boat w/25 HP motor
300'- Sorbent boom
- Sorbent Pads
Contact- Everett Falvey Tel.#(207)469-3165

Sprague Energy:

600'- L8" Spill dam boom- Champion dock
Contact- Ron Patterson Tel.#(207) 469-7946

Sprague Energy North Terminal:

400'- 18" Spill dam boom
1000'- 18" Amercian boom
100'- Sorbent boom
- 1 - 16' Damariscotta boat w/70 HP motor
on trailer-Marine Radio equipped
- Anchors, Rope, Bouys, Misc hardware
- Sorbent pads
Contact-Vaughn Rogerson Tel.#(207) 469-7450

SEARSPORT:

Sprague Energy:

- 1- 16' Damariscotta Boat w/50 HP motor
on trailer
 - 1400'- 30" Amercian Boom
 - Sorbent Pads, Sheeting, Boom
 - Marine Radio System-Base and
Hand hold radios
- Contact-Clint Holmes Tel.#(207)548-2531

IRVING OIL:

- 2- Winslow Air Pumps
 - 250'- 3" Hose
 - 1- Small skimmer
 - Sorbent boom
 - Sorbent pads
- Contact- Ted Engstorm Tel.#(207)548-2541

TENCO/DEFENSE SUPPLY POINT:

- 1- 16' Boston Whaler w/50HP motor on trailer
(2" Hitch)
 - Sorbent Pads
 - Sorbent Boom
- Contact- Scott Clark Tel.#(207)548-5501

**Tanker discharge at Searsport requires oil booming by private contractor. Normally, contractor's equipment is on site and readily available:

- 1- 20' Damarscottia boat w/90HP motor on trailer
- 1500-2000'- 18" Spill dam boom w/anchors

Attachments:

Port Safety Forum Report 2-14-91
PROPAC Training Program Guide
PROPAC Equipment Inventory

CLEAN CASCO BAY, INC.

PROPOSED EQUIPMENT INVENTORY

The following suggestions are based upon the expected level of equipment necessary to reasonably respond to a 5,000 barrel spill in the area of interest. It is envisioned that a contractor or contractors will be hired to store, maintain, deploy, and operate the equipment. This equipment is to supplement the spill control equipment and supplies owned by the contractors and MSRC.

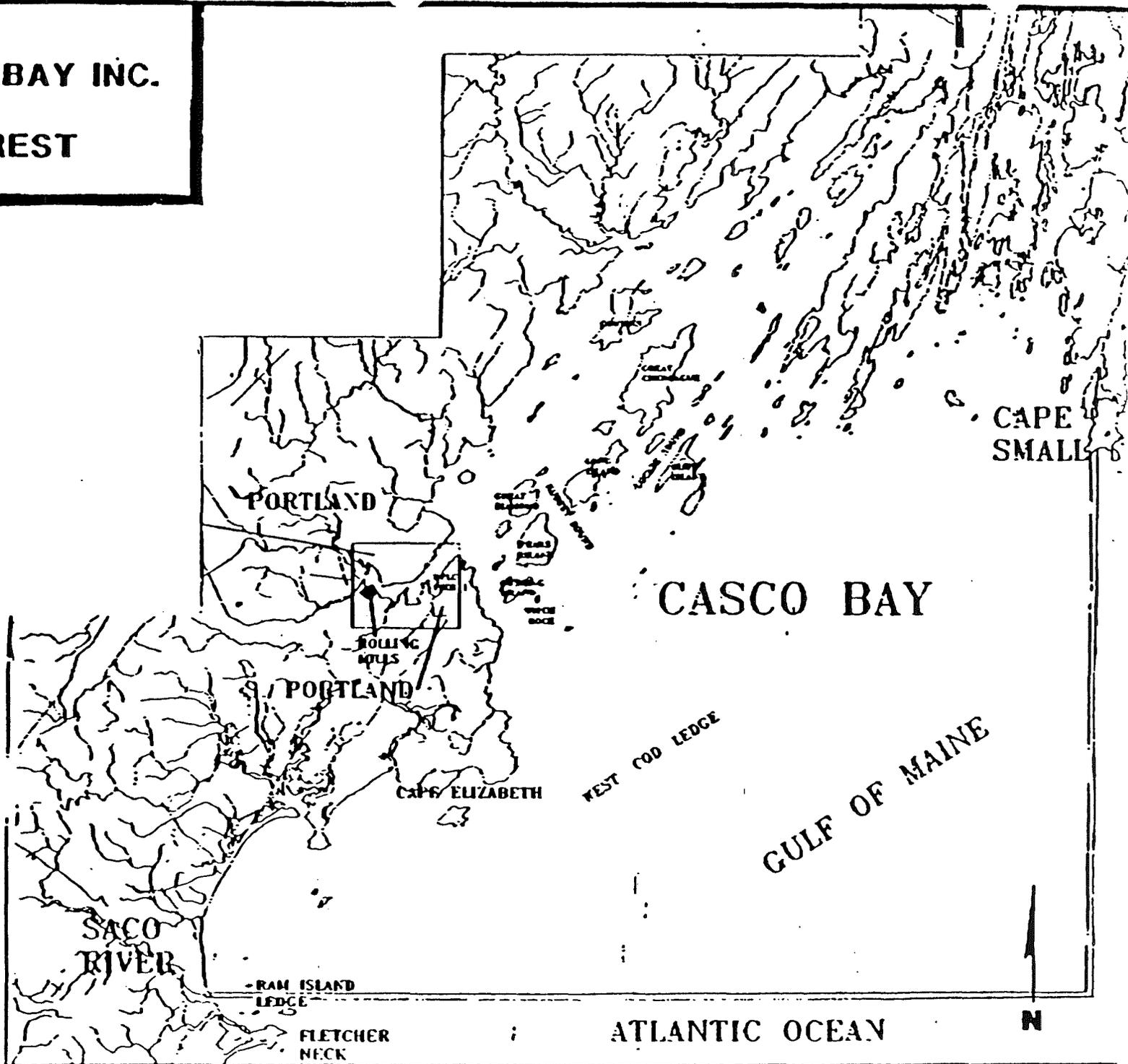
<u>ITEM</u>	<u>QUANTITY</u>
<u>Communications</u>	
Portable communications command post	1
VHF Programmable Portable Radios with Charger	24
Portable Repeaters	1
Mobile Teles Systems Unit (Field Satellite System)	1
Cellular Phones	5
Facsimile Machines	1
Portable Computer	2
	Estimated Cost:
<u>Skimming Equipment</u>	
10 to 20 Ton per hour Portable Disc Skimmers	2
50 Ton per hour Disc Skimmer	1
Heavy Oil (Viscous) Disc Skimmer	1
Weir Skimming Barrier	1
High Capacity Mobile Vacuum Skimming Systems	2
	Estimated Cost:
<u>Lightering</u>	
High Volume Portable Transfer Pumps (long-term lease)	2
Fenders	2
	Estimated Cost:
<u>Specialized Boom</u>	
Shore Protection Boom	1000 ft.
Offshore Rapid Response Inflatable Boom w/reels	5000 ft.
	Estimated Cost:
<u>Vessels</u>	
30 to 35 Foot Fiberglas Landing Craft Type Response Vessels	2
25 Foot Aluminum Diesel Landing Craft Type Response Vessels	2
	Estimated Cost:
<u>Dispersants</u>	
200 to 220 gal. Helicopter Spray Buckets	2
Boat Spray System	1
Government Approved Dispersant (55 gal. drums)	25
<u>Temporary Storage Units</u>	
100-150 BBL. Bladder Type Storage Barges	4
	Estimated Cost:
<u>Vehicles</u>	
Equipment Storage & Transport Trailers	5
Personnel Transportation Vehicle	1
	Estimated Cost:
TOTAL ESTIMATED COST:	

CLEAN CASCO BAY INC.

AREA OF INTEREST

CLEAN CASCO BAY, INC.

EXHIBIT A



APPENDIX F

Surface Fund

Schedule A

Fund Balance 6/30/90			\$3,128,562.52
Plus	License Fees	\$3,262,979.46	
	Interest	\$283,315.93	
	Recoveries	\$112,746.63	
Less	Operating Expenses	\$2,091,636.56	

Fund Balance 6/30/91 \$4,695,967.98

Fund Balance Detail

Trust Fund Investment	\$4,323,592.84
Cash	\$372,375.14
Fund Balance 6/30/91	\$4,695,967.98

Surface Fund

Schedule B

Payroll and Related	\$630,816.00
Professional Fees	\$125,498.00
Travel	\$10,734.00
Auto Expenses	\$32,363.00
Clean up	\$384,286.00
Utilities	\$42,179.00
Rents	\$36,718.00
Repairs	\$6,950.00
Insurance	\$7,331.00
General Operating	\$25,256.00
Office Supplies	\$2,421.00
Mis Minor Equipment	\$96,320.00
State Cap	\$188,665.00
Equipment	\$476,134.00
Bd of Environmental Protection	<u>\$25,965.00</u>
Total Expenses	\$2,091,636.00

COASTAL STATE OIL SPILL LIABILITY LAWS
COMPENSATORY LIABILITY

CLEAN UP

DAMAGES

STATE	CLEAN UP		3RD PARTY		DAMAGES	
	STANDARD	LIMIT	STANDARD	LIMIT	STANDARD	LIMIT
Alabama	negligence	no	-	-	negligence	-
Alaska	strict	no	strict	no	strict	no
California	strict	no	strict	nc	strict	no
Connecticut	strict	no	-	-	-	-
Delaware	strict	Tran: \$300/GT, up to \$30 mil Fac: \$50 mil	strict	Tran: \$300/GT, up to \$30 mil Fac: \$50 mil	strict	Tran: \$300/GT, up to \$30 mil Fac: \$50 mil
Florida	strict	Tran: lesser of \$50 mil or \$625/GT Fac: \$25 mil	strict	no	strict	no
Georgia	strict	no	-	-	strict	no
Hawaii	strict	no	-	-	strict	-
Illinois	strict	no	-	-	strict	no
Indiana	tort	no	-	-	strict	no
Louisiana	strict	Tran: greater of \$1200/GT or \$10 mil for tankers Fac: \$350 mil	strict	Tran: greater of \$1200/GT or \$10 mil for tankers Fac: \$350 mil	strict	Tran: greater of \$1200/GT or \$10 mil for tankers Fac: \$350 mil

APPENDIX G

COASTAL STATE OIL SPILL LIABILITY LAWS
COMPENSATORY LIABILITY

CLEAN UP

DAMAGES

STATE	CLEAN UP		3RD PARTY		DAMAGES	
	STANDARD	LIMIT	STANDARD	LIMIT	STANDARD	LIMIT
Maine	strict	no	strict	no	strict	no
Maryland	strict	no	strict	no	strict	no
Massachusetts	strict	no	strict	no	strict	no
Michigan	tort	no	-	-	-	-
Minnesota	strict	no	-	-	strict	no
Mississippi	strict	no	-	-	strict	no
New Hampshire	strict	no	negligence	no	strict	no
New Jersey	strict	Tran: \$150/GT Fac: \$50 mil	strict	Tran: \$150/GT Fac: \$50 mil	strict	no
New York	strict	Tran: \$300/GT Fac: \$50 mil	strict	Tran: \$300/GT Fac: \$50 mil	strict	Tran: \$300/GT Fac: \$50 mil
North Carolina	strict	no	strict	no	strict	no
Ohio	-	-	-	-	-	-
Oregon	strict	no	strict	no	strict	no
Pennsylvania	-	-	-	-	-	-
Rhode Island	strict	no	strict	no	strict	no

COASTAL STATE OIL SPILL LIABILITY LAWS
COMPENSATORY LIABILITY

STATE	CLEAN UP		DAMAGES			
	STANDARD	LIMIT	3RD PARTY		NATURAL RESOURCES	
			STANDARD	LIMIT	STANDARD	LIMIT
South Carolina	strict	no	arbitration	no	strict	no
Texas	strict	Tran: \$5 mil for <=8000GT; greater of \$600/GT or \$50 mil for >8000GT Fac: \$50 mil (but no limit for OCS)	strict	Tran: \$5 mil for <=8000GT; greater of \$600/GT or \$50 mil for >8000GT Fac: \$50 mil (but no limit for OCS)	strict	no
Virginia	strict	no	strict	Tran: greater of \$500/GT or \$10 mil Fac: \$10 mil	strict	Tran: greater of \$500/GT or \$10 mil Fac: \$10 mil
Washington	strict	no	strict	no	strict	no
Wisconsin	strict	no	-	-	strict	no

Key

GT Gross Ton
 TRAN Transportation
 FAC Facilities

All liability limits subject to forfeiture if the spiller acts in gross negligence or willful misconduct.

Source: American Petroleum Institute (updated May 10, 1991)

APPENDIX H

SHIPOWNERS/OPERATORS THAT DO NOT CALL ON MAINE BY CHOICE

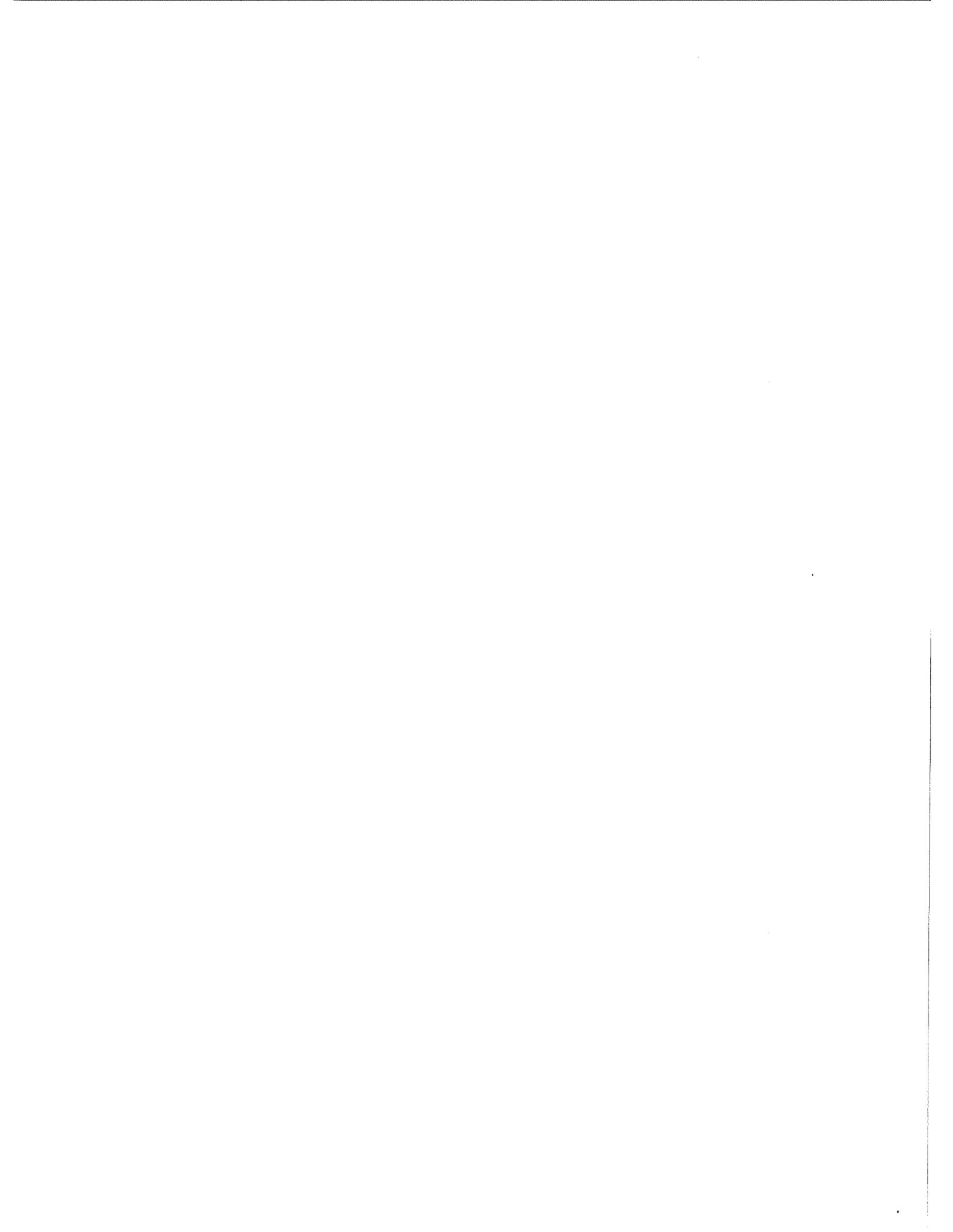
<u>Name</u>	<u>Number of Vessels</u>
SHELL INTERNATIONAL	31
BT NAVIGATION	7
ELF OIL	13
MAERSK	39
BP OIL	21
PETRO FINA	6
TEXACO	22
GOLDEN EAGLE	4
ONASSIS	8
TEEKAY SHIPPING	44
MARITIME OVERSEAS CORP.	13
CHEVRON	36
WORLDWIDE SHIPPING	39
EMBIRICOS	14
AMOCO	<u>8</u>
TOTAL	305

So. Portland, Me

October 30, 1991

PPLC

1385A



APPENDIX J

ENVIRONMENTAL SENSITIVITY INDEX -

I. SHORELINE TYPES

NOAA has ranked these from least sensitive to most sensitive.

1. Exposed rocky shores.
2. Exposed rocky ledges.
3. Fine-grained sand beaches.
4. Coarse-grained sand beaches.
5. Mixed sand and gravel beaches.
- 6A. Gravel beaches.
- 6B. Riprap structures.
7. Exposed tidal flats (moderate-to-high biomass).
8. Sheltered rocky shores.
9. Sheltered tidal flats.
10. Marshes.

(Note** MGS currently has the coastline mapped in 56 categories. This information is currently being digitized and will soon be available. The 56 categories can subsequently be grouped into as many types as are considered necessary but they will not necessarily be identical.)

II. BIOLOGICAL RESOURCES

1. Resident marine mammals

Seals	Haulout grounds or pupping areas
Mink	

2. Marine birds

Wading Birds	Heron, egret, rail, and related bird nesting and feeding areas
Diving Birds	Loon, grebe, cormorant, and related bird nesting and feeding areas
Waterfowl	Migratory waterfowl areas
Shorebirds	Most common feeding areas
Terns or Alcids	Rookeries or feeding area
Raptors	Ospreys, eagles found in coastal areas

3. Shellfish

Lobster	General lobster area, lobster nursery area--habitat, to include substrate depth and salinity
Bivalve Molluscs	Habitat based on USFW Characterization of the Maine Coast and specific surveys
Mussel Seed Beds	
Crab Harvest Areas	Generalized representation as with lobsters
Gastropods Periwinkles and Whelks	Habitat- substrate, depth salinity
Cephalopods(squid)	Habitat- substrate, depth, salinity, and energy of the environment

4. Finfish

Known spawning and harvest areas or areas with conditions suitable for spawning

Pelagic	Herring, menhaden, etc.
Demersal	Flatfish, sculpins, etc
Diadromous	Salmon, smelt, eels etc.

5. Other Invertebrates

Worm bed	Major intertidal worm beds
Sea Urchins	Habitat- substrate, depth, salinity and energy of environment

6. Specialized Habitat types

Habitats not included under shoreline types

7. Rare and endangered species

Marsh plants
Beach plants
Intertidal plants
Fauna

8. Wildlife concentration areas

Staging areas

Feeding areas

Nesting areas

Overwintering areas

9. Marine Flora Assemblages

Marshes

Intertidal-Hard substrate

Subtidal Assemblages

III. SOCIOECONOMIC FEATURES

1. Industrial intakes

power plants

commercial seafood processing facilities

2. Lobster-holding facilities and pens-pounds, intakes for tank facilities, buying stations

3. Aquaculture facilities-floating, submerged and intertidal
Lease sites, hatcheries, experimental areas, closed areas used for growing shellfish

4. State-nominated critical areas

5. Commercial fishing facilities

6. Areas of high public use

recreational beaches

parks and preserves

marinas and yacht clubs

coastal barrier resource system

7. Archeological areas

Other information needed:

Bathymetry

Salinity generalizations

