VOLUME 6 REPORT OF TASK GROUP FIVE Government Management



FOR THE BEAUFORT SEA STEERING COMMITTEE April 1991



GOVERNMENT MANAGEMENT

for BEAUFORT SEA STEERING COMMITTEE

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Mr. Robert Hornal Chairman, Beaufort Sea Steering Committee Hornal Consultants Ltd. 401 - 1755 West Broadway Vancouver, B.C. V6J 4S5

Dear Mr. Hornal:

Canada

On behalf of Task Group Five I am pleased to submit our report concerning government management of oil spills in the Beaufort Sea.

The fundamental question addressed by the task group is: should responsibilities for oil spill management functions associated with hydrocarbon development be transferred to the Minster of Transport from the Minister of Indian and Northern Affairs? The scope of such responsibilities would be broad - ranging from review and approval of industry contingency plans to lead responsibility in the event of a spill caused by a drilling accident. Such a transfer of responsibility would require major changes to the way the federal government manages oil and gas activity.

There has never been to our knowledge an indepth assessment of this particular issue. While several recent public inquires have examined oil spill management related to shipping/tankers, the assignment of responsibilities for oil spill prevention and clean up associated with offshore exploration drilling has not been addressed. Perhaps the inquiry into the Ocean Ranger disaster off the east coast provides the best indication of overall government management issues associated with hydrocarbon drilling. This inquiry found that there must be a single agency responsible for all aspects of drilling and associated emergency response measures. Task Group Five has concluded that the suggested transfer of responsibility from the Department of Indian and Northern Affairs to the Department of Transport would not add to Canada's ability to prevent and respond to major oil spills from a well blow out in the Beaufort Sea. Indeed the division of responsibility between two departments would perhaps result in greater ambiguity over who is in charge.

Although overall responsibility for oil spill management should remain with DIAND, the expertise of other departments, in particular Transport Canada (Canadian Coast Guard) and Environment Canada, as well as the territorial governments, must be used in oil spill prevention and response. The government organization and structure for spill prevention and response is therefore necessarily complex. The Arctic Seas Strategy (1986) is a sound framework; however, we noted that this policy should be reviewed and amended to address, among other things, Inuvialuit involvement, scientific response and linkages between lead and resource agencies. We have recommended a person be assigned, full time, at least for the next three years, to improve government contingency planning for offshore spills. The establishment of this new positionwould be consistent with the government's commitment, in the Green Plan, to improve oil spill preparedness.

I would like to take this opportunity to thank the Beaufort Sea Steering Committee for asking us to undertake this work. I would be pleased to discuss our work with the Committee should you believe this would assist you in preparing recommendations for the Minister.

Yours sincerely,

Chris Cuddy Task Group Leader

c.c. Task Group Members

Report on Beaufort Sea Oil Spill Management

Submitted to Government/Industry/Inuvialuit Beaufort Sea Steering Committee

by

Task Group Five Government Management

February 12, 1991

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ATTACHED

Report on Bilateral Canada/United States Meetings Concerning Beaufort Hydrocarbon Development

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I. ACKNOWLEDGEMENT

This report on government oil spill management was prepared by Task Group Five, whose members consisted of Bob Allen of Environment Canada, Richard Binder of the Inuvialuit Game Council, Chris Cuddy of Department of Indian Affairs and Northern Development (Chairman), Shawn Gill of Canada Oil and Gas Lands Administration, Tim Hawkings of Esso Resources on behalf of the Canadian Petroleum Association, Brian Love of the Yukon Government, Ian Marr of the Coast Guard, Doug Matthews of the Northwest Territories Government and Rod Patterson of Fisheries and Oceans. The work of the Group was supported throughout by J. Anthony Stikeman of Corporation House Ltd., and Michael Jarvis of Michael Jarvis Consultants Ltd.

II. EXECUTIVE SUMMARY

The Beaufort Sea Steering Committee directed Task Group Five to examine the policy and legislative base for the government's management of major marine oil spills in the Beaufort Sea and to recommend improvements to the existing organizational arrangements. In particular, the Task Group was instructed to consider the EIRB's recommendations that the government's responsibilities for contingency plan approval, countermeasures and clean-up be concentrated in one agency, preferably the Canadian Coast Guard (CCG), regardless of the source of the oil spill and that the government authority responsible for oil spill clean-up become the approval agency for all oil spill contingency plans.

The federal government's oil spill prevention and management plans rest on a variety of Acts and supporting regulations which govern drilling for oil and gas, marine transportation and land use activities. These statutes and associated regulations reflect certain fundamental government policies, namely: the oil and gas operator will implement and pay for all appropriate measures to prevent, prepare for and respond to an oil spill; government will take the lead only if the operator is unable to respond; depending on the source of the spill, a specific government agency will assume the role of lead agency to ensure that appropriate clean-up measures are taken and the environment is adequately protected; the lead agency will be supported by one or more resource agencies with unique expertise to provide specific assistance; and the lead agency will designate an on-scene Commander.

The policy framework is currently centered in the Government Strategy for Marine Pollution Incidents in the Arctic Seas Region (1986) which sets out a requirement for all appropriate government departments and agencies to establish an interlocking

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system of contingency plans. The Department of Indian Affairs and Northern Development is responsible for this oil spill policy framework.

In order to determine the optimum government system to manage its Beaufort Sea oil spill responsibilities, Task Group Five examined three organizational options, namely:

- (i) a special oil spill agency;
- (ii) a single government department responsible for all oil spills, regardless of source;
- (iii) a single government department responsible for spills according to their source.

In considering these alternatives, the Task Group considered several criteria for success including clearly defined roles for a single lead agency and supporting resource agencies, a continuum of responsibility by a single agency from approval of the operator's contingency plans to final clean-up, arrangements to keep the public informed about plans and operations, and cost effectiveness. The Task Group also assumed that the most likely cause of a major marine oil spill in the short to mid term was an oil well blow-out.

The Task Group determined that the first option, a special oil spill agency would have certain advantages, namely it would be highly visible and it would concentrate the government's authority for oil spill management in one organization which could improve the public's confidence in the government's preparedness and response capability. On the other hand, it could be difficult to justify given the limited drilling forecasted in the Beaufort Sea. It would require new funding without offsetting budget decreases in existing agencies, it could lead to a duplication of effort and has the potential for confusion among ministerial responsibilities. The second option, a single agency responsible for all oil spills regardless of source, assumes that the CCG would act as lead agency for all spills in the Beaufort Sea whether they are caused by a well blow-out, a ship spill or an onshore spill. This option could also strengthen the public's confidence in the government's preparedness by being able to identify a single agency in charge of all spills. However, the CCG does not have any expertise in well drilling or control and this was considered a significant disadvantage because a blow-out is considered the most likely source of a major spill. Furthermore, this option would make it impossible to establish a single regulatory window for the Beaufort Sea because certain COGLA oil and gas management responsibilities could not be delegated to another agency.

The Task Group concluded that the option which would facilitate the most efficient and effective government management is the one where the lead agency is designated according to the source of It would be sufficiently flexible to allow different the spill. departments to take complete charge of those spills for which they have the most technical expertise, resource capability and legislative responsibility. For drilling and well blow-out control, this would be COGLA (DIAND). This is consistent with the assignment of responsibility for oil spill counter-measures and clean up on the East Coast of Canada, as well as in the United States and the United Kingdom. This management approach would give a specific department such as COGLA (DIAND) full and continuous responsibility and accountability for all aspects of prevention, countermeasures and clean-up related to spills under its jurisdiction.

The Task Group made certain recommendations to improve the Government's management of its Beaufort Sea oil spill responsibilities. Certain recommendations are intended to strengthen the government's existing policy framework, the Arctic Seas Strategy. These include examining the Strategy in depth,

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evaluating the government's contingency plans and level of preparedness, ensuring that industry and government fully understand each other's roles and responsibilities, and tabling annual reports.

Other recommendations would ensure that the roles of the CCG and COGLA are clarified and formally documented in a manner that can be clearly understood within government and by residents of the Beaufort region.

III. RECOMMENDATIONS

Task Group Five examined three organizational options to improve the government's management of major marine oil spills in the Beaufort Sea. The Task Group developed the following recommendations to give effect to its conclusions which flow from the fundamental proposition that the department responsible for regulating oil and gas drilling must have full responsibility for spill prevention, clean-up and compensation.

These recommendations are consistent with the concerns registered in several recent reports on marine oil spill and the "Green Plan" which committed the Government of Canada to improvements in contingency planning, equipment, training, research and technology development.

- 1. The Minister of Indian Affairs and Northern Development should exercise his mandate to coordinate federal activities in the north by ordering an immediate, in depth evaluation of the government's existing policy framework for countermeasures and clean-up of arctic marine spills, namely the Arctic Seas Strategy (1986). Changes should reflect the concerns of the Inuvialuit about the possibility of spills which impact wildlife.
- 2. A full-time, senior level official should be assigned the responsibility to manage the evaluation of and subsequent changes to the Arctic Seas Strategy. This official should be located in the north and have sufficient authority and resources to ensure full and proper evaluation of the government's contingency plans. This individual should also be charged with coordinating communications with the Beaufort Sea communities, territorial governments and native organizations to increase the level of understanding and communication about oil spill contingency plans,

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countermeasures and clean-ups. A summary of the policy framework, operational plans and inter-agency agreements should be published.

- 3. The Minister should require and publish an annual report on the level of preparedness of the government departments and agencies fulfilling their responsibilities under the Arctic Seas Strategy.
- 4. The role of the Canadian Coast Guard in responding to non-ship source marine spills in the Beaufort Sea must be clarified and formally documented in a manner that can be clearly understood within government and by residents of the Beaufort region. The COGLA-CCG memorandum of understanding and contingency plans should specifically indicate that, in the event of a well blowout, what countermeasures and clean-up activities CCG would be required to undertake.
- 5. The role of COGLA in responding to drill-sourced spills in the Beaufort Sea must be clarified and formally documented in a manner that can be clearly understood within Government and by residents of the Beaufort Region. This role must also be clearly reflected in each of the contingency plans which make clear when a COGLA OSC would be appointed, and what are the respective responsibilities of the government and the operator.
- 6. COGLA should continue to submit industry's proposed contingency plans to other departments and agencies for comment. Their analysis and recommendations should be formally documented by a "sign off" before COGLA issues a Drilling Program Approval (DPA).

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7. In reviewing applications for a DPA, government must ensure that the operator can demonstrate that there is full and mutual understanding by industry and government of each other's roles and responsibilities. Formal commitments by all parties of what they are expected to do in the event of an incident should be undertaken on a case by case basis.

IV. INTRODUCTION

The Environmental Impact Review Board (EIRB) released a report in June 1990 recommending against plans by Gulf Canada Resources Ltd. to drill an oil well in the Beaufort Sea. Noting that the Board had raised wide ranging concerns, the Minister of Indian and Northern Affairs established the Beaufort Sea Steering Committee in October, 1990 to advise him on issues relating to oil and gas activity in the Beaufort Sea.

To assist the Committee in its work, seven Task Groups were established to look into oil spill-related issues ranging from worst case scenarios to remedial and restorative action and compensation and liability.

Task Group five, whose report follows, was instructed by the Steering Committee to look into government management of oil spills in the Beaufort Sea. Specifically it was asked to consider the EIRB's recommendations 1 and 2.:

Recommendation 1

"The governmental responsibility for oil spill countermeasures and clean-up activities, either in support of a developer or pursuant to intervention obligations, must be concentrated in one governmental agency, preferably the Canadian Coast Guard, regardless of the source of the oil spill."

Recommendation 2.

"The governmental authority responsible for oil spill clean-up must become the approval agency for all oil spill contingency plans, which should include oil spill countermeasure plans, oil spill clean-up plans and oil spill related wildlife protection plans. The prior approval of

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all such plans must be made a condition of the granting of any DPA."

In carrying out its work, the Group drew on the wide ranging experience of its members, which included representatives of the federal and territorial governments, industry and the Inuvialuit. It also considered the findings of other relevant oil spill studies and investigations. These included the "Report of the Public Review Panel on Tanker Safety and Marine Spills Response Capability" (1990), the "Report to the Premier on Oil Transportation and Oil Spills B.C.", (1991), and the final report of the Beaufort Sea Environmental Assessment Review Panel on Beaufort Sea Hydrocarbon Production and Transportation (1984). Oil spill management structures of other countries were also considered.

In preparing its report, the Group assumed that oil will not be produced in the Beaufort Sea for several years and that the principal source of a major spill over the short to medium term will be a well blowout. The potential for spills from oil carried by smaller vessels for fuel or resupply purposes was also considered. It was also noted that oil and gas operators would have primary responsibility for dealing with oil spills and that Government's role is to ensure that they could do so effectively.

Task Group Five evaluated three options:

- (i) A special oil spill agency
- (ii) A single government department responsible for all oil spills regardless of source; and
- (iii) A single government department responsible for spills according to their source.

The Task Group examined legislation, regulations, and contingency plans to determine how the existing arrangements evolved. A separate volume containing the referenced appendices provides further information to readers wishing to examine the subject matter in greater depth. A list of appendices follows at the end of this report (see Section IX).

V. DISCUSSION

a) LEGISLATION

The federal government's offshore oil spill prevention and management plans rest on a variety of Acts and supporting regulations and official guidelines. A brief overview follows.

- i) Drilling and Production the Oil and Gas Production and Conservation Act and its supporting regulations and guidelines require an operator, among other matters, to prepare a plan before drilling an oil well or producing from one. Drilling arrangements, including relief wells, are to be described along with spill contingency arrangements. Work cannot proceed until the plan is approved by the Canada Oil and Gas Lands Administration. The Canada Petroleum Resources Act's provisions include enabling the drilling and production rights of an operator to be cancelled if he does not comply with the applicable legislative requirements and his commitments under them.
- ii) Marine Transportation the principal acts applying to marine oil pollution in the Beaufort Sea are the Arctic Waters Pollution Prevention Act, the Ocean Dumping Control Act, and the Canadian Environmental Protection Act. Subjects covered include ship construction, navigation and communication standards, dumping of waste in arctic waters and liability and compensation and the seizure and forfeiture of offending ships.
- iii) Others additional relevant legislation includes the Western Arctic Claims Settlement Act, the Territorial Lands Act, the Fisheries Act and others.

A more detailed outline of the supporting acts, regulations and guidelines can be found in Annex I.

b) POLICIES

For many years, federal government policies governing oil spill management have had certain fundamental components.

First, the premise that the polluter will implement and pay for all appropriate prevention, preparedness and response measures to oil spills from drilling operations. If the situation is of such magnitude that the polluter is unable to respond adequately or cannot be identified or chooses not to initiate countermeasures, government will take the lead in managing the spill response.

Second, due to the international origins of marine shipping and the evolution of international marine law, ship owners are not required to ensure the same level of oil spill preparedness or response as drilling operators.

Third, depending on the source of the spill, a specific government agency assumes the role of lead agency to ensure that appropriate clean-up measures are taken and that the environment is adequately protected. For every spill which occurs, there is always a designated lead agency, a designated point of contact for the lead agency, a designated On Scene Commander for the polluter/spiller and a number of resource agencies who may be called upon to assist the designated lead agency. If the situation so develops that the polluter is unable to respond adequately, or if the polluter cannot be identified or chooses not to initiate countermeasures, government will, as noted above, take the lead in managing the spill response. The historical background to the Government's framework policies regarding Beaufort Sea marine spills can be found in Annex 2. Currently, they are:

- (i) Government Strategy for Marine Pollution Incidents in the Arctic Seas Region (April 16, 1986) (See Chart I and Appendix J). This strategy received full and official endorsement by nine federal and Government of NWT Deputy Ministers and remains in effect today. It has several objectives:
 - to provide a framework within which existing authorities and arrangements can be applied;
 - to describe the mechanism available for coordinating and reviewing overall government planning;
 - to identify the principal phases of the government's response to an emergency event,; and
 - to clarify the priority of operational plans by specific emergency.

The strategy provides an overall framework for response, and is not intended to be an operational plan describing the processes for dealing with a specific emergency. These are the direct responsibility of the departments "so charged by established legislation or Government policy".

After describing the need for a strategy and defining certain key terms, the document then turns to planning and preparing for emergencies. A Task Force of federal and territorial officials is established under a coordinator from DIAND. Its responsibilities are to ensure that overall government preparations are complete and meet "satisfactory standards".

GOVERNMENT OIL SPILLS CONTINGENCY PLANS

Arctic Seas Strategy (1986) DIAND, CCG, COGLA, EMR, DOE EPC, GNWT, DND, DFO



The importance of "consistency and coordination" between operational plans is emphasized. Responsibility for specific emergencies is left to individual departments to be dealt with "in accordance with their legislation mandate".

Individual departmental and agency plans are to be referred to the Task Force for review, coordination and "general assessment of the overall state of preparedness". The Task Force is to become involved in the operational phase only if there is uncertainty as to which plan should be activated in response to a particular event. In such a case, a coordinator appointed by DIAND will designate which department or agency is to take the lead.

(ii) National Marine Emergency Plan (NMEP) established by the CCG in May, 1977 (See Appendix K).

This plan, which is currently under review, has as its objective the implementation of "a truly comprehensive national contingency plan through a cooperative Federal-Provincial-local approach. The NMEP is designed to provide the basis for the CCG element of that comprehensive plan. The Plan establishes the policy for responding to all peacetime marine emergencies where the CCG either is tasked as, or supports, the agency leading the response".

The NMEP establishes CCG as the "lead agency responsible for all emergencies resulting from vessels, including their equipment, cargo, fuel and stores, in waters of Canadian interest". It also establishes CCG's "inherent responsibility to act as a major resource agency by responding to emergencies beyond its mandate when requested to do so by the lead agency".

The Plan establishes the procedures for the rapid activation of a command structure and the marshalling and deployment of the appropriate resources to respond to any marine incident. The Plan also establishes the basis for regional plans, of which CCG's Arctic Marine Environmental Emergency Plan is one.

An outline of the various contingency and other plans relating to Beaufort sea oil spills follows in Annex 3. Currently, the designated lead agencies for Arctic marine spills are as follows:

	Lead	Legislative
<u>Spill Incident</u>	Agency	<u>Base</u>
Spills from oil and	COGLA	Oil and Gas Production
gas exploration and		and Conservation Act
production		
facilities		
Spills from ships	CCG	Arctic Waters Pollution
and barges		Prevention Act, Canada
		Shipping Act
Spills from facili-	DIAND	Arctic Waters Pollution
ties/operations		Prevention Act, Northern
permitted under		Inland Waters Act, Public
DIAND legislation;		Lands Grants Act,
winter ice road		Territorial Lands Act
spills; and mystery		
spills		
Spills from federal	EP	Fisheries Act, CEPA,
facilities not		Cabinet Record of
permitted (i.e.		Decision
licensed) under		
federal or		
territorial		
legislation, spills		
in National Parks		
Spills within	GNWT/YTG	Environmental Protection
communities and on		Act, Transportation of
Commissioner's lands		Dangerous Goods Act

c) OPTIONS

In light of the EIRB (Kulluk) report and a general concern about oil spill preparedness, Task Group Five considered three approaches to government management of oil spill countermeasures and clean-up on the Beaufort Sea. These are:

- (i) a special oil spill agency;
- (ii) a single government department responsible for all spills regardless of source; and
- (iii) a single government department responsible for spills according to their source.

In considering these alternatives, the Task Group concluded that a government oil spill prevention and management organization for the Beaufort Sea should satisfy several key criteria, as follows:

- the oil and gas operator must have first level responsibility and capability to respond to an emergency;
- clearly defined roles for all government departments, including designated ministerial responsibility, which are laid out in a clear, public policy framework and supported by the necessary legislation and regulations;
- a single lead agency and a designated on-scene commander;
- the principles of lead and resource agencies must be embodied in any management system to ensure that all appropriate government resources will be brought to

bear in response to a marine oil spill; for example, specific tasks would be handled by the most suitable resource agency based upon its applicable expertise;

- a continuum of responsibility by a single lead agency from review and approval of industry contingency plans through to final clean-up, including full control and approval of all operator activities plus prevention and response plans;
- a single regulatory window is required for the management of oil and gas activities, including countermeasures and cleanup;
- there must also be a provision for the lead agency to recover the costs of the countermeasures and clean-up through immediate access to funds and to ensure its full coverage against all liabilities;
- the residents of Beaufort Sea communities should be consulted to ensure that the government management is responsive to Beaufort Sea conditions such as the requirements of the Inuvialuit Final Agreement;
- agreements to ensure that the activities of the participating government agencies and departments and industry and contracted resources are effectively coordinated before, during and after an oil spill;
- arrangements to keep the public informed of the oil spill prevention and response plans of government and operators;
- address all sizes and sources of marine spills;

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- cost effectiveness;
- an increased industry response capability, including greater use of local expertise for prevention and clean-up, improved coastal zone sensitivity mapping and higher level of oil spill R&D;
- acknowledge arrangements in other parts of Canada, in other countries and international agreements.

The following section reviews the three options which the Task Group examined to determine how the federal and territorial governments could most effectively carry out their oil spill management responsibilities.

The Task Group considered the advantages and disadvantages of all three options in relation to the Beaufort Sea situation, namely, the likelihood of a major spill originating from a well blowout and the consequent need to focus primarily on drilling rather than ship source incidents. The Task Group also considered small spills which could have important environmental impacts. A description of each of the management options is discussed below, as follows:

- a new oil spill agency which would coordinate and approve the government's and operator's oil spill management plans and undertake lead agency responsibilities in the event of a spill, regardless of source;
- a single agency, namely CCG, which would act as lead agency for all spills, regardless of source; and

- a single agency in which the lead agency would be designated according to the source of the spill (ie. well blowout, ship spill or land based accident);
- (i) Oil Spill Agency

Two types of special oil spill agencies were explored by the Task Group. First was the concept of a major new government institution. It would absorb the resources and budgets of existing federal agencies such as the CCG and COGLA. It would be responsible for hands-on management of all aspects of prevention, contingency planning and response by government and the operator for all major spills in the north, regardless of source.

The Task Group determined this option to be impractical to implement given the high cost of establishing a new responsibility centre. Furthermore, it would add another layer of bureaucracy without contributing any additional resources (financial or technical) or expertise.

Consequently, the Task Group considered a scaled down version of a new national or regional agency as being more appropriate and practical. Under this scenario, resources and budgets would not be transferred to the new agency from existing agencies. The new oil spill agency would assume responsibility for coordinating and approving the government's and operator's plans and it would undertake lead agency responsibilities in the event of a spill, at which time it would contract with existing agencies (eg. the CCG and COGLA) for resource agency support. This option was deemed by the Task Group to have certain advantages, as follows:

- it would concentrate the government's authority for oil spill management on the Beaufort Sea in one organization;
- it could be highly visible and could contribute to improved public confidence in the government's preparedness and response capability for all marine spills;
- it would provide a continuum of responsibility in one agency for all prevention, countermeasures and clean-up activities;
- it would eliminate any shortcomings which could arise if an existing agency were placed in overall charge because of their natural biases and traditional modus operandi toward one type of spills versus another;

On the other hand, it would present several problems:

- it would require new federal funding without offsetting budget decreases in existing agencies;
- it could be difficult to justify given the forecast of only limited drilling activity in the Beaufort Sea;
- it could pose difficulties in allocating responsibilities among existing agencies because of concerns by those agencies towards a new institution with no practical experience;

- it could lead to duplication of effort;
- Ministerial accountability could be a problem if the new agency and existing agencies were not always able to agree; there is, therefore, no assurance that this option would reduce the confusion about who is ultimately in charge;
- it would not add any new expertise to the all important task of preventing and responding to an oil well blowout;
- to be competently staffed, it could either hire away the best people from existing agencies or it could recruit their expendables; in both scenarios, either the new agency or the existing agencies would lose competence;
- (ii) Single agency CCG

The single agency concept, namely the designation of the CCG as the lead agency for all major spills in the north - regardless whether they originate from an oil well blow-out or onshore facility or a ship accident was the preferred option of the EIRB in its report.

Under this option, the CCG would be responsible for all aspects of oil spill countermeasures and clean-up activities related to the well head, including drilling and contingency planning approval. The Minister of Transport would have many of the responsibilities now held by the Minister of DIAND. Other agencies would be designated as resource agencies for specific tasks such as COGLA for all aspects related to drilling and rig safety. This option would have several positive features, namely:

- it could strengthen the public's confidence in the government's state of preparedness by being able to identify a single agency in charge of all marine spills;
- hands-on direction of all aspects of oil clean-ups on the water and spill prevention, planning and response by an experienced agency;
- it would provide a continuum of responsibility by ensuring that a single agency would manage a spill response without interruption;

On the other hand, it poses certain difficult problems, as follows:

- This option would probably result in considerable overlap of responsibilities. It would be difficult to clearly define the roles and responsibilities of COGLA (DIAND) and the CCG (Transport Canada) in oil and gas management. In particular, the assignment of responsibility related to financial liability/compensation and government intervention in the industry response would be problematic.
- Given that the most likely cause of a major spill in the Beaufort Sea is an oil well blow out and not a ship incident, the overall management objective should be to prevent and respond to a drilling accident. In this regard, the CCG's traditional role and expertise relates to shipping and not drilling.

- The division of responsibility between COGLA and the CCG would eliminate the single window regulatory regime for hydrocarbon exploration. The highly technical and complex nature of drilling, in particular accident prevention and response, requires a unique legislative and management regime. Oil and gas management regimes in Canada and in many other countries provide for one agency to have continuous responsibility from the initial planning and approval of an offshore drilling operation to the final clean up and restoration in the event of an accident.
- The CCG expertise in oil spill planning and response is centred on marine operations.
 However, much of the drilling in the Beaufort Sea takes place during the winter from ice and sand islands. The CCG does not operate in the north during the winter, whereas DIAND has bases in the north.
- The transfer of responsibility from COGLA (DIAND) to CCG (Transport Canada) would complicate the potential establishment of oil and gas boards under the proposed Northern Accord. The pattern established in the Atlantic Accord is to give the east coast boards full responsibility for all aspects of oil and gas drilling, including oil spill prevention and response.

(iii) Single Agency designated by Spill Source

In this option, the government management would be handled by a single lead agency according to the source of the spill. This agency, supported by resource agencies as necessary, would have continuous responsibility for the government's role in all aspects of a Beaufort Sea spill without any change in command from early planning through to final restoration of the environment.

This approach, whose underlying concept is embodied in the 1986 Arctic Seas Strategy, has several favourable features which meet the general criteria described above:

- this management approach would give a single department full and continuous responsibility and accountability for all aspects of prevention, countermeasures and clean-up related to specific activities under its jurisdiction; this would obviate any change in the continuum of responsibility which could weaken the chain and potentially lead to confusion of roles and responsibilities in the event of a spill;
- it would be sufficiently flexible to allow several different departments and agencies to take complete charge of those spills for which they have most technical expertise, resource capability and legislative responsibility; for example:

well and well blow-out control COGLA (DIAND) ship spills CCG (Transport)

 given inter-agency cooperation and coordination as essential pre-requisites, there would be a seamless weave of planning, prevention and response measures;

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- COGLA would act as lead agency for enforcing drilling regulations and responding to oil well blow-outs, which is entirely appropriate because it has the best technical and management capability to do the job; a properly drilled and serviced well is the single factor most likely to prevent a spill, and the COGLA Administrator's role is therefore central to the government's oil spill management plans;
- it would be consistent with the agencies on the East Coast where responsibility is assumed by the Accord Boards;
- it would be consistent with U.S. and U.K.
 arrangements where responsibilities are divided
 between oil and gas agencies and agencies
 responsible for shipping;

On the other hand, this option poses certain problems or disadvantages which would need to be remedied to be an acceptable management system;

- The absence of a single agency responsible for all spills, regardless of source, could lead to confusion among the public, particularly northern residents, about who is ultimately in charge.
- this option may not alter the perception,
 particularly in the north, that existing
 government response management is inadequate;

- both the CCG (Department of Transport) and COGLA (DIAND) agencies must be prepared to handle a spill management, including planning, prevention and response tasks;
- currently, there is no legislative or regulatory basis to ensure coordination between lead and support agencies.

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VI. CONCLUSIONS

Oil related activity in the Beaufort Sea Region over the short to medium term is expected to be in the form of exploration, rather than production activity. Should preventative measures fail and a major spill occur within the next few years, the source is therefore most likely to be a well blow-out, not a ship accident.

Underlying all industry and management plans for Beaufort Sea drilling is the need to emphasize prevention as the highest priority. However, when an accident such as a well blow-out occurs, the first line of responsibility for all countermeasures and clean-up must rest with industry.

For its part, governmental responsibility for oil spill prevention, countermeasures and clean-up should rest undivided with a single government agency. The Task Group therefore agrees with the EIRB's second recommendation, namely that "the governmental authority responsible for oil spill clean-up must become the approval agency for all oil spill contingency plans".

In the event of a well blow-out, controlling the flow of oil will be the most important first step. Lead responsibility should be given to the one agency, in this case COGLA, which has the greatest well drilling expertise and responsibility for approving the operator's emergency response plans before drilling begins. It is therefore the government agency most familiar with these plans and other drilling factors which would come into play should a blowout occur.

The concept of different lead agencies to handle well and ship incidents is consistent with arrangements in other jurisdictions. It acknowledges the fundamental distinction between drilling and shipping, and it reinforces the single window approach to government management of oil and gas drilling activity.

If an operator is unable to deal satisfactorily with an oil spill and the government is required to take control, intervention should take place within a clearly defined and effective management framework. The preferred government management option rests upon the designation of a single lead agency according to the source of the spill (i.e. well blowout, ship spill, or land based). Each lead agency would assume overall responsibility for all aspects of the government's role, from prevention and contingency planning to countermeasures and clean-up.

Because of the many activities that make up an oil and gas drilling venture, the overall management structure must be backed up by a series of formal undertakings by those departments and agencies best able to provide support services. Existing contingency plans and inter-agency agreements should, therefore, be comprehensively and immediately reviewed with a view to strengthening them. All stakeholders should be included in this review particularly the Inuvialuit whose concerns about the environmental impact of an oil spill on their lands and adjacent waters must be addressed. There must also be an adequate legal and regulatory base for any changes made in present arrangements.

To avoid delays in an emergency, the financial authorities needed to enable an immediate operational response as well as timely compensation should be prepared in advance. A full description of the governments' oil spill prevention, countermeasure and clean up plans should be prepared, periodically updated and published in order to improve the visibility and substance of the government's management plans and to increase the public's confidence in them.

VII. ANNEXES

Annex 1. Acts, Regulations and Official Guidelines

The federal government's Beaufort Sea oil spill management policies and plans rest on a variety of Acts and supporting regulations and official guidelines. In most cases, the legislation applies on a sectoral basis, for example, operating a ship, drilling an oil well or protecting wildlife, rather than to environmental considerations. Only the Arctic Waters Pollution Prevention Act is directly concerned with contamination of the northern seas and the penalties to be applied if its provisions in this regard are not observed. Because the responsibility for the administration of the various Acts and regulations rests with a number of departments and agencies, the measures instituted to prevent or deal with an oil spill are complex.

a) Canada Shipping Act

The Act is concerned with the safe operation of ships. However, in the north, its pollution provisions are replaced by the Arctic Waters Pollution Prevention Act with respect to the prevention and control of pollution and liability and compensation. The Act is enforced by the Department of Transport (CCG).

b) Arctic Waters Pollution Prevention Act

The Act prohibits the unauthorized dumping of waste into arctic waters or on any land where such waste may drain into arctic waters. For purposes of the Act, waste includes any substance that, if added to the arctic waters, would be detrimental to their use by persons, wildlife and plants. Its provisions cover such matters as the deposit and reporting of waste (Sections 4 - 5), the liability and financial responsibility (Sections 6 - 9), shipping safety control zones (Sections 11 - 12), the seizure and forfeiture of offending ships (Section 13), and the designation and powers of pollution prevention officers (Sections 14 - 23). Excerpts from the Act follow as APPENDIX B.

Responsibility for administering the Act rests with CCG for matters relating to shipping and with DIAND for non-shipping matters.

The relevant regulations coming under the Act include:

- i) <u>Arctic Shipping Pollution Prevention Regulations</u> cover such matters as ship construction, navigation and communication standards and the terms under which Arctic Pollution Prevention certificates may be issued.
- ii) Arctic Waters Pollution Prevention Regulations set out the requirements for financial responsibility and the limits of financial liability of ship and cargo owners.
- iii) <u>Other</u> cover a variety of subjects such as the requirements for navigating appliances and equipment, deck watch and navigational personnel standards, steering appliances and equipment.

There is also an Order delineating those areas in the arctic designated as shipping safety control zones under articles 11 and 12 of the Arctic Waters Pollution Prevention Act.

c) Canadian Petroleum Resources Act

The Act provides the legislative base for Canada's frontier oil and gas policy. For example, it provides the issuance of exploration and production licences, certain Canadian ownership requirements, a royalty regime, an Environmental Studies Revolving Fund and the transfer, assignment and registration of oil and gas land rights. A further part containing Sections 101 -109 concern the administration and enforcement of the provisions of the Act. Of these, Section 105 enables the Minister to cancel the rights of an interest owner or holder if he does not comply with the requirements of the Act or the Oil and Gas Production and Conservation Act, including those provisions relating to pollution prevention and control. In the Beaufort Sea region, the Act is administered by DIAND through COGLA. Excerpts from the Act follow in APPENDIX C.

d) Oil and Gas Production and Conservation Act

The Act is the principal law governing the technical aspects of oil and gas exploration and production on Frontier lands. Its provisions cover such matters as the issuance of licences and authorizations, the making of regulations, certain exploration activities, waste of oil and gas resources, oil and gas spills as well as certain production activities. Of particular importance is Section 5(1), which empowers the Minister to revoke a licence or other authorization if the terms upon which it was issued are not complied with; and Section 5.1 which requires that a development plan be submitted and approved before authorization to begin work can be given. The development plan is to set out, among other matters, the environmental considerations

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arising from the proposed undertaking including the prevention of oil spills.

A copy of these Sub-Sections along with Sections 24 -28, which deal specifically with oil and gas spills, can be found in APPENDIX D.

In the Beaufort Sea region the Act is administered by DIAND through COGLA.

The relevant regulations coming under the Act include:

i) <u>Oil and Gas Drilling Regulations</u> - cover such matters as the standards, including those for safety, that must be met if approval is to be given to drill a well, the conditions that will be attached to such approval, inspection and related procedures, the drilling procedures themselves, record and reporting requirements as well as evaluation and termination requirements. Section 79 of the Regulations, the text of which can be found in APPENDIX E, requires operators to prepare a manual for all normal drilling and related operations as well as for all abnormal conditions that can be reasonably anticipated during normal drilling operations.

ii) <u>Oil and Gas Production and Conservation</u> <u>Regulations</u> -

Its contingency planning and safety provisions are analogous to those of the Oil and Gas Drilling Regulations.

To give further precision to the requirements of the Act, COGLA has issued a set of guidelines and procedures called Drilling for_Oil and Gas on Frontier The document's purpose is to assist actual and Lands. prospective oil and gas operators on frontier lands in meeting the requirements of the Oil and Gas Drilling Regulations. Matters covered include inspections, drilling unit requirements, emergency plans and drilling and other reports. The guidelines and procedures also have a number of supporting annexes of which G (which sets out the information to be included in the contingency plan called for by Section 79 of the Oil and Gas Drilling Regulations), is of particular significance. Subjects to be covered include relief well drilling arrangements and oil spill contingency plans. A copy can be found in APPENDIX F.

e) National Energy Board Act

Part III of the Act requires, in effect, that any company planning to construct a pipeline, including offshore, for purposes of carrying oil or natural gas across interprovincial or international boundaries must first obtain the Board's approval. Before this is given, the applicant must submit an environmental impact assessment containing, among other information, contingency plans for the accidental release of oil and gas during the pipeline's operation. The Board must also be given a plan setting out the applicant's policy and procedures for environmental inspection of the pipeline during its construction and operation. Copies of the Board's Act defining its powers with respect to pipelines and their construction and operation, and of Part VI of its draft Rules of Practice and Procedure which set out the requirements for the assessment and

inspection, can be found in APPENDICES G and H. The Act is administered by the National Energy Board.

f) Canadian Environmental Protection Act

The Act incorporates and strengthens previous legislation dealing with toxic substances by giving the federal government the power to regulate or ban their use. Its provisions of relevance to Beaufort Sea oil and gas related activities include the issuance of permits to control dumping at sea from ships, barges and man-made structures (normal discharges from oil and gas platforms are regulated under the OGCPA). Where a Territory's requirements are equivalent, they will be applied rather than the national standard.

The Act is administered by Environment Canada.

g) Canadian Environmental Assessment Act (Bill C-78)

The Act, which is currently under Parliamentary review, will replace the 1984 EARP guidelines order. Its purposes include:

- setting out the rules and establishing a legal basis for the assessment of the environmental implications of projects falling within the federal mandate
- ii) encouraging and facilitating public participation in the assessment process
- iii) giving the federal Minister of the Environment the authority to decide whether to subject a project to a full, public environmental review, and

iv) providing for environmental audits following completion of the project.

It should be noted that studies including public participation of major oil and gas projects will be mandatory. Where environmental responsibility is shared with another authority, a joint process can be used. A summary of the proposed legislation tabled by the Minister of the Environment follows in APPENDIX I.

h) Inuvialuit Final Agreement

The Western Arctic or Inuvialuit Claims Settlement Act (1984) conveys certain land and other rights to the Inuvialuit. One of the key goals of this Act is to protect and preserve the Arctic wildlife, environment and biological productivity of the settlement region. To help realize this goal, an environmental screening and review process has been provided for by the Act. The Environmental Impact Review Board (EIRB) was established to be the review body for development activity. Decisions containing the recommendations of the EIRB are transmitted to the appropriate government department.

i) Other Relevant Legislation

In addition to the legislation described above, there are numerous other acts and regulations that have a relevance to the management of oil spills. Of particular note are:

- Fisheries Act;
- Migratory Birds Convention Act;
- Transportation of Dangerous Goods Act; and
- certain territorial legislation.

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Annex 2. Policy Background

Federal Government policies respecting oil spill preparedness in the Arctic began in 1969 when the M.V. Manhattan passed through the Northwest Passage. The following year when the Arrow grounded in Chedabucto Bay, N.S., an interdepartmental task force was established under Dr. Pat McTaggart-Cowan to address federal responsibilities and organizational matters on marine emergency preparedness. As a result, in 1972, amendments were made to the Canada Shipping Act and the Arctic Waters Pollution Prevention Act was tabled in Parliament.

In 1974, DIAND, acting as administrator of the OGPCA, gave Dome Petroleum approval-in-principle to operate drill ships in the Beaufort Sea. At the same time, the joint industry-government Beaufort Sea Project was established with \$12 million shared funding between industry and government to improve the level of emergency preparedness in the north.

By 1976, when DOME had satisfied the thirteen conditions attached to the drilling program approval, the federal Cabinet, acting on the recommendation of DIAND, authorized a \$2 million oil spill depot at Tuktoyaktuk under the management of the CCG. Cabinet also established an interdepartmental task force to prepare a Beaufort Sea Oil Spill Contingency Plan.

By 1976 the petroleum industry had developed the Beaufort Sea Oil Spill Cooperative and in subsequent years held joint exercises with the CCG Oil spill depot at Tuktoyaktuk. The next year, the task force's **Beaufort Sea Contingency Plan** was established under the management of the Deputy Commissioner of the GNWT as the on scene commander. In 1982, administration of the OGPCA was transferred to COGLA and the powers of the Chief Conservation Officer were given to the COGLA Administrator. Responsibility having shifted to COGLA as lead agency for all oil spills from exploration or production installations, COGLA then developed an Emergency Response Plan in consultation with a number of federal and territorial agencies. This effectively replaced the Beaufort Sea Contingency Plan.

A further development was the endorsement in 1986 by a number of departments under the leadership of DIAND of the Government Strategy for Marine Pollution Incidents in the Arctic Seas Region.

Annex 3. Oil Spill Management Plans

a) COGLA Emergency Response Plan, Northern Region (Jan. 1989) (APPENDIX M)

COGLA has lead agency responsibility for government response to virtually all petroleum exploration and development related emergency situations in the north. It has lead agency responsibility to regain control of the well operation and clean-up operations.

(i) Operator's Contingency Plans

Regulations under OGPCA concerning drilling, production and diving require operators to submit contingency plans for potential emergencies (see APPENDIX D). These plans are "reviewed by COGLA and other government agencies" to ensure that they are sufficient to "enable operators to anticipate, contain and resolve most emergencies likely to occur. Beyond this, a requirement for extraordinary facilities can usually be satisfied through the provision of resources within the petroleum industry". The operator's Drilling Program Approval (DPA) is conditional upon COGLA's acceptance of the contingency plans to respond to and clean up an oil spill. For each company plan review, COGLA prepares a chain of command for combined multi-agency operations.

(ii) Emergency Response

"COGLA's responsibility in an emergency situation is to closely monitor the incident for regulatory compliance, to provide whatever assistance is practicable and, where necessary, to intervene in the management of an operation."

Consistent with the 1986 Strategy, COGLA has determined three levels of response to an emergency as lead agency. They are:

- monitor industry operations;
- assistance/intervention; and
- intervention.
- b) CCG Arctic Marine Environmental Emergency Plan (draft) (February 1990, APPENDIX N)

CCG is nearing completion of a rewrite of its 1977 Plan which will update policies and procedures for responding to Arctic marine emergencies where CCG is either the lead (ie. ship sourced spills) or a resource agency. This revised Plan continues to reflect the philosophy that an emergency operation can be successfully conducted only under a unified command structure with a single source of responsibility, direction and financial accountability.

c) NAP NWT Region Plan for Response to Major Spill Incidents of National Significance in the Arctic Waters (July 1989) (APPENDIX O)

This document outlines the procedures to be followed when responding to a major spill where DIAND is designated as the lead agency. These would include land spills which enter water (both inland and offshore). The Plan provides a framework for response. It is based on the principle that the party responsible for the spill is also responsible for cleaning it up. DIAND's primary response is to investigate as it does not maintain any spill response equipment.

DIAND has developed this response plan for major spills of "national significance" in the Arctic. The plan includes organizational structures which vary according to the seriousness of the spill and include interaction with resource agencies such as CCG which quite clearly would quickly become the focus of a response since DIAND has virtually no oil spill clean-up equipment.

d) Territorial Plans

The GNWT Services and Support Plan for Major Pollution Incidents in the Arctic Seas (January 1987) (APPENDIX P)

This plan documents the lead and resource agency roles which the GNWT would play following an incident. Services and support which the GNWT would provide are transportation, accommodation, communication, response personnel, administration services and intergovernment requests.

The YTG does not have any legislation or regulations affecting offshore oil spills management and therefore does not have any contingency plans.

e) Fisheries & Oceans Central and Arctic Region Emergency Response Plan, 1991

DFO is in the process of finalizing the above Plan for completion in 1991. It will outline DFO's responsibilities in the event of an oil spill (which are advisory to the lead agency) and will indicate specific tasks which are primarily of a monitoring and research nature regarding the effects of deleterious substances on marine life.

f) Emergency Preparedness Canada-Federal Crisis Management Procedure - NWT (January 1989) (APPENDIX Q)

The Federal Crisis Management Procedure - NWT - has been developed to fulfill the coordinating responsibilities assigned to Emergency Preparedness Canada and DIAND. The procedures are based on existing federal departmental responsibilities in emergencies and approved by several interdepartmental committees. It includes a reference to the Arctic Seas Strategy as the official and operative response plan for Arctic marine oil spills.

g) Coordinating Mechanisms

 (i) COGLA-CCG MOU regarding the provision of marine services to the offshore areas of petroleum development (July, 1982) (APPENDIX R)

This MOU provides for coordination between COGLA and CCG as follows:

- Establish Management and Technical committees to ensure successful implementation of the MOU;
- At the request of COGLA, CCG agrees to assess or inspect any installation, structure, vessel or support craft used in energy exploration or development;

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- COGLA is lead agency for "oil spills originating from installations or structures when on site and for oil spills associated with drilling operations"; ie,. including clean-up of waters and shoreline;
- CCG is lead agency for "oil spills originating from vessels and from installations or structures being transported or being used in navigation"; and
- Lead agencies are required to ensure contingency planning. COGLA's contingency plans include their own and the operators; CCG is only required to develop contingency plans for itself.

(ii) 24 hour spill report line

This communications network is maintained by DIAND in the NWT and by DOE in the Yukon twenty-four hours a day. When a spill report is received, DIAND or DOE regional staff responds by reviewing the report, contacting a pre-designated lead agency and informing other regional agencies about the spill. These lines have been operational since the mid 1970's and is used mainly to report minor spills and local incidents.

(iii) Arctic Environmental Emergency Response Team (AREET) (revised November, 1990) (APPENDIX S)

This is an interdepartmental and intergovernmental advisory committee composed of representatives of government agencies with environmental expertise. It is chaired by a representative from Environment Canada who provides advice and recommendations to the lead agency. AREET comes into effect after an emergency has been identified so that it can work with the lead agency and industry on environmental aspects of the situation.

(iv) Working Agreement on the Response of Government and Regulatory Agencies to Spills in the NWT (July 1989) (APPENDIX T)

> This working agreement, which predates the 1986 Strategy, is chaired by DIAND and includes COGLA, CCG, DOE, GNWT and ILA. Its purpose is to formalize procedures in a coordinated state of preparedness and response to spill incidents. The 24-hour spill report line is an integral tool of this network. It is currently under review to ensure full coordination with the 1986 Strategy.

(v) Canada-US Joint Marine Pollution Contingency Plan (June 1984) (APPENDIX U)

This plan permits the Canadian and US Coast Guards, assisted by other governmental authorities, to respond jointly to a pollution incident. The actual response by each country is made under the appropriate national contingency plan. VIII. ACRONYMS

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AREET	Arctic Response Environmental Emergency Team		
AWPPA	Arctic Waters Pollution Prevention Act		
CSA	Canada Shipping Act		
CCG	Canadian Coast Guard		
COGLA	Canadian Oil and Gas Lands Administration		
CPRA	Canadian Petroleum Resources Act		
DOE	Department of the Environment		
DIAND	Department of Indian Affairs and Northern Development		
DPA	Drilling Program Approval		
FEARO	Federal Environmental Assessment Review Office		
GNWT	Government of the Northwest Territories		
ILA	Inuvialuit Land Administration		
NEB	National Energy Board		
OGPCA	Oil and Gas Production and Conservation Act		
YTG	Yukon Territory Government		

IX. APPENDICES

- Appendix A Environmental Impact Review Board Report on the Gulf Canada Resources Kulluk Drilling Program for 1990-1992 - June, 1990 - recommendations 1 and 2.
- Appendix B Arctic Waters Pollution Prevention Act sections 4-9, 11-27.
- Appendix C Canada Petroleum Resources Act section 105.
- Appendix D Oil and Gas Production and Conservation Act -Subsections 5.1 and 5(1); Sections 24 - 28.
- Appendix E Canada Oil and Gas Drilling Regulations section 79.
- Appendix F COGLA Drilling for Oil and Gas on Frontier Lands -Guidelines and Procedures, Sept. 1986 (updated) -Appendix L.
- Appendix G National Energy Board Act sections 30-32, 47-48.
- Appendix HDraft Rules of Practice and Procedure of theNational Energy Board, May, 1987.
- Appendix I Proposed Canadian Environmental Assessment Act -Summary.
- Appendix J Government Strategy for Major Pollution Incidents in the Arctic Seas Regions - April 1986.
- Appendix K National Marine Emergency Plan, May 1977.

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- Appendix L Report of the Public Review Panel on Tanker Safety and Marine Spills Response Capability, November 1990.
- Appendix M COGLA Emergency Response Plan, Northern Region -January 1989.
- Appendix N CCG Arctic Marine Environmental Emergency Plan (draft), February 1990.
- Appendix 0 NAP NWT Region Plan for Response to Major Spill Incidents of National Significance in the Canadian Arctic.
- Appendix P The GNWT Services and Support Plan for Major Pollution Incidents in the Arctic Seas - January, 1987.
- Appendix Q Emergency Procedures Canada-Federal Crisis Management Procedure - NWT. (January 1989) (APPENDIX Q)
- Appendix R Memorandum of Understanding between the Canadian Coast Guard and the Canada Oil and Gas Lands Administration - July 1982.
- Appendix S Arctic Environmental Emergency Response Team (AREET) - November, 1990.
- Appendix T Working Agreement on the Response of Government and Regulatory Agencies to Spills in the Northwest Territories - July 1989.
- Appendix U Canada-US Joint Marine Pollution Contingency Plan - June 1984.

X. BIBLIOGRAPHY

Following is an annotated list of reports containing information of relevance to this study. The texts of or excerpts from those marked with an * can be found in the Appendices.

- a) * Report of the Environmental Impact Review Board, dated June 28, 1990, regarding the Gulf Canada Resources
 Kulluk Drilling Program for 1990-92. An assessment of the implications of recommendations 1 and 2 of the report is to be a principal objective of the task group for which this study is being prepared. Copies of the two recommendations can be found in Appendix A.
- b) COGLA response to the Report of the EIRB on the Kulluk Drilling Program.
- c) * Report of the Public Review Panel on Tanker Safety and Marine Spills Response Capability dated September, 1990. The panel's mandate provided for a general review of marine oil and chemical movement and spills. A number of its conclusions and recommendations bear directly on the issues being covered by this study. Excerpts can be found in Appendix L.
- d) Report of the Environmental Impact Review Board dated November 1, 1989 regarding the Esso Chevron et al Isserk I-15 Drilling Program. While the Program was approved in this instance, certain of the Board's conditions and recommendations, especially regarding the involvement of the Inuvialiut in certain of the procedures, may be relevant to the current study. A recommendation in the report that all aspects of

DIAND's current work on compensation and liability be accelerated was endorsed in the Kulluk report.

- e) * Government Strategy for Major Pollution Incidents in the Arctic Regions; April 16, 1986. (Appendix J)
- e) Northern Action Program N W T Hazardous Materials Spill Plan; July 1989.
- f) * NAP NWT Region Plan for Response to Major Spill Incidents of National Significance in the Canadian Arctic. (Appendix O)
- g) * COGLA Emergency Response Plan, Northern Region; January, 1989. (Appendix M)
- h) * National Marine Emergency Plan, May 1977; Coast Guard. (Appendix K)
- i) * Working Agreement on the Response of Government and Regulatory Agencies to Spills in the Northwest Territories; July 1989. (Appendix T)
- j) Report to the Premier on Oil Transportation and Oil Spills. While it applies to the British Columbia coast and may not have any significant direct relevance to the Beaufort Sea, the task group should be aware of its general conclusions.
- k) Final Report of the Environmental Assessment Panel on the Beaufort Sea Hydrocarbon Production and Transportation proposal of July, 1984. Section 4 on Oil Spills and Risks reviews and makes certain recommendations concerning the possibility of oil spills in the area.

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- 1) DIAND Comment of 1985 on the Environmental Assessment Panel on Beaufort Sea Hydrocarbon Production and Transportation of July, 1984.
- m) Report of the Special Senate Committee on Northern Pipeline dated March 30, 1983. While much of the report is out of date, parts of Chapter 5 entitled "The Regulatory Process" may still be of interest.
- n) Report of the Alaska Oil Spill Commission dated January, 1990. While much of the contents is irrelevant to the work of the task group, several of the recommendations in the section headed "Government Response Posture" may have application to its work.
- o) Summary of the State of Alaska Oil and Hazardous Substance Contingency Plan - elements of the format and certain of the provisions may be of interest to the task group. There is also a reference to a joint B C/U S task force which is to enable a cooperative and coordinated response to be made to west coast oil spills.
- p) Arctic Environmental Emergency Response Team (AREET) -November, 1990.

Report on Bilateral Canada/United States Meetings Concerning Beaufort Hydrocarbon Development

> Submitted to Beaufort Sea Steering Committee

> > by

Task Group Five

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February 6, 1991

I. Recommendations

Subject to consultations with the United States, the Inuvialuit should be invited to participate in the Canada/United States meetings concerning hydrocarbon development in the Beaufort Sea. The Inuvialuit would take part along with the other Canadians attending these meetings. The meetings should be well organized and continue to serve as a mechanism for informal exchange of information regarding oil and gas activity in the Beaufort Sea.

The Northwest Territories and Yukon Governments should also be invited to participate in these meetings.

II. Introduction

Task Group Five was asked to consider the matter of Inuvialuit participation in meetings between Canada and the United States concerning oil and gas activities in Canadian and American waters of the Beaufort Sea. The Group was also asked to advise the Steering Committee regarding the suggestion that these meetings should become formalized and cover a comprehensive agenda of relevant issues.

This report describes the purpose of these meetings and the current approach used for exchanging information between officials of the two governments. It then discusses the issues of Inuvialuit participation and formal agendas for the meetings. Finally, the conclusions of the task group are presented.

III. Discussion

A. Results of EIRB

The Environmental Impact Review Board, pursuant to the Inuvialuit Final Agreement, reviewed a three-year Beaufort Sea drilling program proposed by Gulf Canada Resources Ltd. One of the Board's recommendations reads as follows:

"Because of their significant legal, economical and cultural interests in wildlife harvesting, the Inupiat and the Inuvialuit should be formally involved in annual meetings between the Government of Canada and the Government of the United States held to discuss current and future activities in the Beaufort Sea."

B. Background

The Canada/USA bilateral meetings on Beaufort Sea activity were first held in the mid 1970's. These exchanges were held annually until the early 1980's and now are held bi-annually. The host rotates between the two countries. Canada will host the next meeting which is tentatively planned for the spring in Victoria, British Columbia.

The meetings have always been informal. Topics of discussion and participating organizations have varied considerably over the years. A typical agenda for past meetings has been a review of government and industry activities related to drilling in the Beaufort with an outlook to the next year or two. Environmental research has had a prominent place on most agendas.

Canadian participants at the meetings usually includes one or more individuals from: External Affairs, Indian Affairs and Northern Development, Energy, Mines and Resources, Environment Canada, Fisheries and Oceans, and Transport Canada. The American team usually represents: Department of State, National Science Foundation, Alaska Fish and Wildlife Service, Alaska Minerals Management Serv ~e, National and Atmospheric Administration, National Marine isheries Service and the U.S. Coast Guard. The Science Advisor _or the North Slope Borough also participated in the 1989 meeting.

C. Rationale for Decision

The Board's recommendation makes two points. First, that the Inupiat and the Inuvialuit should be involved in the annual meetings and second that these meetings should be formal.

Several factors were considered in determining if the Inuvialuit should be invited to participate in the Canada/US meetings:

- The Inuvialuit Final Agreement recognizes the special interest of the Inuvialuit in the Beaufort. The Agreement specifically provides for the Game Council to appoint members whenever possible or appropriate for any Canadian delegation that deals with international matters affecting wildlife harvesting by the Inuvialuit.
- 2. The territorial governments will probably wish to have at least the same involvement as the Inuvialuit.
- 3. Should other native organizations, i.e. the Old Crow Indian Band also be invited to attend these meetings?

With regard to the meetings being formalized, it is noted that these meetings serve as an opportunity to freely exchange scientific and technical information without a lot of procedures and rules. A number of participants in past meetings have found them very productive and they are concerned that any attempt to formalize the discussion would result in them getting bogged down in red tape.

It has been noted however that formal processes for dealing with transboundary issues may be established from time to time. We are aware that the United States has made extensive modifications to its legislation in the wake of the Exxon Valdez spill. One of these changes relates to this discussion. The United States Oil Pollution Act of 1990, section 8302 contains a provision that mandates "the Secretary of State, in consultation with the Secretary of the Interior, the Secretary of Transportation and the Governor of Alaska, to begin negotiations with the Foreign Minister of Canada regarding a treaty dealing with the complex issues of recovery of damages, contingency plans, and coordinated actions in the event of an oil spill in the Arctic Ocean". Before any such negotiations begin, the US Interior Secretary must conduct a study and submit a report to Congress of the issues noted above. This report was to have been submitted before the end of January 1991. However, problems in completing the study are estimated to delay its submission to Congress until the month of June, 1991. If and when this U.S. initiative is launched, it could lead to formal talks between the countries on pollution matters related to the activity in the Beaufort Sea. These discussions would not be undertaken through the meetings referred to in the EIRB recommendation.

Conclusion

External Affairs has polled federal departments to determine their positions with respect to Inuvialuit participation in the meetings, as well as the issue of how formal the meetings should be. Departments generally support the idea of Inuvialuit participation in the meetings. The proposal to formalize the meetings, however, does not have support. External Affairs will inform the United States about Canada's desire to include the Inuvialuit in the meetings. If the United States has no concerns with the idea, the Inuvialuit should be invited to participate in the next meeting. Even if the U.S. has concerns, as the host, Canada may be able to include an Inuvialuit representative on its delegation to the next meeting.