



November 20, 2018

Hon. Dan Sullivan
United States Senate
702 Hart Senate Office Building
Washington, D.C. 20510

Subject: Spill Response and Prevention Surety Act

Dear Senator Sullivan:

On behalf of the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) and the Cook Inlet Regional Citizens Advisory Council (CIRCAC), we would like to express to you that both Councils genuinely appreciate, support, and applaud your actions to help prevent and respond to future oil spills in Alaska and throughout the United States as reflected in the draft Spill Response and Prevention Surety Act (SRPSA) that you and your advisors have developed.

As you know, the PWSRCAC and CIRCAC were statutorily authorized in the wake of the 1989 Exxon Valdez Oil Spill (EVOS) which had a profoundly harmful impact on the fish and wildlife, people, environment, and economy of Alaska. Section 5002(b)(3) of Public Law 101-380 (33 U.S.C. 2701), the Oil Pollution Act of 1990 (OPA 90), states that --

"Purpose--The Prince William Sound Program shall be responsible for environmental monitoring of the terminal facilities in Prince William Sound and the crude oil tankers operating in Prince William Sound. The Cook Inlet Program shall be responsible for environmental monitoring of the terminal facilities and crude oil tankers operating in Cook Inlet located South of the latitude at Point Possession and North of the latitude at Amatuli Island, including offshore facilities in Cook Inlet."

Since enactment of OPA 90, these organizations have worked closely with industry, State and Federal regulators, the Congress, and the public to learn and benefit from the experience of the EVOS so as to help Alaska avoid any future major oil spills.

One of the most meaningful and effective ways to help prevent and respond to major oil spills is to ensure that there is adequate funding for the immediate as well as the long-term sustainability of the Oil Spill Liability Trust Fund (OSLTF). In 2005, Senator Ted Stevens, Senator Murkowski, and Congressman Young with support and assistance of the Councils worked to obtain the statutory reinstatement of the OSLTF financing rate that had terminated. In part, as a result of such termination and drawdown on the Fund, the OSLTF was in serious jeopardy of not being able to fulfill its mission. The Congress with leadership from the Alaska Congressional Delegation, who had lived through a major oil spill, took action with their colleagues in Congress to reinstate the financing rate and thereby help ensure that the OSLTF would be adequately funded.

The members of the two Councils are very pleased that the SRPSA incorporates a number of the recommendations that the Councils have considered along with the Alaska Congressional Delegation over the past few years. By establishing a ceiling and a floor for the unobligated Fund balances of the OSLTF and a mechanism automatically

metering the financing rate, the SRPSA would prudently secure continuous adequate funding for the OSLTF and would as a result substantially enhance the capabilities of the OSLTF to prevent and respond to oil spills quickly and effectively. Also, we agree with your decision to drop the provision in the draft bill that would have exempted exported oil from the application of the current OSLTF financing rate.

Other notable features of the SRPSA that both Councils believe will be extremely helpful to the operation of the OSLTF are that the bill would: (1) authorize cost of living adjustments for the Fund floor and ceiling in order to make certain that the funding levels do not become obsolete due to the effects of inflation; (2) eliminate the limit on emergency fund advances from the OSLTF principal fund permitted by the Coast Guard to respond to spills; (3) allow for multiple advances to the emergency fund subject to a cap and reporting to Congress; (4) double the single incident funding cap to \$2 billion; (5) double the natural resource damage claim cap to \$1 billion; (6) establish a **prevention** grant program to be financed by interest earnings and other sources of revenue to the Fund; and (7) reform the review and Fund dispersal process to improve efficiency.


In response to your, Senator Murkowski's, and Congressman Young's request for suggestions about potential State activities, projects, and programs that would be constructive and feasible uses of OSLTF **prevention grant program funding**, we have included in the enclosure to this letter a list of such activities, projects and programs for possible use by the Secretary of the Department of Homeland Security in evaluating oil spill prevention activities, projects, and program applications from the states.


In developing this list, the Councils sought comments from the stakeholders within the two Councils as well as other stakeholders, including the Pacific States British Columbia Oil Spill Task Force; Nuka Research and Planning Group; the Alaska Department of Environmental Conservation; the State of Washington's Department of Ecology and others.

We appreciate this opportunity to offer the enclosed comments and recommendations on the draft SRPSA for your review and consideration as you, the other members of the Alaska Congressional Delegation, and your other colleagues work to enact the SRPSA as soon as that can be achieved.

We will be standing by to respond to any questions or requests for further information that may be helpful to you, and to otherwise assist, as the SRPSA goes through the legislative process toward what the diverse membership of both Councils hope will be enactment of this landmark and legacy legislation that is so important to Alaska and to the rest of the United States.

Sincerely,


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Enclosure: Comments and Recommendations on the SRPSA

cc: Rep. Don Young
Sen. Lisa Murkowski
PWSRCAC and CIRCAC Board of Directors and Member Organizations

Comments and Recommendations
by the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC)
and the Cook Inlet Regional Citizens Advisory Council (CIRCAC)
on the draft Spill Response and Prevention Surety Act

November 20, 2018

The following are comments and recommendations regarding the draft Spill Response and Prevention Surety Act language.

1. OIL SPILL PREVENTION GRANT PROGRAM

a. The bill would amend the Oil Pollution Act of 1990 by adding a new Section 4119 which creates the Oil Spill Response and Prevention Grant Program. Section (b) entitled “Establishment” states that the “Secretary shall **annually** award grants to eligible entities.....”. Section (e) entitled “Funding”, subsection (1) states that \$20,000,000 shall be available, without further appropriation, **biennially**, to carry out the grant program.....”.

Recommendation: Amend the title of the program to the "Oil Spill Prevention Grant Program" ("OSPGP") so as to ensure the focus of the program is on Prevention, as an essential complement to the programmatic rationale for the OSLTF which is oil spill response. Also, clarify the bill language to avoid possible confusion between the grant award cycle and the timing for transferring funds from the OSLTF to the OSPGP.

b. Section (d) entitled “Required Coordination,” subsection (1), provides that the Secretary shall coordinate with the Interagency Coordinating Committee on Oil Pollution Research (ICCOPR) to prioritize and award grants and to ensure alignment with the principal objectives established in the Oil Pollution Research and Technology Plan. The PWSRCAC and the CIRCAC believe that while ICCOPR is a logical and outstanding group to review *research grants*, and provide recommendations to the Secretary on oil spill research as it does currently, it would not be an appropriate entity to advise on non-research prevention grants. For those, other offices within federal agencies would be very appropriate and capable of helping to advise the Secretary upon request.

Recommendation: Amend the draft bill to clarify that the Secretary has the authority to seek and receive recommendations from other relevant federal agencies to assist the Secretary in evaluating grant awards for prevention activities, projects, and programs and ICCOPR where such activities, projects, and programs are oil pollution research but prevention related.

c. Section (e) entitled “Funding,” subsection (1) provides that \$20,000,000 shall be available, without further appropriation, biennially, to carry out the grant program.....”. The intent of this section and the establishment of the OSPGP is highly meritorious and has great potential to positively impact oil spill prevention. However, in the Council’s opinion, \$20 million every two years (\$10 million a year), is inadequate to yield a substantial positive impact on preventing oil spills. From experience, oil spill prevention is far less expensive by comparison than oil spill response after a spill; for industry, government, and the public. Therefore, allocating adequate resources toward prevention is one of the *best investments* the U.S. can make to avoid the harm and expense to people, their lives and livelihoods, the environment, and to the economy.

Recommendation: Change the amount available *biennially* for the Oil Spill Prevention Grant Program to \$60 million so that up to \$30 million *annually* could be granted to the states for oil spill prevention and prevention-related response activities, projects, and programs for grant applications approved by the Secretary.

2. INFLATION PROOFING

The section of the bill entitled “Fund Financing Rate” on page nine, contains Section 2 entitled “Inflation Adjustment.” This section provides for cost of living adjustments to the floor and ceiling of the unobligated Fund balance. The two Councils support inflation proofing in

order to keep pace with the real costs of responding to oil spills. However, the Councils recommend that inflation proofing also be applied to other components of the bill, including the limits on single incident and natural resource damage claim payouts and the biennial limit on funding for the Prevention Grant Program. By including such inflation proofing, the Congress would reduce or eliminate the need for legislation to adjust such figures in the future.

Recommendation: Include inflation proofing adjustments every four (4) years for all OSLTF components including the limits on single incident and natural resource damage claim payouts and the biennial limit on funding for the Oil Spill Prevention Grant Program.

3. **LISTING OF POTENTIAL OIL SPILL PREVENTION GRANT PROGRAM ACTIVITIES, PROJECTS, AND PROGRAMS**

The following is a listing of potential activities, projects, and programs recommended for consideration by the federal government for providing funding support to states from the OSLTF for an oil spill prevention grant program.

The input the PWSRCAC and the CIRCAC sought and received from a diverse group of agencies and stakeholders was categorized into six broad areas as shown below. OSLTF funding could be used to encourage and support oil spill prevention activities, projects, and programs by the states: inspections and evaluations, equipment and technology upgrades, training, contingency planning, risk assessment and studies, and abandoned and derelict vessel identification, remediation, and removal.

a. Inspections and Evaluations:

- (1) Testing of marine terminal and transportation facility secondary containment systems.
- (2) Periodic reviews of best available oil spill prevention technology and equipment.
- (3) Evaluation of national and international Best Available Technology (BAT) and Best Management Practices (BMP) at marine terminal and oil transportation facilities.
- (4) In support of BAT and BMP reviews, funding for state personnel to attend technical conferences, hire experts, host conferences, research specific technology improvements, and publish results for use by industry and regulators.

b. Equipment and Technology Upgrades:

- (1) Upgrade and/or provide additional vessel emergency tow packages to key areas around the states.
- (2) Provide additional response equipment caches around the states to protect environmentally sensitive areas.
- (3) Use of analytic tools to tailor response capacity. For example, if there is a response gap because of certain factors in an area, making sure equipment stockpiles are the most fit-for-purpose technology to deal with the response limits.
- (4) New technology and equipment demonstration projects or pilot programs to benefit oil spill prevention.

c. Training:

- (1) Upgrade and promote optimal use of spill prevention and response training facilities like the AVTEC Marine Vessel Simulator in Seward, AK.
- (2) Training for states to ensure compliance with American Petroleum Institute (API) marine terminal and secondary containment system and piping and tank system inspection, maintenance, and repair standards.
- (3) Training state staff on corrosion mitigation techniques.
- (4) Review corrosion mitigation plans currently used by industry and to inform and make recommendations for improvements aimed at preventing oil spills.
- (5) Training for state staff in pipeline inspection technology, equipment, and methods and/or hire experts to assist in reviewing pipeline inspection plans currently used by industry to inform and make recommendations on improvements aimed at preventing oil spills.
- (6) Support state outreach initiatives such as home heating oil tank maintenance and risks and additional research on proper storage and maintenance of those tanks to prevent oil spills.
- (7) Educating tank truck companies on safety procedures and mitigating the risk of (i.e., preventing) oil spills through state-sponsored public forums.

d. Contingency Planning:

- (1) Expand the State of Alaska's Geographic Response Strategy (GRS) Program to better identify and protect additional environmentally sensitive areas from oil spills.
- (2) Support for states to conduct and participate in additional oil spill prevention exercises and inspections of prevention devices and equipment.
- (3) Strategic plans to assist states in prioritizing and remediating aging bulk oil storage and transportation infrastructure to help prevent oil leaks/spills.

e. Risk Assessment/Oil Spill Prevention and Studies:

- (1) Funding for risk assessments on bulk oil facilities, vessels, and pipelines to identify and address areas of concern.
- (2) Vessel traffic analyses that occur with some regularity to inform understanding of overall ship movements and potentially changing patterns or risks.
- (3) Support Harbor and/or Waterway Safety Committees to bring together key stakeholders in oversight roles.
- (4) Building better information/data management systems and sharing across coastal states (U.S.-wide) so that cross-boundary risks and patterns can be assessed and best prevention management practices can be shared.
- (5) Support for improved methods or increased organizational capacity to capture and leverage near miss information (i.e., British Columbia Coastal States Task Force). This data could be used to inform human factors related casualty incidents and identify ways to mitigate risks and prevent reoccurrence.
- (6) A formal vessel risk assessment study to determine and document the current and forecasted increase in Arctic/Alaska vessel traffic and analyze the potential for oil spills.
- (7) A study to determine and document the logistical challenges and inherent difficulties with launching and sustaining an effective oil spill response in remote locations.
- (8) Support for robust state agency involvement in Waterway and Harbor Safety Committees responsible for identifying and reducing port and harbor vulnerabilities and maritime risks including vessel casualties and oil spills.

f. Abandoned and Derelict Vessel and Facility Identification, Remediation, and Removal:

- (1) Assist states with the removal, remediation, and destruction of pre-identified abandoned and derelict vessels prior to them becoming a hazard to the communities they are left in and the environment.
- (2) Support for additional Class 2 Facility Inspections and/or the development of an abandoned facility inventory in an effort to identify and prioritize risk to aid in preventing oil spills.
- (3) Technical assistance and training via in person and telephonic engagement with facilities which is critical for oil spill prevention, especially in rural facilities.

Recommendation: That the language of the bill reflect that the primary purpose of the section is oil spill prevention. The primary focus of the OSLTF has been and is oil spill response and clean-up. The PWSRCAC and the CIRCAC believe that because of the historic focus of the OSLTF on oil spill response, the prevention grant program should be aimed at encouraging greater efforts by the states to prevent oil spills. Also recommend incorporating by reference the above list of activities, projects, and programs in the legislative history of the SRPSA. Such a list could then be utilized by the Secretary and the states and may be considered in applications to the Secretary from states for grants from the OSLTF that the Secretary determines would be directly beneficial to the prevention of oil spills, to include oil spill response activities, projects, and programs, if they would have a primary and distinct benefit to the prevention of oil spills.