

CS FOR HOUSE BILL NO. 135 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 4/23/92
Referred: Finance

Sponsor(s): REPRESENTATIVES DAVIDSON, Navarre, Grussendorf, Ellis, Brown, Gruenberg, Kubina,
Finkelstein, Koponen, Moyer

A BILL

FOR AN ACT ENTITLED

1 "An Act enacting and entering into the Pacific Ocean Resources Compact."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 46 is amended by adding a new chapter to read.

4 CHAPTER 47. PACIFIC OCEAN RESOURCES COMPACT.

5 Sec. 46.47.010. COMPACT ENACTED AND ENTERED INTO. (a) The Pacific Ocean
6 Resources Compact as set out in AS 46.47.020 is enacted into law and entered into on behalf of
7 the state. This compact shall take effect after two or more of the states of California, Hawaii,
8 Oregon, or Washington ratify the compact in substantially the same form as set out in
9 AS 46.47.020 and consent is granted by the Congress as required by section 10, Article I, of the
10 Constitution of the United States.

11 (b) In addition to the states named in (a) of this section, the Province of British Columbia
12 may become an associate party to the compact, without voting power. Upon request of the
13 Province of British Columbia and approval of the Congress, the Province of British Columbia
14 may become a full party to the compact with the same rights and powers as the party states.

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(D) environmental monitoring and research;

(4) each party has jurisdiction over the submerged and submersible land within its territorial sea and responsibility for management of many marine resources and ocean uses; each party has unique natural resource, social, economic, and political conditions for which local management by the individual party is the most appropriate;

(5) the parties now do not have an effective means to address mutual concerns related to transport of oil and hazardous substances in waters within and beyond the party's jurisdiction that may jeopardize ocean resources and uses important to one or more coastal parties;

(6) the 1983 Presidential Proclamation of the 200-mile United States Exclusive Economic Zone has created the opportunity for all coastal states to more fully exercise and assert their responsibilities pertaining to the protection, conservation, and development of ocean resources under United States jurisdiction;

(7) citizens of the Pacific states and the Province of British Columbia are increasingly concerned with the environmental integrity of the ocean and protection of all ocean resources;

(8) recent studies conducted in the wake of major accidental releases of oil or hazardous substances have concluded that the existing system of response to spills could be improved in the following ways to provide better protection of ocean resources:

- (A) enhanced personnel training and qualifications;
- (B) improved vessel design and integrity;
- (C) better mechanisms for cost recovery by the states or the province;
- (D) improved coordination in regulatory oversight;
- (E) enhanced traffic management; and
- (F) an improved information base dealing with marine and coastal environments;

(9) a spill or discharge of oil or a hazardous substance from an ocean-going vessel has the potential of causing major regional effects.

(b) Therefore, the purpose of this compact is to

(1) assist in the promotion of interstate commerce by encouraging uniform regulation of the transportation of oil or hazardous substances within the compact zone;

- 1 (2) provide a legal mechanism to regulate certain ocean activities within the
2 **United States Exclusive Economic Zone;**
- 3 (3) enhance regional coordination of issues of critical importance;
4 (4) work with federal agencies to advance the best interest of the region;
5 (5) foster regional cooperation and pooling of resources to reduce costs and
6 increase effective use of scarce resources;
7 (6) monitor activities of concern to the parties;
8 (7) address issues of mutual concern to the Pacific states and the Province of
9 **British Columbia** and enhance the parties' influence over activities of concern that are not now
10 addressed through existing compacts, including
- 11 (A) spill prevention;
12 (B) transportation of oil and other hazardous substances;
13 (C) spill response planning; and
14 (D) environmental monitoring and research;
- 15 (8) foster cooperation and coordination among the parties in order to increase the
16 effectiveness of the individual party's ocean laws and programs;
17 (9) provide technical assistance to parties for ocean activities covered by this
18 compact;
19 (10) provide for formal participation by the Province of British Columbia with
20 the compact to more fully address issues of regional concern;
21 (11) ensure that the citizens of the region have opportunities to participate in
22 discussions and deliberations of regional ocean resources issues;
23 (12) establish an innovative system under which the parties can represent their
24 shared interests within the compact zone, including
- 25 (A) the maintenance and protection of common ocean resources; and
26 (B) vessel transportation of oil and other hazardous substances;
- 27 (13) recommend uniform safety standards for routes, crews, and equipment for
28 vessels transporting oil and hazardous substances within the compact zone and monitor the
29 implementation of these standards and regulations by federal agencies, states or provinces, and
30 private industry;
31 (14) promote more coordinated management of ocean resources that are of mutual

1 concern;

2 (15) provide a forum for the regional coordination of the individual parties' plans
3 for the management and protection of those areas of the Pacific Ocean and adjacent waters over
4 which the compacting parties jointly or separately now have or may acquire jurisdiction.

5 ARTICLE II
6 DEFINITIONS

7 In this compact,

8 (1) "compact" means the representative body created by Article IV of this
9 compact;

10 (2) "compact zone" means the portion of the oceans bordering the parties within
11 the 200-mile exclusive economic zone;

12 (3) "hazardous substance" means an element or compound that, when it enters in
13 or on the water, presents an imminent and substantial danger to the public health or welfare or
14 the environment, including fish, animals, vegetation, or a part of the natural habitat in which they
15 are found; "hazardous substance" includes a substance designated under 33 U.S.C. 1321(b)(2)(A),
16 an element, compound, mixture, solution, or substance designated under 42 U.S.C. 9602, a
17 hazardous waste having characteristics identified under or listed under 42 U.S.C. 6921, a toxic
18 pollutant listed under 33 U.S.C. 1317(a), and an imminently hazardous chemical substance or
19 mixture with respect to which the administrator of the United States Environmental Protection
20 Agency has taken action under 15 U.S.C. 2606;

21 (4) "navigable waters" means the waters of the United States, including the
22 territorial sea;

23 (5) "oil" means crude petroleum oil or any other hydrocarbon, regardless of
24 gravity, that is produced at the well in liquid form by ordinary production methods, and any
25 petroleum products or petrochemicals of any kind and in any form whether crude, refined, or a
26 petroleum byproduct, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily
27 refuse, or mixed with other wastes, liquefied natural gas, or propane;

28 (6) "party" means a state or province that ratifies this compact as provided in
29 Article III of this compact;

30 (7) "representative" means an individual appointed as provided in Article IV of
31 this compact to represent a party;

1 (8) "vessel" means a watercraft or other artificial contrivance that is constructed
2 or adapted to carry, or that carries oil or hazardous substances in bulk as cargo or cargo residue
3 and that is greater than 5,000 gross weight tonnage, and that

4 (A) operates on the navigable waters of the compact zone; or

5 (B) transfers oil or hazardous substances in a place subject to the
6 jurisdiction of the United States.

7 ARTICLE III

8 OPERATIVE DATES

9 (a) Except as provided in (b) of this article, this compact shall become effective when
10 this state and two or more of the states of California, Hawaii, Oregon, or Washington ratify the
11 compact and the consent of the Congress is or has been granted as required by section 10,
12 Article I, of the Constitution of the United States.

13 (b) This agreement shall become operative as to the Province of British Columbia as a
14 full party upon request of the Province of British Columbia and approval of the Congress.

15 ARTICLE IV

16 PACIFIC OCEAN RESOURCES COMPACT

17 (a) The Pacific Ocean Resources Compact is created and shall have its offices within the
18 territorial limits of one of the parties, shall carry out its duties and functions in accordance with
19 this compact, shall continue in force and effect in accordance with this compact, and, except as
20 specifically provided in this compact, may not be considered an agency or instrumentality of the
21 United States for the purpose of any federal law. Each party participating in this compact shall
22 appoint two persons, subject to the applicable laws of the appointing party, to undertake the
23 functions and duties of representatives of the compact. This compact shall be invested with the
24 powers and duties set out in this compact.

25 (b) The term of each representative shall be four years. A representative shall hold office
26 until a successor is appointed and qualified but the successor's term shall expire four years from
27 the legal date of expiration of the term of the predecessor. Vacancies occurring in the office of
28 a representative for any reason or cause shall be filled for the unexpired term by the party
29 represented by the vacancy. A party may remove the representative for that party in accordance
30 with the statutes of the party concerned. Each representative may delegate to a deputy the power
31 to be present and participate, including voting as the representative or substitute, at any meeting

1 of or hearing by or other proceeding of the compact.

2 (c) The compact shall invite the Secretary of the United States Department of
3 Transportation, the Administrator of the United States Environmental Protection Agency, and the
4 Administrator of the National Oceanic and Atmospheric Administration or their designees to
5 participate as nonvoting members of the compact.

6 ARTICLE V

7 PACIFIC OCEAN RESOURCES COMPACT AUTHORITY

8 (a) The Pacific Ocean Resources Compact is authorized to

9 (1) facilitate the prevention of or response to oil and hazardous substance spills
10 by

11 (A) serving as a West Coast Spill Prevention Advisory Committee to the
12 United States Coast Guard; as such, the compact shall advise the United States Coast
13 Guard on matters pertaining to spill prevention and response within the compact zone and
14 also shall advise the United States Coast Guard on other matters within the compact's
15 authority as set forth in this compact;

16 (B) participating as an interested person in any rulemaking proceeding by
17 the United States Coast Guard related to the establishment of safety standards for routes,
18 crews, and equipment for vessels transporting oil and hazardous substances; the United
19 States Coast Guard shall adopt the recommendations of the compact, unless the United
20 States Coast Guard makes a finding, as part of the rulemaking process, that the adoption
21 of a recommendation would not prevent or facilitate response to oil and hazardous
22 substance spills;

23 (C) as an interested person, requesting the United States Coast Guard to
24 initiate rulemaking for the establishment or amendment of safety standards for routes,
25 crews, and equipment for vessels transporting oil and hazardous substances; the United
26 States Coast Guard shall initiate rulemaking as requested by the compact, unless the
27 United States Coast Guard makes a finding that the initiation of the rulemaking would not
28 further the prevention of or response to oil and hazardous substance spills;

29 (D) making recommendations to other appropriate state, federal, and
30 regional entities regarding uniform safety standards for routes, crews, and equipment for
31 vessels transporting oil and hazardous substances in the compact zone;

1 (2) ensure a coordinated network of oil and hazardous substance spill response
2 plans and programs of the parties, federal agencies, and private organizations:

3 (3) by regulation, establish the requirements for submission of and approval by
4 the compact of a contingency plan by any vessel transporting oil or hazardous substance in the
5 compact zone; the requirements must be compatible with the requirements for response plans
6 under sec. 4202 of the Oil Pollution Act of 1990 (P.L. 101-380); a plan developed in accordance
7 with the regulations adopted by the compact and approved by the compact shall satisfy the
8 requirements of sec. 4202 of the Oil Pollution Act and shall satisfy and supersede any
9 requirements of an individual party for submitting a vessel contingency or spill response plan;
10 however, all plans approved by parties to this compact before the operative date of the compact
11 shall remain in full force and effect until a contingency plan is approved by the compact under
12 this paragraph; if a contingency plan approved by one of the parties to this compact expires after
13 the compact contingency plan regulations are adopted, a new contingency plan must be adopted
14 under the compact regulations, in establishing regulations under this paragraph, the compact shall
15 work closely with officials of the parties to assure that the vessel contingency plans required
16 under this compact include all subject areas included by the member parties in the standards for
17 vessel contingency plans of the parties, in the aggregate, before the adoption of the compact;

18 (4) establish and maintain an informational clearinghouse related to spill response,
19 including a directory of personnel, equipment, technical expertise, organizations, and other
20 resources available to assist as part of a regional oil or hazardous substance spill response;

21 (5) provide a forum for discussion and recommendation to resolve conflicts
22 among member parties or the federal government regarding various ocean resources programs
23 that have been or may be established by each party;

24 (6) provide opportunities for public participation in compact activities by holding
25 meetings of the compact in various locations within the territorial limits of the parties, providing
26 opportunities for public comment at meetings and developing a public outreach program;

27 (7) designate state or provincial agency officials to act on behalf of the compact
28 as liaisons with federal agencies;

29 (8) identify the regional data needs related to ocean resources and recommend a
30 method for compiling the data in a format that can be shared by all parties;

31 (9) consult with and advise any pertinent party or federal agency with regard to

1 problems connected with ocean resources management and recommend the adoption of any rules
2 or regulations the compact considers advisable that are within the jurisdiction of the agency;

3 (10) establish sanctions and a schedule of civil penalties for violations of the rules
4 or regulations of the compact and impose those sanctions or civil penalties in accordance with
5 5 U.S.C. 551 - 559 and 701 - 706;

6 (11) request the United States Coast Guard to enforce or assist in the enforcement
7 of any regulations adopted by the compact including, but not limited to, regulations related to the
8 submission of a contingency plan or financial assurance requirements in the compact zone;

9 (12) establish a schedule of reasonable fees to be assessed for the review of a
10 contingency plan submitted under (3) of this subsection; the fees must be sufficient to recover
11 the costs of reviewing the plans and conducting any related inspections; the fees may be assessed
12 in increments up to the maximum amount.

13 (b) In addition to the authority granted under (a) of this article, the compact may

14 (1) accept grants and gifts;

15 (2) enter into contracts for whose performance the compact shall be solely
16 responsible in order to support its operations;

17 (3) conduct and prepare, independently or in cooperation with others, studies,
18 investigations, research, and programs relating to the purposes of this compact;

19 (4) conduct public hearings on matters pertaining to the purposes of this compact;

20 (5) establish a standardized cost recovery formula for damages to other resources
21 based on the amount of oil or hazardous substance spilled;

22 (6) enter into an agreement with the United States Coast Guard under which the
23 compact will administer compliance with the requirements for demonstrating financial
24 responsibility under section 1016 of the Oil Pollution Act of 1990 in an amount established by
25 the compact; proof of financial responsibility, if established by the compact under this paragraph,
26 shall satisfy and supersede the requirement of any individual party for demonstrating financial
27 responsibility; however, all financial responsibility requirements established by the parties to this
28 compact before the compact establishes an amount under the paragraph shall remain in full force
29 and effect until the compact establishes a requirement and enters into an agreement with the
30 United States Coast Guard under this paragraph; in establishing the amount of financial
31 responsibility under this paragraph, the compact shall work with officials of each party to assure

1 that such requirements are sufficient to satisfy the requirements of the parties, in aggregate;
2 (7) in accordance with the provisions of 5 U.S.C. 551 - 559 and 701 - 706,
3 enforce the rules and regulations adopted by the compact to carry out the authority of the
4 compact as set out in this article;
5 (8) appoint technical and advisory committees for the purpose of advising the
6 compact on regional ocean resources issues, data needs and format, and other purposes related
7 to the compact's activities; a technical or advisory committee appointed by the compact is not
8 subject to the provisions of the Federal Advisory Committee Act (P.L. 92-463, as amended);
9 (9) allow a variance from the provisions of this compact or rules or regulations
10 adopted by the compact under this article; a variance must be based on a showing by the person
11 or entity seeking the variance that the activity allowed under the variance will have no regional
12 effect and that the variance is economically necessary; under no circumstances may a variance
13 result in the regulation of the transportation of oil or hazardous substance according to standards
14 less stringent than standards imposed under federal law.
15 (c) The compact shall adopt all regulations necessary to carry out its duties and exercise
16 its authority under this article. The compact shall adopt the regulations in accordance with the
17 provisions of 5 U.S.C. 500 - 559.

18 ARTICLE VI

19 PACIFIC OCEAN RESOURCES COMPACT ORGANIZATION

20 The compact shall select a chair and a vice-chair. After the initial chair and vice-chair
21 are selected, the compact shall establish a rotation for the selection of the chair and vice-chair
22 so the office rotates through the parties to the compact. The compact shall appoint and at its
23 pleasure remove or discharge such officers and employees as may be required to carry the
24 provisions of this compact into effect and shall fix and determine their duties, qualifications, and
25 compensation. The compact shall adopt rules and regulations for the conduct of its business.
26 It may establish and maintain one or more offices for the transaction of its business and may
27 meet at any time or place within the territorial limits of the signatory parties but must meet at
28 least once a year.

29 ARTICLE VII

30 VOTING AND QUORUM

31 (a) A majority of the representatives shall constitute a quorum.

1 (b) Each representative shall be entitled to one vote. An action or decision of the
2 compact may not be approved unless the action or decision receives a majority of the votes of
3 the representatives, including at least one affirmative vote from each party.

4 ARTICLE VIII

5 SUPPORT AGENCIES

6 The compact may contract for the staff support necessary to carry out the purposes of this
7 compact or request appropriate agencies of the signatory parties to act as the research agencies
8 of the compact.

9 ARTICLE IX

10 PARTIES' POWERS UNDER COMPACT

11 Except as specifically provided in Article V of this compact, nothing in this compact may
12 be construed to limit the powers of a party or to repeal or prevent the enactment of legislation
13 or the enforcement of a requirement imposing additional conditions and restrictions to conserve
14 ocean resources.

15 ARTICLE X

16 ABSENCE

17 Continued absence of representation or of a compact representative from a party shall be
18 brought to the attention of the appointing authority of the party not represented.

19 ARTICLE XI

20 FUNDING

21 (a) Each party shall contribute to the support of the compact.

22 (b) The annual contribution of each party shall be figured to the nearest \$100.

23 (c) The compact shall prepare an annual budget which shall be approved by vote of the
24 compact. After approval, the proposed budget shall be presented to the chief executive and the
25 legislative body of each party.

26 (d) Each party shall be responsible for the expenses of its own representatives.

27 ARTICLE XII

28 WITHDRAWAL FROM COMPACT

29 This compact shall continue in force and remain binding upon each party until renounced
30 by it. Renunciation of this compact must be preceded by sending six months' notice in writing
31 of intention to withdraw from the compact to the other parties to the compact.

1 **Sec. 46.47.030. REPRESENTATIVES.** The two representatives of the state to the Pacific
2 Ocean Resources Compact shall be appointed by the governor, subject to confirmation by the
3 legislature.

4 **Sec. 46.47.040. PUBLIC REVIEW OF REGULATIONS.** Regulations adopted by the
5 Pacific Ocean Resources Compact are subject to public review under the procedures of AS 44.62
6 (Administrative Procedure Act).