SENATE BILL NO. 102

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS COTTEN, Zharoff, Sturgulewski, Eliason

Introduced: 2/1/91
Referred: Senate Special Committee on Oil and Gas, Transportation and Finance

A BILL

FOR AN ACT ENTITLED

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

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

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

CHAPTER 47. PACIFIC OCEAN RESOURCES COMPACT.

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

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

1 Sec. 46.47.020. COMPACT TERMS AND CONDITIONS. The provisions of the Pacific
2 Ocean Resources Compact are:
3 ARTICLE I
4 FINDINGS AND PURPOSE
5 (a) The parties recognize that
6 (1) this state and the states of California, Hawaii, Oregon, and Washington and
7 the Province of British Columbia have a common interest in the protection of marine and coastal
8 resources; this common interest results from
9 (A) the fluid, dynamic ocean currents and atmospheric winds that carry
10 pollutants beyond one party's coastal area to another;
11 (B) the migratory nature of many important living marine resources that
12 depend on the marine habitat of various parties for different parts of their lifecycle;
13 (C) the economic reliance of each party on renewable resources of the
14 ocean;
15 (D) the use of the ocean for transport of oil and other hazardous
16 substances between ports in the various parties and other ports; and
17 (E) a regional interest in providing a stable environment for those
18 communities dependent on ocean resources and ocean trade for a livelihood;
19 (2) some marine resource activities, such as fisheries, are currently highly
20 managed with regard for their regional or transboundary nature through existing state programs,
21 regional fisheries councils, interstate compacts, and international treaties; because there are
22 existing formal mechanisms for interstate cooperation and coordination for these marine resource
23 activities, this compact is not intended to encompass these activities;
24 (3) a formal interstate agreement does not exist to address and resolve issues of
25 mutual concern or to coordinate individual programs of the parties that affect regional interests
26 in the areas of
27 (A) prevention of oil and hazardous substance spills;
28 (B) transportation of oil and other hazardous substances;
29 (C) oil and hazardous substance spill response planning; and
30 (D) environmental monitoring and research;
31 (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 fails to provide adequate protection to ocean resources in the following ways:

(A) inadequate personnel training and qualifications;

(B) weaknesses in vessel design and integrity;

(C) insufficient traffic management;

(D) gaps in regulatory oversight;

(E) incomplete cost recovery by the states or provinces; and

(F) a lack of information about the 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 providing uniform regulation of the transportation of oil or hazardous substances within the compact zone;

(2) provide a legal mechanism to regulate certain ocean activities within the United States Exclusive Economic Zone that the parties cannot now individually regulate;

(3) enhance regional sovereignty over issues of critical importance;

(4) direct federal agencies to act in the best interest of the region;

(5) foster regional cooperation and pooling of resources to reduce costs and increase effective use of scarce resources;

(6) enhance the oversight and supervision of activities of concern to the parties;

(7) address issues of mutual concern to the Pacific states and the Province of British Columbia and enhance the parties' influence over activities of concern that are not now addressed through existing compacts, including

(A) spill prevention;

(B) transportation of oil and other hazardous substances;

(C) spill response planning; and

(D) environmental monitoring and research;

(8) foster cooperation and coordination among the parties in order to increase the effectiveness of the individual party's ocean laws and programs;

(9) provide technical assistance to parties for ocean activities covered by this compact;

(10) provide for formal participation by the Province of British Columbia with the compact to more fully address issues of regional concern;

(11) ensure that the citizens of the region have opportunities to participate in discussions and deliberations of regional ocean resources issues;

(12) establish an innovative system under which the parties can represent their shared interests within the compact zone, including

(A) the maintenance and protection of common ocean resources; and

(B) vessel transportation of oil and other hazardous substances;

(13) establish uniform safety standards for routes, crews, and equipment for vessels transporting oil and hazardous substances within the compact zone and to provide oversight for the implementation of these standards and regulations by federal agencies, states or provinces, and private industry;

(14) promote more coordinated management of ocean resources that are of mutual concern;

(15) provide a forum for the regional coordination of the individual parties' plans for the management and protection of those areas of the Pacific Ocean and adjacent waters over

which the compacting parties jointly or separately now have or may acquire jurisdiction.

ARTICLE II

DEFINITIONS

In this compact,

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

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

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

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

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

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

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

(8) "vessel" means a watercraft or other artificial contrivance that is constructed or adapted to carry, or that carries oil or hazardous substance in bulk as cargo or cargo residue, and that

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

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

ARTICLE III

OPERATIVE DATES

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

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

ARTICLE IV

PACIFIC OCEAN RESOURCES COMPACT

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

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

(c) The compact shall invite the Secretary of the United States Department of Transportation, the Administrator of the United States Environmental Protection Agency, and the

1 Administrator of the National Oceanic and Atmospheric Administration or their designees to
2 participate as nonvoting members of the compact.

3 ARTICLE V

4 PACIFIC OCEAN RESOURCES COMPACT AUTHORITY

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

6 (1) facilitate the prevention of oil and hazardous substance spills through the
7 establishment of uniform safety standards for routes, crews, and equipment for vessels
8 transporting oil and hazardous substances to the extent that the parties and the federal government
9 have authority within the compact zone;

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

12 (3) by regulation, establish the requirements for submission of and approval by
13 the compact of a contingency plan by any vessel transporting oil or hazardous substance in the
14 compact zone; the requirements must be at least as stringent as the requirements for spill
15 response plans under sec. 4202 of the Oil Pollution Act of 1990 (P.L. 101-380); a plan developed
16 in accordance with the regulations adopted by the compact and approved by the compact shall
17 satisfy the requirements of sec. 4202 of the Oil Pollution Act and any requirements of an
18 individual party for submitting a vessel contingency or spill response plan; in establishing
19 regulations under this paragraph, the compact shall work closely with officials of the parties to
20 assure that the vessel contingency plans required under this compact are at least as
21 comprehensive as similar plans required by the parties and to integrate, to the fullest extent
22 possible, any requirements for vessel contingency plans in effect at the time the compact initiates
23 its requirements under this paragraph;

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

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

30 (6) provide opportunities for public participation in compact activities by holding
31 meetings of the compact in various locations within the territorial limits of the parties, providing

1 opportunities for public comment at meetings and developing a public outreach program;
2 (7) designate state or provincial agency officials to act on behalf of the compact
3 as liaisons with federal agencies;
4 (8) identify the regional data needs related to ocean resources and recommend a
5 method for compiling the data in a format that can be shared by all parties;
6 (9) consult with and advise any pertinent party or federal agency with regard to
7 problems connected with ocean resources management and recommend the adoption of any rules
8 or regulations the compact considers advisable that are within the jurisdiction of the agency;
9 (10) establish sanctions and a schedule of civil penalties for violations of the rules
10 or regulations of the compact and impose those sanctions or civil penalties in accordance with
11 5 U.S.C. 551 - 559 and 701 - 706.
12 (11) request the United States Coast Guard to enforce or assist in the enforcement
13 of any regulations adopted by the compact related to the prevention of and response to oil or
14 hazardous substance spills in the compact zone.
15 (b) In addition to the authority granted under (a) of this article, the compact may
16 (1) accept grants and gifts;
17 (2) enter into contracts for whose performance the compact shall be solely
18 responsible in order to support its operations;
19 (3) conduct and prepare, independently or in cooperation with others, studies,
20 investigations, research, and programs relating to the purposes of this compact;
21 (4) conduct public hearings on matters pertaining to the purposes of this compact;
22 (5) issue subpoenas;
23 (6) in accordance with the provisions of 5 U.S.C. 551 - 559 and 701 - 706,
24 enforce the rules and regulations adopted by the compact to carry out the authority of the
25 compact as set out in this article;
26 (7) appoint technical and advisory committees for the purpose of advising the
27 compact on regional ocean resources issues, data needs and format, and other purposes related
28 to the compact's activities; a technical or advisory committee appointed by the compact is not
29 subject to the provisions of the Federal Advisory Committee Act (P.L. 92-463, as amended);
30 (8) allow a variance from the provisions of this compact or rules or regulations
31 adopted by the compact under this article; a variance must be based on a showing by the person

or entity seeking the variance that the activity allowed under the variance will have no regional effect and that the variance is economically necessary; under no circumstances may a variance result in the regulation of the transportation of oil or hazardous substance according to standards less stringent than standards imposed under federal law.

(c) The compact shall adopt all regulations necessary to carry out its duties and exercise its authority under this article. The compact shall adopt the regulations in accordance with the provisions of 5 U.S.C. 500 - 559.

ARTICLE VI

PACIFIC OCEAN RESOURCES COMPACT ORGANIZATION

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

ARTICLE VII

VOTING AND QUORUM

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

(b) Each party shall be entitled to one vote. An action or decision of the compact may not be approved unless the action or decision receives a majority of the votes of the parties.

ARTICLE VIII

SUPPORT AGENCIES

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

ARTICLE IX

PARTIES' POWERS UNDER COMPACT

Except as specifically provided in Article V of this compact, nothing in this compact may

be construed to limit the powers of a party or to repeal or prevent the enactment of legislation or the enforcement of a requirement imposing additional conditions and restrictions to conserve ocean resources.

ARTICLE X

ABSENCE

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

ARTICLE XI

FUNDING

(a) Each party shall contribute to the support of the compact according to the party's relative proportion of the total of the parties' gross state products, but each party shall contribute at least 10 percent of the total annual budget for the compact and may not be required to contribute more than 50 percent of the total annual budget for the compact.

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

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

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

ARTICLE XII

WITHDRAWAL FROM COMPACT

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

Sec. 46.47.030. REPRESENTATIVES. The three representatives of the state to the Pacific Ocean Resources Compact shall be appointed by the governor, subject to confirmation by the legislature.