HB

135

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
410 Willoughby Avenue, Suite 105
Juneau, AK 99801-1795

Telephone No. (907)465-5050
FAX No. (907)465-5070

April 22, 1992

Representative Cliff Davidson
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Davidson:

As you have requested, the following are the Department's concerns and questions relating to HB 135, "An Act enacting and entering into the Pacific Ocean Resources Compact." Many are related to the very broad language in the legislation, and our uncertainty as to how the authorities might be implemented.

Some individuals supporting the Compact legislation do not expect the Compact to develop regulations. If it is not the intent of the Legislature to have the Compact develop regulations, then we question the need for this legislation. There is already a mechanism in place along the West Coast for coordination between the states through the States/British Columbia Oil Spill Task Force. The Task Force has coordinated on individual jurisdiction regulations development, striving for consistency where individual state/provincial laws have allowed. To the extent possible, the Task Force has also coordinated comments on the federal rule making projects under OPA '90.

More specifically:

* The federal government and all of the West Coast states have recently passed laws to strengthen spill prevention and response. Alaska, Washington, Oregon, California and the Coast Guard are all in various stages of implementing their new laws. We believe it is premature to propose another entity with rule-making authority while these other initiatives are underway and before we've had a chance to evaluate their effectiveness.

* The laws passed by the West Coast states and Congress provide detailed guidance to the agencies in developing regulations for spill prevention and response. In contrast, the Compact bill provides no guidance and no boundaries for the development of regulations. The

Compact would be authorized to regulate contingency planning requirements for tankers. While some proponents of the Compact argue it would bring consistency in contingency planning, others have stated we should assume the Compact's regulations would follow a regional approach. We see a conflict here, uniformity vs. regional, so are uncertain as to which scenario the Compact might follow. Even if it was a regional planning process, we are uncertain as to the boundaries of those regions. Would all of Alaska be one region, or several?

* The proposed Compact covers transportation of hazardous materials. It does not define which hazardous materials or in what quantities the compact can or should regulate (again, no guidance).

* As written, the Compact may regulate transportation on Alaska rivers.

* Spill response plans must be developed to reflect the area of operation of a vessel. To be effective, a Response Plan must identify potential mishaps; quantity, type, location, and response time of equipment; information about resources at risk and prioritize them for protection, etc. Even if the Compact were to develop uniform regulations for West Coast operators, those operators will still need to develop Response Plans applicable to each region of operation for the vessel. Again, what boundaries might the regions follow?

* Who will be responsible for reviewing the response plans to ensure compliance with the Compact's regulations? Who will be responsible for enforcing the regulations? Who will conduct inspections? Who will conduct and evaluate drills? State staff? Compact staff? Coast Guard staff?

* The States would continue to be responsible for contingency planning for shore based facilities, and some vessels. Is a division in responsibility the best approach for planning?

* The Department is concerned that establishment of a Compact could easily lead to weaken the authorities recently established in Alaska under HB 567 because each issue/area to be regulated by the Compact is likely only be as strict as the weakest provision among the Compact states. Some people have stated that the regional approach to regulation development would nullify this concern, however there is no guidance in the legislation that would necessarily result in regional regulations. Plus, the regional approach as we've already stated eliminates the uniformity in approach some proponents of the Compact have given as its strong point.

* The Compact does not have to follow the Alaska Administrative Procedures in regulatory development. The Department is concerned that the public, particularly smaller coastal communities in Alaska will not be afforded the same level of involvement in the development of regulations under the Compact as they have now when state regulations are developed. We also are uncertain as to the interaction between the Compact's regulations and the coastal zone process which is preserved under Alaska's contingency planning regulations.

* The Compact headquarters will likely be located outside of Alaska, further limiting public access to this agency.

* The Compact has the authority to establish sanctions and penalties relating the natural resource damages. While any process developed by the Compact does not expressly preempt a states process, OPA '90 prohibits the double counting of natural resource damages. The Department is concerned as to the impact the Compact's aciton in this area may have on Alaska's ability to assess damages under its own laws. This is further complicated by the fact that NOAA is developing federal rules on this same subject, and again double counting is prohibited.

* In order to prevent a duplication of effort, and potential weakening of individual state's rights, the Compact as a rule making body could be limited to regulating oil and hazardous materials transport outside of state waters and in the Exclusive Economic Zone. This will allow individual states to maintain sovereignty over their jurisdictions but allow the Compact to establish standards for "federal" waters that are consistent along the West Coast. We would encourage the Legislature to further explore this possibility.

Please accept these questions and concerns in the spirit in which they are intended - to lay issues on the table for debate and discussion. Feel free to contact me if you need any additional information.

Sincerely,

Janice Adair

Janice Adair
Assistant Commissioner

LK/JA/ars(H:\asdir\davidson.com)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM March 2, 1990

SUBJECT: Interstate compacts
(Work Order No. 6-2304)

TO: Representative Cliff Davidson

FROM: John B. Gaguine JBG
Legislative Counsel

You have asked a number of questions regarding interstate compacts. A couple of these questions are answered in the materials you sent over. Legal Research Report No. 9.2 for the Oil Spill Commission, "Potential Utility of an Interstate Compact as a Vehicle for Oil Spill Prevention and Response," explains well what an interstate compact is, and under what authority the states may initiate them. I will try to address some of the questions that are not covered by those materials.

There is no statute governing the negotiation of interstate compacts. Since, as discussed in Legal Research Report No. 9.2, a compact requires the passage of identical legislation by the legislatures of several states, negotiations among the states are a prerequisite to a compact. One would expect those negotiations to be carried out by executive branch officials most conversant with the subject matter, which in the area of oil transport would seem to be DEC officials. However, I do not see any constitutional separation-of-powers problems with the legislature initiating compact negotiations, participating in them or even carrying them out without executive branch participation, since the compact is essentially a legislative function.

As discussed in Legal Research Report No. 9.2, a successful compact would have to be approved by the legislatures of the states involved and then, if involving a matter that would ordinarily be preempted by the federal government (as would be the case in regulation of oil transport, where the U S.

Supreme Court in 1977 invalidated Washington laws as pre-empted by federal legislation), would have to be approved by Congress. Legal Research Report No. 9.2 notes that in some cases negotiation of the compact and approval by the state legislatures and Congress has taken up to eight years.

Compacts involving foreign countries are far rarer than interstate compacts; none of the compacts to which Alaska is a party (listed below) involve any foreign nations. However, the provision of the U.S. constitution that allows interstate compacts also authorizes compacts "with a foreign power", if Congress consents. I do not know whether Canadian law would allow British Columbia to enter into a compact, or whether Canada would have to be a party, although section 16 of the Constitution Act of British Columbia suggests that the province could not enter into a compact with an American state. It seems likely, though, that the U.S. State Department would not look favorably on an agreement between Alaska and Canada on oil transportation rather than a treaty between the United States and Canada on the subject, and that the State Department might well oppose Congressional approval of an Alaska-Canada agreement.

You have also asked what the procedure is for initiating an interstate compact in Oregon, Washington and California. I assume that it is the same as in Alaska, since none of those states has any statutes on the adoption of interstate compacts (not even California, which has statutes on every subject imaginable). Washington does have a statute appointing a commission to negotiate a compact on the apportionment of the waters of the Columbia River basin, but nothing on compacts in general.

Alaska is a participant in a large number of interstate compacts (according to Legal Research Report No. 9.2, seventeen). These cover such diverse areas as fisheries (the Pacific Marine Fisheries Compact, AS 16.45.020), corrections (the Interstate Correction Compact, AS 33.36.020), higher education (the Western Regional Higher Education Compact, AS 14.44.015), and nuclear energy (the Western Interstate Nuclear Compact, AS 41.98.110, and the Northwest Interstate Compact on Low-Level Radioactive Waste Management, AS 46.-45.010). In the environmental area, AS 46.04.100 authorizes the governor to execute compacts with other states or countries on oil pollution control, and AS 46.09.050 authorizes the governor to execute compacts on hazardous substance release control. However, no formal compacts on either of these subjects appear in the Alaska statutes.

Finally, you have asked about language in Section 309(b) of the Coastal Zone Management Act of 1972 that gives the consent of Congress to two or more coastal states to enter into compacts on coastal zone planning, policies and programs. I do not think that this language would be applicable to a compact between Alaska and the other Pacific coast states on oil transportation. The legislative history behind this section suggests strongly that it was meant to allow compacts between neighboring states sharing a similar coastline, such as (to use an example given in the history) Delaware, Maryland, and Virginia. See 1976 U.S. Code Cong. and Admin. News 1794-95. Since Alaska's coastline is many hundreds of miles away from the coastline of the nearest state, I do not think that Section 309(b) could apply to Alaska.

If I may be of further assistance, please advise.

JBG:pl
WKP2/119

Written Statement

of

Kurt R. Oxley

ARCO Transportation Company

House Resources Committee

Hearing on H.B. 135

The Pacific Ocean Resources Compact

April 9, 1992

Mr. Chairman, Members of the Committee; my name is Kurt Oxley. I am a Government Relations Consultant with ARCO Transportation Company, the transportation subsidiary of Atlantic Richfield Company - more commonly known as ARCO. ARCO is a major U.S. based producer and marketer of petroleum and petroleum products, natural gas, coal, and petrochemicals. We are also a major transporter of petroleum by water and pipeline in the Mid-Continent region of the U.S. By far, our greatest transportation activity occurs along the West Coast, both through our 21 percent ownership interest in the Trans Alaska Pipeline, as well as on ARCO Marine's ten vessel U.S.-flag tanker fleet.

ARCO Transportation is keenly interested in H.B. 135, the Pacific Ocean Resources Compact. We have participated in discussions of this topic before the Oceans Committee of the Western Legislative Conference, and have registered our concerns with the Compact proposal when it was considered in the states of Washington, Oregon, and California. I appreciate the opportunity to present my written statement to you today.

The Compact, a concept which seeks to regulate oil and hazardous substance transportation, spill prevention and response, and other maritime and coastal concerns, including the extension of the State's coastal economic zones from three miles to two hundred miles is fraught with implementation as well as operational problems. While the Compact proposal before you today would enter into force upon its ratification by two or more of the five Western States, it will also require the approval of the U.S. Congress.

Arco Transportation remains committed to the belief that the coordination of oil spill prevention and response plans, both among the Western States, as well as with the Federal Government is important in achieving optimal environmental protection. This goal is achievable by increased coordination of Western State policies, with an eye towards building upon, instead of supplanting, the Federal framework.

While changes have been made in comparison to the original Compact proposal, moving it in the direction of increased coordination among the participating states with more active participation in the Federal legislative and regulatory process, the concept of a formal, Congressionally approved, Compact is still troublesome. There are three primary concerns with the compact approach in this instance. My first concern arises from the fact that the Western States, and Alaska in particular, were quick in developing

legislation to better ensure safe oil transportation and to protect their waters, resources, and citizenry from oil spills. ARCO Transportation welcomed an opportunity to participate in the oil spill legislative process and continues to provide input to state agencies as regulations are formulated which implement the legislation. To sweep this all aside in an effort to legislate uniformity between the Western States is a misplaced, duplicative, and expensive effort.

Secondly, I am also concerned that the Compact would supersede newly established Federal laws and regulations which provide a uniform framework for ocean policy in Federal waters. The wide-ranging improvements in spill prevention and response which will arise out of the Federal Oil Pollution Act of 1990 are, just as with the Alaska law, still in the implementation process.

Last of all, the addition of another layer of government, one which would come between state entities and the federal government is counterproductive. The current Federal/State review and regulatory process can be burdensome - an intermediary Compact layer would only further complicate the process.

STATE OF ALASKA
House of Representatives
District 27

Representative Cliff Davidson
Chairman
House Resources Committee

Box V, Juneau, AK 99811
(907) 465-2487
Box 746, Kodiak, AK 99615
(907) 486-8250

TO: Representat ve Dave Finkelstein, Chairman
House Labor and Commerce Committee

FROM: Representative Cliff Davidson

DATE: 31 March, 1992

SUBJECT: House Bill 135

Pacific Ocean Resources Compact legislation was simultaneously introduced in Alaska, Hawaii, Washington, Oregon and California in February 1991. The intent of the legislation is to provide a coordinated and continual effort to: 1) prevent spills of substances dangerous to the environment and the fisheries of the Pacific Ocean, and 2) provide a uniform set of standards for matters such as contingency planning and financial responsibility.

Upon introduction, the compact legislation in each of the states was identical. Since that time, various modifications have been made. It is a legal requirement that before Congress can act on a compact, essentially identical legislation must pass through each state legislature. Only after consistent legislation has passed in the various states and Congress has approved the compact does the legal authority exist for the compact to operate. For those reasons, I am today offering a proposed committee substitute that is identical to the current Senate version. At the present time, this version better conforms to the legislation currently under discussion in the other coastal states.

Thank you for this hearing on House Bill 135.

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 135 ( )

1992 LEGISLATIVE SESSION

Revision Date: 2/12/91
Department Affected: Environmental Conservation
Title: Pacific Ocean Resources Compact
BRU: Spill Prevention & Response
Sponsor: Davidson et al
Component: Spill Prevention & Response
Requestor: House Labor & Committee

COMPONENT SERIAL NO. 1016

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES			57.0	57.0	57.0	57.0
TRAVEL	10.0	20.0	40.0	40.0	40.0	40.0
CONTRACTUAL		4.0	200.0	440.0	440.0	440.0
SUPPLIES		1.0	10.0	10.0	10.0	10.0
EQUIPMENT			10.0	10.0	10.0	10.0
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.	25.	317.	557.	557.	557.
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	10.0	25.0	317.0	557.0	557.0	557.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	10.	25.	317.	557.	557.	557.

POSITIONS:

FULL-TIME	0.0	0.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Lynn Tomich Kent
Phone: 465-5220
Division: Spill Prevention & Response
Date: 4/7/92

Approved by Commissioner:
Agency: Environmental Conservation
Date:

Distribution (by preparer):Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

-ATTACHMENT-
HB 135 4/7/92

Estimation of this fiscal note has required several fundamental assumptions regarding the future direction of the proposed compact. If the parties to the compact choose to be expansive in exercising their mandate, then the operational costs will be greater than if the compact remained in a more advisory capacity. For this analysis we choose assumptions that would result in a fiscal note that assumes startup of the compact over a three year period while other states pass similar laws and Congress ratifies the compact through the high end of the multiplicity of possible fiscal impacts to the State should the compact develop its own regulatory package.

We did not factor in the compact's proposed funding formula, and instead choose to reflect Alaska's costs will be a contribution equal to that of the four other states. If less than five states joined the compact, then the costs to each would be increased somewhat due to lessening of economies of scale.

During start-up of the compact, the amount required for participation will be considerably lower because the organizational details and the compact's mandate would not be established. The first two years of funding will cover organizational meetings and negotiations.

It is assumed that under any scenario, one new full-time staff position (Environmental Specialist III) would be needed after the first two years to carry out Alaska's responsibilities under the compact. Additional funding is provided after the second year to cover the travel costs for Alaska's three appointed representatives and contractual funding to pay Alaska's share of the total annual budget for the compact. This contractual amount would phase in and by FY 96 would pay for five staff and for operational costs at the compact's headquarters.

Funding to carry-out these new responsibilities is not available in existing budgets. The compact is envisioned as a permanent body and thus, the need for funding would continue in future years unless the state withdrew from participation. The costs for participation should remain stable, although the state's contribution for support of the compact would likely fluctuate depending on the funding formula and the extent of the compact's mandate.

General funds are shown as the funding source. The Oil and Hazardous Substance Release Response Fund could be considered as a back-up source if a determination was made that this use is consistent with the purposes of the fund.

FY 93 FUNDING

Travel		10.0
	Total	10.0

FY 96 FULL FUNDING

Personal Services		
1 Environmental Specialist III		57.0
Travel		
Estimated for staff and three appointed representatives to attend meetings of the compact		40.0
Contractual		
Includes Alaska's estimated contribution to support the compact and five staff positions		440.0
Supplies		
		10.0
Equipment		
		10.0
	Total	557.0

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FISCAL NOTE

Nc 1

Bill Version: CSHB 135(L&C)

(H) Publish Date: 4-01-92

STATE OF ALASKA

1992 LEGISLATIVE SESSION

Revision Date: 2/12/91

Department Affected: Environmental Conservation

Title: Pacific Ocean Resources Compact

BRU: Spill Prevention & Response

Sponsor: Davidson et al

Component: Spill Prevention & Response

Requestor: House Labor & Committee

COMPONENT SERIAL NO. ~~1016~~ 1654

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	57.0	57.0	57.0	57.0	57.0	57.0
TRAVEL	40.0	40.0	40.0	40.0	40.0	40.0
CONTRACTUAL	440.0	440.0	440.0	440.0	440.0	440.0
SUPPLIES	10.0	10.0	10.0	10.0	10.0	10.0
EQUIPMENT	10.0	10.0	10.0	10.0	10.0	10.0
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	557.	557.	557.	557.	557.	557.
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	557.0	557.0	557.0	557.0	557.0	557.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	557.	557.	557.	557.	557.	557.

POSITIONS: 1

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Lynn Tomich Kent

Phone: 465-5220

Division: Spill Prevention & Response

Date: 3/31/92

Approved by Commissioner: Joe D. Perkins

Agency: Environmental Conservation

Date: 3/31/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

-ATTACHMENT-

Estimation of this fiscal note has required several fundamental assumptions regarding the future direction of the proposed compact. If the parties to the compact choose to be expansive in exercising their mandate, then the operational costs will be greater than if the compact remained in a more advisory capacity. For this analysis we choose assumptions that would result in a fiscal note towards the high end of the multiplicity of possible fiscal impacts to the State.

We did not factor in the compact's proposed funding formula, and instead choose to reflect Alaska's costs will be a contribution equal to that of the four other states. If less than five states joined the compact, then the costs to each would be increased somewhat due to lessening of economies of scale.

However, the compact does propose a funding formula. Under this formula, Alaska's annual contribution to the support of the compact would be determined according to the relative proportion of each party's gross state product in relation to the compact's total annual budget, subject to a minimum 10 percent contribution and maximum contribution of 50 percent of the total annual budget of the compact. Using the proposed funding formula might tend to reduce Alaska's costs from those presented here. For instance, if Alaska was joined by Washington and Oregon, then Alaska would provide 14 percent of the compact's operational cost, Washington 50 percent, and Oregon 34 percent. If California also joined the compact, then Alaska's cost would be 10 percent, Washington 26 percent, Oregon 14 percent, and California 50 percent.

It is assumed that under any scenario, one new full-time staff position (Environmental Specialist III) would be needed to carry out Alaska's responsibilities under the compact. Additional funding is provided to cover the travel costs for Alaska's three appointed representatives and contractual funding to pay Alaska's equal share of the total annual budget for the compact. This contractual amount would pay for five staff and for operational costs at the compact's headquarters. During start-up of the compact, the entire amount required for these positions and operational costs might be reduced, because organizational details and the compact's mandate would not be established. Instead, travel costs might be greater during the start-up of the compact than in future years because of the need for organizational meetings and negotiations. However, in this analysis we have depicted both travel and contractual costs equally for early years and later years.

Funding to carry-out these new responsibilities is not available in existing budgets. The compact is envisioned as a permanent body and thus, the need for funding would continue in future years unless the state withdrew from participation. The costs

for participation should remain stable, although the state's contribution for support of the compact would likely fluctuate depending on the funding formula and the extent of the compact's mandate.

General funds are shown as the funding source. The Oil and Hazardous Substance Release Response Fund could be considered as a back-up source if a determination was made that this use is consistent with the purposes of the fund.

Personal Services	
1 Environmental Specialist III	57.0
Travel	
Estimated for staff and three appointed representatives to attend meetings of the compact	40.0
Contractual	
Includes Alaska's estimated contribution to support the compact and five staff positions	440.0
Supplies	10.0
Equipment	10.0
Total	557.0

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. HB135

Revision Date: March 19
Department Affected: Environmental Conservation
Title: Pacific Ocean Resources Compact
BRU: Environmental Quality
Component: Environmental Quality Projects
Sponsor: Navarre, Grussendorf, Ellis, etc.
COMPONENT SERIAL NUMBER 1C116
Requestor:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	56.7	56.7	56.7	56.7	56.7	56.7
TRAVEL	40	40	40	40	40	40
CONTRACTUAL	441.5	441.5	441.5	441.5	441.5	441.5
SUPPLIES	9	9	9	9	9	9
EQUIPMENT	9	9	9	9	9	9
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	556.2	556.2	556.2	556.2	556.2	556.2
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

GENERAL FUND	556.2	556.2	556.2	556.2	556.2	556.2
FEDERAL FUND						
OTHER						
TOTAL	556.2	556.2	556.2	556.2	556.2	556.2

POSITIONS:

FULL-TIME	1	1	1	1	1	1	1
PART-TIME							
TEMPORARY							

Estimate of current year impact: No current fiscal year impact.

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared By: Lynn Kent
Phone: 465-2630
Division: Environmental Quality
Date: 3/19/91

Approved by Commissioner: Joan A Fenrich
Agency: Department of Environmental Conservation
Date: 3/27/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency (ies).

Rev 10/90

depending on the funding formula and the extent of the compact's mandate.

General funds are shown as the funding source. The Oil and Hazardous Substance Release Response Fund could be considered as a back-up source if a determination was made that this use is consistent with the purposes of the fund.

Personal Services	
1 Environmental Specialist III	56.7
Travel	
Estimated for staff and three appointed representatives to attend meetings of the compact	40.0
Contractual	
Includes Alaska's estimated contribution to support the compact and five staff positions	441.5
Supplies	9.0
Equipment	9.0
Total	556.2

1991 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Legislative Fiscal Office

MEASURE NUMBER: SB 500
STATUS: C-Engrossed
SUBJECT: Ratifies Pacific Ocean Resources Compact.
GOVERNMENT UNIT AFFECTED: Department of Land Conservation and Development, Legislative Assembly
PREPARED BY: Ken Rocco
REVIEWED BY: Ann Glaze, John Lattimer
DATE: 6/26/91

		1991-93	1993-95
EFFECT ON EXPENDITURES:			
Emergency Board	General Fund	$ 25,000	
Legislative Assembly		Indeterminate	

GOVERNOR'S BUDGET: Measure is not included in Governor's budget.

COMMENTS:

The measure, as amended, provides ratification of the Pacific Ocean Resources Compact by the Legislative Assembly. The compact is designed to coordinate protection of marine and coastal resources by the States of Alaska, California, Hawaii, Oregon, and Washington. The amended measure provides for a General Fund appropriation to the Emergency Board of $25,000 to carry out the provisions of the Pacific Ocean Resources Compact. The appropriation reflects the amount anticipated for the initial costs of maintaining involvement with the compact while the ratification process occurs in other states.

Each ratifying state is to appoint two persons to act as representatives to the compact. As amended, one member of the Senate and one member of the House are to be appointed to represent Oregon. The fiscal impact on the Legislative Assembly depends on several unknowns such as the date of ratification and the number and location of meetings. Funds are allocated to the Legislative Assembly for committees and membership on organizations. The ability of this activity to be funded from these resources depends on the total amount budgeted and on the priorities set by the leadership in allocating the available funds.

Expenditures could increase in subsequent biennia depending on the number of states that ratify the compact and the scope of the compact's activity. Preliminary estimates of the Department of Land Conservation and Development's Ocean Resources Program indicate that a staff of at least three professional level positions would be required for full implementation. Total

compact expenditures for personal services, travel and office expenses, administrative costs, and capital outlay expenditures could range between $500,000 and $750,000 per biennium. Assuming all five states ratify the compact and share expenses on some pro rata basis, Oregon's share could range between $100,000 and $150,000 per biennium.

State agencies with responsibilities for marine and coastal resources could encounter additional work due to the compact, but the increase is expected to be minimal.

LEGISLATIVE REVENUE OFFICE

REVENUE IMPACT ANALYSIS

BILL # SB500C DATE 6-26-91

[redacted] REVENUE OFFICE HAS DETERMINED
[redacted]ION HAS NO IMPACT ON STATE OR LOCAL
[redacted]NALYZED BY THIS OFFICE

SOUTHEAST ALASKA PETROLEUM RESOURCE ORGANIZATION
540 Water Street Suite 202
Ketchikan, Akaska 99901

03/19/91

Statement concerning the proposed adoption of the Pacific Ocean Resources Compact by SB 102 & HB 135

The Southeast Alaska Petroleum Resource Organization, SEAPRO, is a recently formed cooperative organization representing several oil transporters, oil terminals, and bulk oil users who do business in the Southeast Alaska region. Our area of operation is from Dixon Entrance to Yakutat, and our headquarters office is located in Ketchikan. The purpose of the organization is to enhance the regional industry's ability to respond to oil spills which may occur in this area, especially any spill which may be greater than the capacity of any one member to control and clean up. Currently SEAPRO operates as an information network between member companies, other regional companies, government agencies, and other pollution response organizations. One of the goals of this network is to be able to provide a rapid and comprehensive means of communication between industry and government which will allow more efficient planning for pollution prevention and response, plus acquire appropriate pollution response resources as rapidly and efficiently as possible in the event that they are needed.

Over the past couple of days we have been reviewing the proposed Pacific Ocean Resource Compact in light of it's potential impact on pollution prevention and response within our area of concern, which includes the adjacent waters of British Columbia. It is the opinion of SEAPRO management that this Compact offers some potential benefits in advancing pollution prevention and response, but that it also contains several technical deficiencies and omissions which should be corrected in advance of adoption.

BENEFITS

1. The adoption of the Compact, especially if British Columbia is included, should improve overall pollution prevention and response efficiency. All of the Pacific coastal jurisdictions are in the process of adopting rules, regulations, and procedures which are intended to enhance pollution prevention and response. Unfortunately, each jurisdiction seems to creating different approaches to solving the same problems. The multiplicity and duplication caused by this circumstance has forced industry to expend time, energy, and resources, sometimes at cross purposes, in attempts to divine means of compliance with the anticipated desires of each separate jurisdiction.

(1. Continued) Establishing a single set of rules to govern the entire region will allow industry to focus it's efforts and expenditures in those areas which are mutually determined to be of greatest benefit toward pollution prevention and response.

2. Adoption of the Compact should improve the expertise of each individual jurisdiction. Currently, each individual state or province is limited in it's pollution specific expertise by it's own internal capability to acquire and maintain such expertise. Additionally, the expertise acquired by any particular jurisdiction is generally limited to the specific concerns of the agencies within that region. This handicap greatly limits the broader professional knowledge which is necessary to keep abreast of technological trends or developments which tend to antiquate specific regulations as well as prevention and response planning and methods. The Compact could act to centralize available expertise and distribute information tailored to the specific need of any particular jurisdiction, thereby increasing the access to expertise for all of the jurisdictions without necessarily having to maintain such expertise "in house".

3. Adoption of the Compact should force the federal government to improve the level of professionalism within their regulatory agencies. Enforcement of the Compact requirements will fall on the U.S. Coast Guard. The Coast Guard has been charged with enforcing pollution prevention and vessel safety regulations for decades. Unfortunately, due to a number of complex personnel policies and conditions within the Coast Guard, the level of professional competence at the inspection and enforcement level has deteriorated over the past several years. This condition has caused resentment of, and decreased cooperation with, Coast Guard inspectors by many in industry. Requiring the Coast Guard to enforce the provisions adopted by the Compact will allow the several jurisdictions direct oversight over the Coast Guard's professional performance. This may well force the leadership of the Coast Guard to adopt policies and procedures which will improve the level of professional competence of their inspectors and administrators, thereby increasing industries willingness to cooperate with those personnel. The end result would be an improvement in the overall material condition of merchant vessels and waterfront facilities.

TECHNICAL DEFICIENCIES

1. There seems to be a growing trend by legislators to be overly specific in technical terms when creating new law. We view this as a serious mistake. For example, under Article II Definitions (5), you end the definition of "oil" with the words "liquified natural gas, or propane". While propane is a petroleum product, (liquified petroleum gas), it is only one of a series of such products.

(1. Continued) By adopting such precise language you specifically omit other similar petroleum gasses such as butane, propylene, and butylene which are capable of liquefaction by pressurization only, while specifying LNG, (methane), which is not capable of liquefaction unless refrigerated to extreme temperatures. Aside from the fact that none of these gasses, especially LNG, pose any serious environmental threat if spilled, and aside from the fact that technology to contain these products if spilled does not exist, the attempted specificity makes the law appear silly in the eyes of professionals, and creates serious problems of compliance and enforcement.

2. Article II Definitions (8) gives a definition for "vessel" which appears to be legally insufficient. It appears that an attempt to specify tank vessels is being made, but falls short of doing so. It also points to three additional characters, "bulk", "cargo" and "residue", which are key to the definition of a vessel, yet these three characters are not defined. All three of these characters have specific definitions under 33 CFR, 46 CFR, and 49 CFR. It would be interesting to know which definition this law envisions. Also, since you are dealing with interstate commerce, possibly international commerce, it would be nice if the definition of "vessel" were a little more in compliance with that which is specified in 1 USC.

3. Article II Definitions (8) (B) ends with the words "in a place subject to the jurisdiction of the United States." Since this Compact could possibly include an international jurisdiction, possibly that wording should be changed to "in a place subject to the jurisdiction of the Compact."

4. Unfortunately, we have not had sufficient time to thoroughly analyze the proposed legislation in conjunction with the referenced laws, but we tend to believe that the general concept is acceptable if specific technical details of the regulations promulgated under the referenced laws are directly incorporated by the Compact.

OMISSIONS

The most serious omission of this proposed Compact is that it patently ignores existing and future threats to the environment. As is traditional after all oil spills which achieve notoriety, the public, (media), clamors for action and politicians pass laws to prevent a repetition of similar incidents. The problem is that usually such actions are directed at closing the barn door through which the horse has already bolted. The legislation drawn usually envisions a specific incident, but it's impacts will be felt in places unimagined.

This certainly has been the case with all of the environmental legislation passed by Alaska since the EXXON VALDEZ, and it appears to be the case here. As is clear from attempting to define a "vessel" within this legislation, everybody seems to have put their blinders on and are focusing on "tank vessels". Specifically tank vessels carrying crude oil. While tank vessels carrying crude oil will always pose a threat to the environment, they are not the sole threat. Unfortunately, the entire state of Alaska seems to be oblivious to the fact that there are other vessels plying our waters which also threaten the environment, as well as the health and safety of large numbers of people.

Every year for the past ten years, there have been significant casualties involving foreign flag cruise ships either in Alaskan waters, enroute to Alaska, or just departing Alaska. Of these, the fire and sinking of the PRINZENDAM , and the grounding and sinking of the SUN DANCER resulted in significant pollution. Fortunately, the first happened well out to sea, while the other occurred in Canada. But several others such as the DAPHNE and NORTH STAR have resulted in moderate pollution of Alaskan waters.

Many of these ships carry large quantities of heavy fuel oil which looks and acts much like crude oil. These ships proceed into some of the most sensitive habitats in our state, through difficult navigational areas, with the added pressure of keeping precise time schedules. None of these ships have contingency plans, none have adequate pollution response or control equipment, none have adequately trained spill response personnel, and all are capable of protecting themselves from legal claims arising from a ship casualty. Of course none of us will be all that concerned with environmental protection when one of these ships goes to the bottom hazarding the lives of 800 visitors to our state, but oil pollution will be a by-product of such a tragedy. You are courting disaster by not recognizing this threat and planning accordingly.

In addition to cruise ships, a significant number of foreign flag freight ships call at locations large and small throughout the state. Again, these vessels carry large quantities of heavy fuel, and they have a history of causing pollution incidents, although not as frequently as cruise ships. The most serious pollution incident in Southeast Alaska's history was caused by such a ship sinking in Dixon Entrance, and a couple of freight trampers have caused environmental damage in the Aleutians over the past couple of years.

Finally, the rapidly increasing size and number of "uninspected" fishing vessels bearing the U.S. flag working Alaskan waters also pose a serious threat. Recently one such vessel sank in Tongass Narrows in front of the oil terminals in Ketchikan, causing the largest oil spill in that community in many years. Because these vessels have had the political ability to prevent themselves from falling under Coast Guard inspection, they usually fall far below the material condition, damage control capability, and manning standards of even the foreign flag cruise ships. Again these ships pose a substantial threat to the environment, not to mention the threat to the health and safety of their crews and innocent by-standers, yet the threat they pose is being ignored.

Another omission, or more correctly a mis-classification, which will lead to serious deficiencies in pollution prevention and preparedness planning has already been encodified in HB 567 which was passed last year, and has been the cause of furious regulatory activity so far this year. This is the professionally unacceptable mistake of dividing oils into the categories of crude oil and non-crude oil for the purpose of assigning pollution regulation applicability. The use of the wording crude and non-crude was an apparent attempt by the legislature to recognize that certain non-persistent oils common to the Alaskan transportation system pose a lesser threat to the environment than does "Alaskan" crude oils. This division then was established to allow for a lesser degree of financial responsibility and even prevention and preparedness measures.

Those of us in the oil pollution business divide oils by there tendency to pose threats to the environment. The terms persistent and non-persistent are the classifications normally use to determine the gross environmental threat of a product. We tend to think of crude oil as persistent, however, there are numerous examples of crude oils which exhibit characteristics similar to gasoline or case head oils. We also tend to think of non-crude oils as non-persistent. But Number 6 oil, Bunker C, and Asphalt are all examples of non-crude oils which are highly persistent when spilled into the marine environment. In the first case, there is little concern because we do not experience very light crude oils in the Alaskan transportation system. In the second case, however, there is very real cause for concern, because we experience all three of the products mentioned with relative frequency in Alaska.

In our view, the threat to the environment posed by a spill of 100,000 gallons of heavy fuel oil or asphalt is roughly similar to a 100,000 gallon spill of "Alaskan" crude oil.

If you judge the threat to the environment by the relative persistence of the product, you can see how foolish it is for the state to treat oils of relatively equal persistence as a lesser threat than 'Alaskan' crude oil. Yet this is exactly the situation created by the wording of HB 567. This is another example of trying to be over technical in writing law when you have little professional knowledge of the subject at hand.

Our reason for mentioning this last item is to illustrate the almost impossible regulatory compliance climate which is being developed by the State of Alaska. While Alaska has lead the pack in creating an impossible compliance climate, it is not alone. All of the other jurisdictions considering the Pacific Ocean Resources Compact are working toward equally impossible regulations.

It is our hope that by placing the authority for further development of pollution prevention and response regulations under a single jurisdiction, we will be able to then work with that jurisdiction to achieve a more rational and professional approach to controlling the threat posed by the transportation of oils and hazardous materials than is currently possible.

It is also our hope that in the event this Compact is not established in the very near future, that the Alaska State Legislature will revisit the legislation passed in the wake of the EXXON VALDEZ, assess the damage which those laws and subsequent regulations are doing to Alaskan businesses, and make adjustments which improve the regulatory compliance capabilities of our businesses without compromising environmental protection.

Our organization stands ready to assist you in any way possible to achieve the goals stated above.

R. H. Mullen
Manager

Samson Tug & Barge Company, Inc.

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Senator Sam Cotten
Alaska State Legislature
P.O. Box V
State Capitol
Juneau, AK. 99811

March 14, 1991

Dear Senator Cotten:

We were aware of a compact being worked on by the Pacific Coast states and the Province of British Columbia, however information was somewhat scarce. We are very appreciative of having been brought up to speed on the status of the compact and of Senate Bill No. 102. We have reviewed SB 102 and find both agreements and disagreements with the bill.

This bill, as with HB 567 of 1990, fails to recognize the largest potential for a major oil spill in Alaska or members of the compact. Certainly the Exxon Valdez made an impression, but historically how many tankships have had major spills in the last 12 years? How many large freight vessels and foreign flag passenger vessels have had major spills? A review of U.S. Coast Guard records will show a very real list. In Southeast Alaska and the nearby Canadian waters in recent years - the Lee Wang Zin, the Sundancer, the North Star, just to name a few who have grounded and spilled oil into the water. No, they are not carrying crude oil, but they all carry and use heavy bunker oil (persistent). Some of the old and the majority of the new foreign flag passenger vessels carry in the neighborhood of 1,000,000 gallons of this heavy oil. During the summer they transit throughout Southeast Alaska, Prince William Sound, Seward, and into Anchorage. They do not have onboard any major oil response equipment.

Scenario: At 0200 on a summer morning the foreign flag passenger vessel Rotterdam grounds on a charted pinnacle in the vicinity of the entrance to Glacier Bay, Alaska. Two fuel tank compartments have been holed and heavy bunker oil is leaking. Weather is Southeasterly winds 30 kts with gust to 40; tide is flooding. There are 1200 passengers onboard and the vessel has a 15 degree list.

With this scenario, we have search and rescue - 1800 persons (passengers and crew) in jeopardy, a grounded vessel that may or may not be salvageable, oil in the water and the potential for a lot more oil. They have no C-Plans, no response equipment, no trained personnel to respond, and minimum liability insurance for clean-up. This oil will be around for a long time and the impact will be tremendous and so will the public outrage. Why aren't these vessels required to comply will be the question?

Other oceangoing freight vessels, including fish processors, visit ports year round from Ketchikan to Dutch Harbor and the Pribilofs. These vessels meet the minimum federal pollution prevention regulations but carry very little oil response equipment onboard. If one of these vessels grounded, there would be little to no containment of heavy oil by the spiller.
The above noted vessels need to be added to the definitions under Article II and they need to be regulated, as they are the biggest threat to the waters of Alaska and the members of the compact. ADEC appears unwilling to acknowledge these vessels as potential threats, but the compact should, because they are threats.

As noted in your cover letter, we agree an exemption should be made for tank barges transporting non-crude petroleum products to communities. We recommend that instead of deadweight tonnage that vessel exemption be based on the barge capacity. We would recommend tank barges transporting non-persistent oils (gasoline, kerosene, diesel) of not more than 50,000 barrels be exempted. Tank barges are presently under inspection and monitored by the U.S. Coast Guard for safety, manning, and pollution prevention. They carry onboard pollution containment equipment, personnel are licensed/documented, and personnel are trained in oil spill response.

We agree with the uniformity of standards, as we transport not only petroleum products but deck cargo as well to and from Southcentral, Western, and Southeast Alaska. Requiring only one spill C-Plan for petroleum products for the Pacific region would be ideal. There are some standards that would be disadvantageous to industry and we have a disagreement with. Establishing routes that may exclude transit at night or dictate where a class of vessel must navigate; inspection standards for uninspected vessels; manning of vessels. The intent of establishing some of these standards is well meaning however industry must be included in any finalization of compact regulations. Research and studies should be done utilizing all data available and support agencies (Article VIII) should not be agencies of signatory parties. Parties outside the compact should be employed to do the research, as state agencies tend to be partial to the state government and its needs, rather than the needs of the overall people, including industry.

These are the immediate concerns of SB 102 that we have. If we can be of further assistance in this matter, please do not hesitate to call upon us.

Sincerely,

Albert M. Snelling

ALBERT M. SNELLING
Safety Officer

cc: Senator Eliason

PACIFIC OCEAN RESOURCES COMPACT

Multi-State Compacts

A compact is a multi-state agreement consented to by Congress, through which states form a governing body pertaining to issues of regional concern.[1] Multi-state compacts have been used to address problems such as air pollution, land use planning, and water allocation. The one consistent theme of all multi-state compacts is the presence of a regulatory problem which transcends state boundaries. In the case of the proposed Pacific Ocean Resources Compact, the states of Alaska, California, Hawaii, Oregon, and Washington (and potentially British Columbia as a non-voting member) would join in a multi-state compact for the purpose of the regulation of shipments of oil and hazardous substances which impact the region. The Compact does not address resource management or allocation, or the regulation of fisheries.

In structure, compacts are formal agreements enacted by statute in the legislatures of the separate states--the wording of each state's statute is essentially the same. Once ratified by each state and approved by Congress, the compact cannot be altered, repealed, revoked or ignored by a member state. Because it is approved by Congress, the compact is a federal rather than state law as it relates to legal, Constitutional objectives. As a result of Congressional approval which bestows federal authority, a multi-state compact, by definition, does not interfere with interstate commerce. Therefore, the multi-state compact agency can address resource problems with regulations that compact members could not do as individual states.[2]

The Pacific Ocean Resources Compact as currently proposed will have three members from each of the states of Alaska, California,

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[1]Much of the information contained in this overview summarizes, Harry Bader, "Potential Utility of and Interstate Compact as a Vehicle for Oil Spill Prevention and Response," and Alison Rieser, "Federal Pre-Emption Considerations for State Oil Spill Prevention and Response Arrangements," in Alaska Oil Spill Commission, SPILL, The Wreck of the Exxon Valdez, Appendix M, State of Alaska, February 1990.

[2]For example, mary of the regulations Alaska enacted in 1976 concerning oil tanker safety standards, the coastal protection fund, and tanker searches that were prohibited in Chevron v. Hammond in 1979, or removed from statute after Ray v. Atlantic, could theoretically have been permitted had they been enacted by a compact to which Alaska was a member.

Hawaii, Oregon, and Washington. Fiscal support of the compact agency is in proportion to each state's portion of the total gross states' product with no state paying more than 50 percent or less than ten percent of the agency's annual budget. Selection and compensation of each state's members is the discretion of the states.

Benefits to Alaska of Joining the Pacific Ocean Resources Compact

Alaska can benefit in numerous ways from joining the Pacific compact. The primary benefit is enhanced state sovereignty over issues of critical importance to the state such as the prevention of oil and hazardous waste spills, transportation of oil and hazardous wastes, oil spill contingency planning, and environmental monitoring and research. By forming a multi-state compact approved by Congress, regulatory authority that was previously the exclusive domain of the federal government is transferred to the compact agency. Of particular relevance to the Pacific compact is the jurisdiction over the ocean waters from the state's three-mile limit to the 200-mile limit. Regional spill response and prevention contingency planning would be extended into this 200-mile zone. The compact agency will have the authority to regulate activities related to oil and hazardous substances within this zone.[3]

Of particular concern to Alaska is the compact's ability to influence or regulate aspects of oil tanker transportation such as tanker design, tug escorts, safety equipment, and crew size and training. Undoubtedly, the multi-state compact will have greater authority than the individual states currently have. To the extent that the compact regulates regional North Slope tanker traffic, the compact would not conflict with the federal Ports and Waterways Safety Act which sets tanker safety standards to avoid international conflicts. However, this regulatory authority would be contingent upon North Slope tanker traffic continuing to be confined to the compact region as a result of the export ban. Certain aspects of tanker standards such as double hulls, is likely to receive legal challenge as a result of questions remaining from Ray v. Atlantic Richfield Company and Chevron v. Hammond.

In addition to establishing uniform vessel safety standards, the compact will have the authority to coordinate the oil and hazardous substance spill response plans and programs of the states, federal agencies and private organizations. The compact also establishes requirements for the submission and approval of contingency plans

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[3]In the early 1980s, the Alaska Department of Fish and Game completed a study on the potential effectiveness of multi-state compacts and concluded that they offer little benefit. Since that time, however, the lawsuit Seattle Master Builders v. Pacific Northwest Power and Conservation Council 786 F.2d. 1359 (1986), explicitly established the authority of multi-state compacts.

for vessels transporting oil and hazardous substances in the compact zone. These requirements must be at least as stringent as those required under the federal Oil Spill Pollution Act of 1990.

Alaska's sphere of influence would also be significantly increased because Alaska would comprise one-fifth of the voting power within the compact agency with each party having one vote. In contrast, Alaska holds less than one half percent of voting power in Congress.

In general, industry has expressed support for the uniform set of standards that would result from the Compact. For example, only one vessel contingency plan would be required to operate in the region. Similar legislation has been introduced in the states of California, Hawaii, Oregon and Washington.

G. Fay
2/1/91

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LEGAL RESEARCH REPORT

No. 9.2

"POTENTIAL UTILITY OF AN INTERSTATE COMPACT AS A VEHICLE FOR OIL SPILL PREVENTION AND RESPONSE"

Submitted: December 1989

Principal Investigator: Harry Bader

FINAL

I. PROSPECTUS

Federal Courts, in the past decade, have breathed renewed vitality into compact clause theory. This judicial activity, coupled with recent creative applications of the compact clause by Congress to mounting regional problems, offers the state of Alaska a wide range of options which permits conduct otherwise prohibited within the stream of interstate commerce.

Through compact, the state can achieve enhanced sovereignty via regulations which have the force of federal law and exert a controlling influence over federal agency conduct. Compacts also permit the pooling of resources generating the synergistic effect of creating a sum greater than its parts. Compacts also can be designed to increase responsiveness to local needs.

This paper addresses the utility of compacting as a means for protecting natural resources, notably the abundant fishery, through enhanced regulation of oil transshipment in Pacific waters and terrestrial pipelines, terminal operations, and production areas. The application of compact concepts in this analysis is, therefore, directed toward resource protection, not resource allocation. Thus, the involved states should find little opportunity for internal conflict within the compact structure.

II. INTRODUCTION

Alaska has assumed a premiere role as nation's steward by virtue of the incalculable natural resource wealth within her borders. Whether those resources are unscathed wilderness, alluring placer deposits, the oil which drives industry, or the remarkable yet still not entirely understood anadromous fish, these resources are Alaskan from whom the future of a nation is fashioned. Due to the importance of these resources to all American, Alaska has often been forced to accept resource policies not of her own choosing. It is incumbent upon this state to protect its sovereignty by demonstrating a willingness and an ability to ensure the protection and wise use of resources vital to both Alaska and the rest of the country. Pursuant to this end, leaders in the state must apply proven mechanisms in innovative ways which will enable the state to emblazon her own vision to her own future.

The interstate compact is a potentially valuable instrument for ensuring Alaska's rightful place as chief architect or resources planning management. As U.S. Supreme Court Justice Felix Frankfurter championed in a 1925 Yale Law Review article, "Conservation of natural resources is thus making a major demand on American statesmanship. An exploration of the possibilities of the compact idea furnishes a partial answer to one of the most intricate and comprehensive of all American problems." Indeed, the federal judiciary recently heralded the compact as an "...innovative system of cooperative federalism..." in which states can substantively participate in natural resource decision making. Seattle Master Builders v. Pacific Northwest Power and Conservation Council 786 F.2d. 1359 (1986).

There are basically two types of compacts which can take on any one or part of three forms. The traditional compact is the multi-state agreement. A newer type, pioneered under the Delaware River Compact is a multi-state/federal

organization. The forms of compact may be a self-sustaining service compact such as the New York Port Authority, which operates the New York City commercial port, or the nonregulatory cooperative management agreement such as the Atlantic States Fisheries Commission, 56 Stat.267(1942), or a regulatory compact with substantive teeth such as the Northwest Power Planning Council, 16 USC 839. An effective compact among the Pacific states and provinces for the regulation of oil shipments would most effectively be an amalgamation of the regulatory and management forms.

Alaska is no stranger to the compact. Indeed the state is currently a partner in seventeen compact organizations, such as the Pacific States Fisheries Compact and the Interstate Oil and Gas Compact. All of these compacts, however, predate the judicial pronouncements which brought forth the new principles enabling compacts to serve as dispensers of federal law; therefore, our state's current agreements lack the ability to be an effective forum for enforcing Alaska's appropriate role in resource management.

III. PROSPECTS

WHAT IS A COMPACT?

A compact is a multi-state agreement, (or multi-state/federal agreement) consented to by Congress, whereby states may coalesce to form an authoritative body governing issues of regional concern. They have been employed to solve problems of air pollution, land use planning, water allocation, and a myriad of other applications. The one consistent theme, always, is the presence of a regulatory problem with transcends state boundaries.

The constitutional basis for compacts is found in article, I, section 10 clause 3, which holds that "... no state shall, without the Consent of Congress...enter into any Agreement or Compact with another state or with a foreign power." Through this simple clause, the Constitution recognizes the inherent sovereign power of

states to form agreements aimed at regional problem solving. Because a compact is essentially a contract between states, the basic tenets of contract law have traditional been applied to compact relationships. Pursuant to these agreements, the Supreme Court has confirmed that states have the ability to delegate their political powers to, and to devise financing for, the activities contemplated by compacts. Dyerv. Sims 341 US 22 (1951).

Because Congressional consent transforms compact provisions into federal law, compacts can authorize state conduct which would otherwise be constitutionally invalid. Cuyler v. Adams 449 US 433 (1981) and Intake Water Company v. Yellowstone River Compact 590 F.Supp. 293 (1983).

In structure, compacts are formal documents made between the states in an identifiable text. This document is enacted by statute in the legislatures of the separate states. The wording of these statutes must be essentially the same for each state. Once ratified by the requisite states and approved by Congress, the compact cannot be altered, repealed, revoked or ignored by a member state. Disputes arising under compacts are taken to the federal courts, not state courts, for final interpretation. Unlike reciprocal agreements, the statutes ratifying compacts are conditioned upon conduct by the members. Seattle Builders at 1372.

WHAT ARE THE POWERS OF A COMPACT?

Because a compact is approved by congress, the compact is federal, not state, law for consideration of Constitutional objections. Cuyler at 438. Therefore, a compact cannot, by definition, be a state law impermissibly interfering with interstate commerce or federal supremacy interests, nor do traditional pre-emption problems apply. This transformation occurs because Congress, in approving the agreement, exercises its legislative power that the compact threatens to encroach upon, and declares the compact to be consistent with Congress's supreme power in that area. Intake Water Company at 297. Therefore the compact agency may

address resource problems with regulations that compacting members could not do as individual states. For example, many of the Alaska state regulations (SB 406) concerning oil tanker regulation, risk avoidance charges, the coastal protection fund, and tanker searches, prohibited by federal district judge Fitzgerald in Chevron v. Hammond. in 1979, or dropped by the state after Ray v. Atlantic Rishfield could, theoretically have been permitted to stand had they been enacted by a compact to which Alaska was a member. Likewise Alaska, through authority delegated by the compact commission, could exert regulatory controls over the North Slope productin areas, the pipeline, terminal operations and off-shore production, even in areas otherwise pre-empted.

Not only may compacting states enter the realm usually reserved for the federal government, compact agencies may even exert a controlling influence over federal agencies when Congress has given a clear and unambiguous mandate to that end in the consent legislation. Seattle Master Builders at 1364. Currently, two compacts are now operating which possess and wield this impressive authority. One is the Northwest Power Council (16 USC 839) and the other is the Columbia River Gorge Commission (16 USC 544). The more powerful multi-state compact is the Northwest Power Council. Charged with the duty to develop and implement an energy and conservation plan for the states of Washington, Oregon, Idaho, and Montana, the Council is also empowered to oversee the operations of the federal Bonniville Power Administration, at least to the extent necessary as to ensure federal compliance with the compact's plan. Oversight authority is manifested through several provisions within the consent legislation. The Council may review the actions of BPA to determine whether BPA is consistent with the compact's goals and regulations. The Council may notify BPA if the Council deems federal conduct inappropriate in light of the plan's provisions. In such cases, the BPA may to continue with proposals or activity unless a formal written

justifiability, subject to all the structures of administrative procedure law, is proffered by the federal agency.

POLICY BENEFITS OF A COMPACT ORGANIZATION

Several benefits accrue from the structural organization and inherent powers of a compact. Chief among these benefits is enhanced state sovereignty over issues of critical importance to the state. Contrary to the intuitive belief that compacts truncate state power through binding agreements, the compact is a latch key which opens a door into an entirely new sphere of influence otherwise inaccessible to states. Oklahoma's governor, Johnson Murrasy, understood this attribute while advocating Red River Compact. Murray believed a compact "...an effective block against federal encroachment on state sovereignty...and an inspiration to many who are tired of federal intervention in every field imaginable." Reviewing the sad history of Coast Guard supervision over tanker and crew safety monitoring, federal supervision may not only be a benign nuisance, but incompetent and dangerous as well.

Compacts can also prevent federal agencies form acting cavalierly toward state interests. The Northwest Power Council was designed to prevent this problem. Recently, Alaska has again felt the brunt of federal insensitivity to state regulatory organs. In another natural resource field, wildlife management, the National Park Service violated the spirit of cooperative game management, enunciated after ANILCA, by unilaterally ending the land and shoot wolf hunting in National Preserve lands without first consulting the state Game Board last year. Whether one opposes or advocates wolf hunting, this lesson of federal condescension towards Alaska's state authorities bodes ill for hopes of amicable federal agency cooperation in oil activity regulation.

In addition to allowing states to travel waters normally reserved as a federal province, a compact necessarily increases an individual state's

representational power within a given context. Alaska, for example, is only a voice of 3 within a din of 535 legislators in the federal Congress. Whereas in a Pacific states compact, Alaska could compose fully 25% of the decision .naking body as one of four equal partners.

Equally important is a compact's role in increasing regulatory responsiveness to community needs and values. This sensitivity to the local population is achieved because of thee great accountability with a compact organization. Citizens can have direct access to the compact representatives appointed by their governor, much like contacting their state legislator, rather than having to deal with the labyrinth channels of a faceless bureaucracy. Due to the traditional tie between compact representatives and a governor, there is a closer link with the electoral process than would be under a bureaucratic regulatory regime. Because of this responsiveness, compact decisions would be expected to be more narrowly tailored to the specific needs of the region, and therefore more effective and efficient than generalized federal policy decisions. Sensitivity to local needs is a mandate in the wake of the Exxon Valdex, yet as Attorney General Doug Baily has pointed out, there is now a fear that the Trustee Council, established under federal law after the spill, may be frustrating the interests of the local communities in Prince William Sound.

The responsiveness of an interstate compact also outshines the effectiveness of the judiciary in most circumstances. The judicial instrument is simply too sporadic and static to deal with the dynamics of the continuously adjusting environment of regional resources management.

Enhanced oversight is another benefit. A good industry record for 12 years in Prince William sound led to complacency in enforcement of safety standards and preparedness which led to unsafe conditions and an inability to respond to the Exxon Valdez tragedy. If a particular state or agency is lulled into an ineffective

enforcement role, the interests and agents of other states could stimulate additional oversight. Compacts increase the number of watch dogs by increasing the number of participant within the regulatory and enforcement scheme.

Likewise, compacts pool the resources (personnel, equipment, financing, expertise, etc.) of member states, enabling activity impossible for any one state to accomplish on its own.

Compacts provide a unified and cohesive agency through which decision making is streamlined and coordinated. Such a management scheme would have enhanced oil spill recovery efforts this past March. The Skinner-Reilly Report, prepared by the National Response Team for President Bush, found that the various contingency plans for Prince William Sound did not refer to each other or establish a workable response command hierarchy. This situation resulted in confusion and delay during the critical first days of the response in the Exxon oil spills, exacerbating the devastating environmental consequences.

Another benefit of compacting as a means of dealing with regional problems is its role in reducing peripheral interests. In the compacting process, states negotiate directly with each other about issues which immediately affect them. This operational milieu excludes centrifugal forces beyond the region which may otherwise intervene if the controls were to take place on a national level.

Finally, compacts foster synchronization of state efforts in controlling regional problems. If states pursue their own independent regulatory program, Balkanization and duplication can undermine effective controls. More importantly, in the absence of a compact, the vigilance of one state may be thwarted by the inaction or lax administration of adjoining state.

HOW IS A COMPACT FORMED?

...questions of joining or not joining an interstate compact, or creating one, renewing or not renewing it, of appropriating money for its support, of sanctioning

and implementing activities, are uniquely the responsibilities of the states and their people, and it is the state and their people which should have an intense concern for what they may be gaining, losing, delegating or benefiting through the path of interstate compacts ...

M. Ridgeway

Interstate Compacts: A Federal Question

1971

There is no form or pattern for a proper compact, the process of its genesis if free from restriction aside from the Congressional consent criterion. Thus, states are arbiters of their own destiny. With over a hundred compacts now in existence, compacts of the future have a rich history to learn from in constructing agreements to meet the needs of emerging regional problems. The primary obstacle to effective use of compacts as regulatory device is the time period traditionally involved in bringing a compact to fruition. Often times, the period form initial negotiations to federal consent, has consumed more than eight years. Glacial slowness need not be the rule, and the avoidance of some common pitfalls can serve to greatly reduce delay.

One contemporary practice which has shortened the time frame for compact formation has been the shift away from formal compact negotiation commissions to extra-legal organizations composed of various state officials who share a common desire to rectify a particular problem. A most effective start is for each state's negotiating team to draft its own provisions for inclusion in an agreement to serve as a basis for negotiation.

Because Congressional consent to begin negotiations is not mandated by the Constitution, a compacting team ought not to seek this protracted strategy before beginning substantive consultations. Many feel that having prior Congressional

approval for negotiating enables Congress to guide the states and contributes significantly to eventual federal ratification chances. However, this advantage can typically be gained with the inclusion of a nonvoting federal official in the negotiating team.

Crucial to success has been the involvement of local leaders from potentially affected communities and interest groups. This does not mean allocating formal positions to such groups, but it does require the creation of a standardized mechanism of communication and meaningful participation This approach not only expands the information horizon contributing to better compacts, but serves a legitimization function, thereby reducing potentially disorientating opposition from within state. Rarely will Congress give its stamp of approval to a compact perceived as eviscerated internally by intra-state strife.

The experience of the Red river compact found that the early establishment of both legals and technical advisory committees for information gathering and processing was helpful in facilitating the negotiating process. The Red River example also demonstrated the need to guard against information gathering becoming an end unto itself, stymieing progress.

Once the compact document has been drafted, each state must pass enabling legislation conditioned upon the consent of the other involved sates. Each statute will require reciprocal action to be effective. Northeast Bancorp, Inc. V. Federal Reserve Board 86 LEd.2d. 112 (1985). Each statute must be virtually identical in form and wording. After approval by the appropriate governors, the compact is subject to federal consent.

Congressional approval is not required of all interstate agreements. Only those arrangements which are "directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States" require consent under

the Constitution. Washington Metro Area Transit Authority v. One Parcel of Land 706 F2d. 1312, 1316 and Cuyler at 448. an agreement intended to regulate oil shipments on land and water within the Pacific states will most certainly encroach upon the federal province, and therefore must receive consent under the compact clause.

It is this encroachment which serves as the vehicle through which compact provisions become federal law. When Congress approves a compact, Congress exercises the legislative power that the compact threatens to encroach upon, and declares that the compact is consistent with Congress's supreme power in that area. Intake Water Co. at 297.

After congress has bestowed is consent, tradition holds the President reserves a right to participate in the approval process, though presidential involvement probably could be avoided through a concurrent resolution serving as Congress's consent mechanism.

Congress has a duty to ensure that compacts do not proceed to impermissibly infringe upon critical federal interests not contemplated in the consent resolution. Therefore, Congress retains the power to alter, amend, or repeal a compact. Cuyler at 439-440. Also, Congress may enact subsequent legislation which is expressly inconsistent with an interstate compact to which it had previously given its consent.

The extent of federal power to intervene in the internal affairs of an approved compact is the subject of much debate. While the courts have sidestepped this constitutional issue, dicta provides insight to the judiciary's hesitancy to permit wholesale federal intrusion into compact operations. "We have o way of knowing what ramification would result from a holding that congress has the implied constitutional power to alter, amend, or repeal its consent to an interstate compact. Certainly, in view of the number and variety of

compacts in effect today, such a holding would stir up an air of uncertainty in those areas of our national life presently affected by the existence of these compacts. No doubt the suspicion of even potential impertinency would be damaging to the very concept of interstate compacts." Tobin v. United States 306 F.2d 270 at 273 (1962).

WHAT ELEMENTS ARE NECESSARY FOR AN EFFECTIVE COMPACT DOCUMENT?

After the Clean Air act, a flurry of compacting activity erupted in the attempt to control regional air pollution. to assist congress in sifting through the flood of compact proposals, the Department of Health, Education, and Welfare created a set of Guidelines denoting key indicators of competent compact drafting. The indicators were expected to reveal which documents showed the highest potential for achieving their stated goals. See: Air Pollution, 1968 Hearings on Air Pollution Compacts, S2350, S.J. Res. 95 Before the Subcommittee on Air Pollution, 90th Congress, 2nd sess. 3 (1968). Combined with subsequent Compact debates, a beacon can be constructed which provides safe passage for would be compact drafters. An enumerated discussion of important draft criteria, based upon the foregoing, follows.

1. Any agency establishes by the compact should have broad standard-setting monitoring, and enforcement powers.

A compact document must articulate the mission and duties for which it is created and demonstrate the means by which these goals will be realized. The document should demonstrate that the mechanisms specified as tools for compact operation will both be effective in achieving the goals as well as being the best possible option available.

The multistate agreement needs to also explain what type of administrative agency will effectuate its purposes. Two basic options are available. Each party

state may use its own agencies if they appear to be fully equipped to carry out compact policy, or if the complexity of the arrangement necessitates, a special interstate agency may be crated. The compact should be able to delegate authority, but it should not be required to refrain from taking enforcement action until other entities have had an opportunity to do so. In order to coordinate its activities with the federal government, the compact ought to be authorized to designate liaisons to work and communicate with federal agencies involved with the same regional problems.

In order to attain its true potential, the compact document must contain a provision ensuring that federal activities and projects will be coordinated to the fullest extent possible with the policies of the compact.

Finally, in order to retain the flexibility demanded in the field of resource protection, a host of housekeeping provisions must be contained within the documents. The organization should have the power to conduct investigations, make studies, hold hearings, prepare findings, adopt rules and regulations, carry out enforcement actions (including litigation), and the ability to enter into contracts.

2. Each state must have equal representation

It is well settled that compacting states possess equal voting power, despite economic, population, and geographic disparities. Allocating several voting representatives to each state allows a greater range of expertise to be present on the authoritative body, as well as minimizing the potential of special interest capture of a particular state or representative. Another important provision concerning representation involves the ability of states to render their representative accountable and sensitive to their constituency. the accountability dilemma is a real quandary because interstate compacts transcend state lines and political units, thereby circumventing the accustomed channels and structures of

responsibility in the American political system. The apparent freedom that compacts enjoy from their home legislatures must be circumscribed to prevent administrative tyranny without emasculating the agency, rendering it unfit for achieving its mission.

3. Enforcement and business actions by the compact should not require unanimous consent.

Business and enforcement actions should not require unanimity on the part of the decision making board; however, a simple majority is just as undesirable due to the lack of protection it affords minority interests. Thus, a common trend is the 3/4 majority requirement. The requirement concerns the total number of voting representatives, not three-quarters of member states, permitting state delegations to split on a particular vote.

4. The compact must be able to demonstrate financial integrity.

Financial integrity incorporates the needs to be able to receive and dispense funds. It is imperative for a compact to be able to obtain financing beyond simple allocations by member states.

5. The federal government ought to have an avenue to participate in a nonvoting fashion.

6. A valid regionalist justification must be presented.

Compacts are intended to provide a solution for a problem of regional character which defies both federal and state oriented approaches. Congress must see that a set of unique forces (economic, social, ecological, or geographic) frustrates conventional contrivances. Regional interests, regional wisdom, and regional pride must serve as the foundation from which the most effective devices will spawn. it is imperative that the uniqueness of the region be clearly defended when proposing a compact, or the federal judiciary has left no doubt that differing

conditions in different geographic areas may provide a reasonable basis for different legislative treatment.

7. Miscellaneous

A host of other conditions require treatment in a compact document. Of particular importance will be the dedication of drafters in articulating clear definitions and intent for the articles of the compact. Because it is the federal court system which is the final arbitrator in compact disputes and interpretation, care must be taken to ensure that alternative constructions of compact articles do not wreak violence upon the purposes envisioned by the agreement's framers.

No clearer example exists of the consequences to Alaska due to curt misinterpreting of state intent that the Ninth circuit's inquiry into Alaska's definition of "rural" under the subsistence provisions found in ANILCA. Kenaitze Indian Tribe v. Alaska 860 F.2d. 312,316 (1988). In that case the court paid no special attention to the uniqueness of Alaska's remote bush regions, and held that what constituted rural in Iowa would serve as an appropriate definition for rural in Alaska. This decision, which devastated Alaska's state subsistence provisions in 1988, was a result due in part to the state's failure to adequately explain the rationale employed in reaching this particular definition. The lesson of this case ought not to be lost on compact designers attempting to protect resources under the unique conditions faced in the Pacific Rim Region.

IV POLICY APPLICATIONS FOR RESOURCE PROTECTION

This section attempts to portray the spectrum of possibilities available under compact theory for regulation the oil industry, federal agencies, and state government, in order to protect the natural resources for which the Pacific Rim is famed This is by no means an exhaustive analysis, rather, its intent is merely

informative and designed to reveal the changes that can be reaped, both minor and radical, under the case law offer by Cuyler and its progeny.

Establishment of the uniqueness of this region, justifying compact treatment should not be difficult. The presence of an extensive aboriginal population extremely dependent upon the anadromous fishery for subsistence and cultural survival, coupled with the large non-native subsistence population in Alaska, would alone justify special action But there are other ties that bond these states as well. Economically, the fishing industry in Alaska, Washington, and Oregon are entirely dependent upon the harvest in Alaska costal waters. Indeed, these are the most important fishing grounds in the nation and the continent. Sea Grant has estimated that over 70% of the Seattle based industry derives its fish from Alaska. Oregon's fishing industry is similarly dependent. This condition creates the economic bonds definitive for regionalism. Also, the unspoiled coastlines of the Pacific Coast, from the glaciated wilderness fiords of Alaska to the wild shores of Washington's Olympic Peninsula down to Oregon's protected ocean beaches and California's Big Sur, reveal a unique ecological treasure preserved for the world. Travelling past these environmentally sensitive shores, tankers carry one-fifth of the country's crude oil consumption. Cumulatively, these factors form a regional portrait, separate from the broad strode of the federal brush.

Canadian provinces, as well as states, may share in interstate compacts, serving as full participating members. This is currently the case in the Northeast Forest Fire Protection Compact, in which Quebec and New Brunswick are members. A regional compact could envision British Columbia and the Yukon Territory as potential members as well as the Pacific states.

when assessing these policy applications, bear in mind that some would require express federal consent acknowledging subtle changes to the scope of the Ports and Waterways Safety Act and the Clean Water Act. Finally, it is prudent

to note that the Alaska legislature has already invited the application of compact to the task of oil pollution control through AS Section 47.04.100 (1984), authorizing the Governor to pursue compacting in order to achieve the purposes of oil pollution protection. The basis of a compact may be premised upon the very effective Pacific Oil and Ports Group created in 1975 by Dennis Dooley of the Alaska Oil Tanker Task Force under the direction of Walt Parker. The group involved Alaska, California, Idaho, Oregon, and Washington, and promulgated a set of Tanker standards.

After the Exxon Valdex debacle, a host of federal, state, and independent entities conducted investigations and studies to determine what went wrong in Prince William Sound. Interestingly through the morass of accusations and finger pointing, several common themes surface with striking consistency. These findings can be organized into four general categories which shed light on a set of corrective recommendations.

Findings:

1. Contingency Planning

The shear multitude of plans and agencies involved in oil recovery stymied effective response because of a fundamental failure to unify under a coordinated command hierarchy. Organizational responsibilities were unclear, decision making wallowed as a "team concept" broke down into adversarial relationships.

2. Coast Guard

The Coast Guard routinely approved reductions in the number of sailors required on oil tankers, as well as reducing the level of experience for tanker operations. Pilotage standards for Prince William Sound were lowered to meet nationwide general standards. It appears that Coast Guard decision making is driven by industry initiative, rather than agency fact finding. Finally, the Coast

Guard failed to carry through its promises to develop radar installations and stricter tanker design standards.

3. Department of Environmental Conservation

The agency lacks the financial and personnel resources to effectively evaluate industry response capabilities and preparedness. In part, this is due to other priorities which DEC has responsibility towards. However, DEC apparently failed to enforce violations and deviations it detected with Alyeska operations.

4. Industry

The oil companies ignored recommendations to improve spill prevention and response. Alyeska, the company, cancelled contract with a company to maintain dedicated response teams in 1981, and disbanded is own teams in 1984. Equipment inventories were allowed to fall below what was adequate to deal with even moderate sized spills.

5. Interior Pipeline Maintenance and spill Prevention

Over the past 12 years, more than 1.5 million gallons of hot crude oil have boiled across fragile tundra and fouled miles on Interior streams. Innovations in leak detection and response technology have not been adopted by Alyeska. DEC has not pursued inspection of strategic spill equipment caches. A litany of spill examples bodes ill for the lands traversed by the pipeline. Past terrestrial spills have been surprisingly large, due in part to the company's reliance on visual or olfactory detection of leaks. The 650,000 gallons that poured out at Steel Creek and the 240,000 gallons that polluted 30 miles of the Atigun Valley were all detected by human inspection, rather than electronic or mechanical means. Pipe check valves and bends have all been the source of major spills totalling 1000,000's of gallons. Aging equipment and corrosion offer new sources for concern and need immediate regulation and monitoring. A spill on the Yukon or

Tazlina and their many tributaries could devastate the subsistence fishery upon which tens of thousands of rural Alaskans and an ancient culture depend.

Recommendations

1. Adoption of response equipment inventory system, which also monitors equipment readiness and maintenance.

2. Development of a comprehensive contingency plan incorporating all effected parties to stimulate a streamlined coordinated command structure

3. Creation of a single mission enforcement unit.

4. Move oil spill responsibility from the industry. An independent dedicated response team permanently stationed to respond to spills, both terrestrial and marine, is essential.

5. Establish an entity with oversight authority concerning Coast Guard standard setting.

6. Invoke technology forcing provisions which mandate the application of spill prevention and recovery innovations when they become available.

7. Adopt strict crew size and qualification standards.

8. Adopt an emergency requisitioning authority capable of mobilizing equipment, personnel, and logistical services

9. Develop a pre-authorization procedure for streamlined decision-making under exigent circumstances for burning and dispersant use.

10. Implement on-site and on-tanker surprise inspection authority vested in the appropriate state regulatory agency.

COMPACT APPLICATION OF RECOMMENDATIONS

1. Comprehensive Monitoring and Water Protection Interstate Authority

The duty of this compact option would be to provide a coordinated and unified command, regulating industry spill prevention and response capability along the TAPS route. The authority would be responsible for drafting a comprehensive contingency planning process and command hierarchy, superseding the fractured planning currently in place.

This entity would have authority to invoke priorities, regulatory criteria, and monitoring capability, which is binding on all member states, to ensure that adequate equipment, crew, and maintenance are available for spill prevention and clean-up. It could maintain a standing dedicated crew of its own, pooling the financial, personnel, equipment, and expertise resources of its member states and provinces; or, it could oversee and enforce standards controlling industry and state agency contingency operations.

Finally, a compact could, foreseeably, enact uniform tanker safety standards for the Alaska Oil Trade. Because this trade is domestic by nature and law, compact standards would not conflict with the PWSA, an act intended to achieve international uniformity. Compacts would provide the consistency in regulation which foreclose the argument that federal requirements are needed to prevent the costly impacts of diverse state standards.

In addition to streamlining regulatory mechanisms and molding them into an effective unified whole, the organization could be endowed with emergency requisitioning power to prevent industry lockup of response resources.

This approach would permit the flexibility to deal with all five sectors of oil activity, the North Slope, the pipeline, the Valdez terminal, tanker shipping in Cook Inlet and Prince William Sound, and off-shore activity.

2. Oil Pollution Control Standards and Review Council

A compact may be empowered to develop standards and regulations pertaining to crude oil shipment in the member states on both land and water.

The regulations may be embodied in a region-wide comprehensive plan, modeled after the Northwest Power council For example, the plan could establish policies regarding oil spill prevention, tanker design, crew size and qualifications, mandatory response and navigation equipment, etc.

The compact would be vested with the authority to review Coast Guard and other federal agency actions to determine whether their conduct was consistent with the plan. If the federal agency were found deficient in promulgating the plan's policies, the compact could hold hearings and issue a reviewable decision. Federal conduct determined to be inconsistent with plan mardates would be inconsistent until the Coast guard issued a formal, reasoned justification clearly and unambiguously articulating the compelling reason for the incontinency, linking the agency's activity to specific finding of fact.

This approach has enforcement teeth, and therefore, embodies a substantive advantage over any localized citizen's advisory councils currently contemplated in federal legislation. Due to its standardized and formal process, this approach achieves legitimization and formal realizability functions.

3. Risk Avoidance Charges and A Waters Protection Fund

A compact can accomplish what the Attorney General's office stipulated away in 1979 after the Ray decision and the Chevron litigation. The compact authority may establish its own fees for crude oil shipped across member's territory, regardless of origin, for the purposes of establishing a permanent fund to be utilized in spill recovery and mitigation, or prevention. An adjustable fee system may be used to create incentives for spill prevention technology. Alaska's dedicated funding prohibition could easily be avoided through direct fees imposed by the compact, or through the delegation of compact power to the state. See Washington Metro Area Authority at 1321-3122.

V. CONCLUSION

Interstate compacts are formal agreements, ratified by Congress which enhance the power of member states. Compacting states may express regulations which carry the force of federal law, thus immunizing compact conduct from pre-emption and interstate commerce challenges. With this enhanced regulatory authority, compacts enable states to cooperatively resolve regional problems with powers unavailable to solitary states.

Compacts may serve as an effective vehicle permitting Alaska to regulate the oil industry in a unitary fashion consistent with the mandate encapsulated within AS 46.04.200, requiring a coordinated, master stateside plan.

BILL BRADBURY
Senate Majority Leader
OREGON STATE SENATE
SALEM, OREGON
97310-1347

July 25, 1991

Rep. Cliff Davidson
Alaska Hse of Representatives
State Capitol. P.O.B. V
Juneau, AK 99811

Dear Cliff:

The Interstate Ocean Compact bill has been passed by both houses of the Oregon Legislature and was signed into law by Oregon Governor Barbara Roberts.

The die is now cast, and if an ocean compact is going to exist to increase the Eastern Pacific Rim prevention of oil spills, other state legislatures must enact similar legislation in their states.

I have enclosed a copy of Senate Bill 500 (the Ocean Compact bill) in its final form. I am very hopeful that at least two other states will be able to enact similar legislation during their next legislative session.

Once three states have enacted comparable legislation, we can approach the federal government and ask Congress to ratify our compact. My goal would be to have the compact up and running by January of 1993. I am very hopeful we can get compact legislation through your legislature early in the 1992 session.

As you know, creation of a compact does not require passage of identical legislation in each member state, but the courts have ruled that each member state must pass legislation granting the compact identifiably comparable powers for it to actually be a compact under federal law.

I would strongly suggest that each state use the legislation adopted by Oregon as their starting point and determine whether any amendments are necessary to achieve passage.

I look forward to seeing many of you at the Western Legislative Conference annual meeting in Cheyenne, Wyoming this September, or at the Pacific Fishery Legislative Task Force in Alaska.

Hoping for successful enactment of this compact.

My Best,

Bill

Bill Bradbury
State Senator

C-Engrossed
Senate Bill 500

Ordered by the House June 26
Including Senate Amendments dated April 25 and June 14 and House Amendments dated June 26

Sponsored by Senator BRADBURY, Senators BRENNEMAN, COHEN, GOLD, KITZHABER, SPRINGER, Representatives JOSI, RIJKEN, SCHROEDER, TAYLOR, WHITTY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Ratifies Pacific Ocean Resources Compact. Appropriates money to Emergency Board for contribution to compact. **Requires one member of Senate be appointed by President of Senate and one member of House of Representatives be appointed by Speaker of House to act as representatives on compact.**

Declares emergency, effective July 1, 1991.

A BILL FOR AN ACT

Relating to Pacific Ocean Resources Compact; appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) The Legislative Assembly of the State of Oregon hereby ratifies the Pacific Ocean Resources Compact as set forth in section 2 of this Act. This compact shall take effect after two or more of the States of Alaska, California, Hawaii or Washington ratify the compact and consent is granted by Congress as required by section 10, Article I of the Constitution of the United States.

(2) In addition to the States of Alaska, California, Hawaii and Washington, 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 Congress, the Province of British Columbia may become a full party to this compact with the same rights and powers as the party states.

SECTION 2. The provisions of the Pacific Ocean Resources Compact are as follows:

ARTICLE I

Findings and Purpose

A. The parties recognize:

(1) The States of Alaska, California, Hawaii, Oregon and Washington and the Province of British Columbia have a common interest in the protection of marine and coastal resources. This common interest results from:

(a) The fluid, dynamic ocean currents and atmospheric winds that carry pollutants beyond one party's coastal area to another.

(b) The migratory nature of many important living marine resources that depend upon the marine habitat of various parties for different parts of their lifecycle.

(c) The economic reliance of each party upon renewable resources of the ocean.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

(d) The use of the ocean for transport of oil and other hazardous substances between ports in the various parties and other nations.

(e) A regional interest in providing a stable environment for those communities dependent upon ocean resources and ocean trade for a livelihood.

(2) Some marine resource activities, such as fisheries, are currently highly managed with regard for their regional or transboundary nature through existing state programs, regional fisheries councils, interstate compacts and international treaties. Because there are existing formal mechanisms for interstate cooperation and coordination for these marine resource activities, this compact is not intended to encompass these activities or to grant to the Pacific Ocean Resources Compact authority to regulate resource allocation or management as it may pertain to the use and consumption of marine resources.

(3) A formal interstate agreement does not exist to address and resolve issues of mutual concern or to coordinate individual programs of the parties that affect regional interests in the areas of:

(a) Prevention of oil and hazardous substance spills;

(b) Transportation of oil and other hazardous substances;

(c) Oil and hazardous substance spill response planning;

(d) Environmental monitoring and research; and

(e) Ocean resource management.

(4) Each party has jurisdiction over the submerged and submersible lands 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) 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 hazardous substance from an ocean-going vessel has the potential of causing major regional impacts.

B. Therefore, the purposes of this compact shall be:

(1) To assist in the promotion of interstate commerce by encouraging uniform regulation of the

transportation of oil or hazardous substance within the compact zone.

(2) To provide a legal mechanism to regulate certain ocean activities within the United States Exclusive Economic Zone.

(3) To enhance regional coordination of issues of critical importance.

(4) To work with federal agencies to advance the best interest of the region.

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

(6) To monitor activities of concern to the parties.

(7) To 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;

(d) Environmental monitoring and research; and

(e) Ocean resource management.

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

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

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

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

(12) To 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) The vessel transportation of oil and other hazardous substances.

(13) To recommend uniform safety standards for routes, crews and equipment for vessels transporting oil and hazardous substances within the compact zone and monitor the implementation of these standards and regulations by federal agencies, states or provinces and private industry.

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

(15) To 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

As used 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" or "hazardous substances" means any element or compound that, when it enters in or upon the water, presents an imminent and substantial danger to the public health or welfare or the environment, including but not limited to fish, animals, vegetation or any part of the natural habitat in which they are found. "Hazardous substance" includes but is not lim-

ited to a substance designated under 33 U.S.C. §1321 (b)(2)(A), any element, compound, mixture, solution or substance designated under 42 U.S.C. §9602, any hazardous waste having characteristics identified under or listed under 42 U.S.C. § 6921, any toxic pollutant listed under 33 U.S.C. §1317 (a) and any 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 and any other hydrocarbons regardless of gravity, which are 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 by-product, 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 to the compact.

(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

(1) Except as provided in paragraph (2) of this Article, this compact shall become effective when two or more of the States of Alaska, California, Hawaii or Washington ratify the compact and the consent of Congress is or has been granted as required by section 10, Article I of the Constitution of the United States.

(2) 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

(1) 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, shall 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 two 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 forth in this compact.

(2) 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 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. Any 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.

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

ARTICLE V

Pacific Ocean Resources Compact Authority

(1) The Pacific Ocean Resources Compact is authorized to:

(a) Facilitate the prevention of oil and hazardous substance spills by:

(A) Serving as a West Coast Spill Prevention Advisory Committee to the United States Coast Guard. As such, the compact shall advise the United States Coast Guard on matters pertaining to spill prevention within the compact zone and also shall advise the United States Coast Guard on other matters within the compact's authority as set forth in this compact.

(B) Participating as an interested person in any rulemaking proceeding by the United States Coast Guard related to the establishment of safety standards for routes, crews and equipment for vessels transporting oil and hazardous substances. The United States Coast Guard shall adopt the recommendations of the compact, unless the United States Coast Guard makes a finding, as part of the rulemaking process, that the adoption of such recommendations would not further the prevention of oil and hazardous substance spills.

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

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

(b) Insure a coordinated network of oil and hazardous substance spill response plans and programs of the parties, federal agencies and private organizations.

(c) By regulation, establish the requirements for submission of and approval by the compact of a contingency plan by any vessel transporting oil or hazardous substance in the compact zone. Such requirements shall be consistent with the requirements for response plans under section 4202 of the Oil Pollution Act of 1990 (P.L. 101-380). A plan developed in accordance with the regulations adopted by the compact and approved by the compact shall satisfy the requirements of section 4202 of the Oil Pollution Act and shall supersede any requirements of an individual party for submitting a vessel contingency or spill response plan. However, all plans approved by parties to this compact before the operative date of the compact shall remain in full force and effect until a contingency plan is approved by the compact pursuant to this paragraph. In establishing regulations under this paragraph, the compact shall work closely with officials of the parties to assure that the vessel contingency plans required under this compact include all subject areas included by the member parties, in the standards for vessel contingency plans of the parties, in aggregate, before the adoption of the compact.

(d) Establish and maintain an informational clearinghouse related to spill response, including a

directory of personnel, equipment, technical expertise, organizations and other resources available to assist as part of a regional oil or hazardous substance spill response.

(e) Provide a forum for discussion and recommendation to resolve conflicts among member parties or the federal government regarding various ocean resources programs that have been or may be established by each party.

(f) Provide opportunities for public participation in compact activities by holding meetings of the compact in various locations within the territorial limits of the parties, providing opportunities for public comment at meetings and developing a public outreach program.

(g) Designate state or provincial agency officials to act on behalf of the compact as liaisons with federal agencies.

(h) Identify the regional data needs related to ocean resources and recommend a method for compiling the data in a format that can be shared by all parties.

(i) Consult with and advise any pertinent party or federal agency with regard to problems connected with ocean resources management and recommend the adoption of any rules or regulations the compact considers advisable that are within the jurisdiction of the agency.

(j) Establish sanctions and a schedule of civil penalties for violations of the rules or regulations of the compact and impose such sanctions or civil penalties in accordance with 5 U.S.C. §§551 to 559 and §§701 to 706.

(k) Request the United States Coast Guard to enforce or assist in the enforcement of any regulations adopted by the compact including but not limited to regulations related to the submission of a contingency plan or financial assurance requirements in the compact zone.

(L) Establish a schedule of reasonable fees to be assessed for the review of a contingency plan submitted under paragraph (c) of this subsection. The fees shall be sufficient to recover the costs of reviewing the plans and conducting any related inspections. The fees may be assessed in increments up to the maximum amount.

(2) In addition to the authority granted under paragraph (1) of this Article, the compact may:

(a) Accept grants and gifts.

(b) Enter into contracts for whose performance the compact shall be solely responsible in order to support its operations.

(c) Conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs relating to the purposes of this compact.

(d) Conduct public hearings on matters pertaining to the purposes of this compact.

(e) Establish a standardized cost recovery formula for damages to other resources based on the amount of oil or hazardous substance spilled.

(f) Enter into an agreement with the United States Coast Guard under which the compact will administer compliance with the requirements for demonstrating financial responsibility under section 1016 of the Oil Pollution Act of 1990 in an amount established by the compact. Such proof of financial responsibility, if established by the compact, shall satisfy and supersede the requirement of any individual party for demonstrating financial responsibility. However, all financial responsibility requirements established by the parties to this compact before the compact establishes an amount under this paragraph shall remain in full force and effect until the compact establishes a requirement and enters into an agreement with the United States Coast Guard under this paragraph. In establishing the amount of financial responsibility under this paragraph, the compact shall work with officials of each party to assure that such requirements are sufficient to satisfy the require-

ments of the parties, in aggregate.

(g) In accordance with the provisions of 5 U.S.C. §§551 to 559 and §§701-706, enforce the rules and regulations adopted by the compact to carry out the authority of the compact as set forth in this Article.

(h) Appoint technical and advisory committees for the purpose of advising the compact on regional ocean resources issues, data needs and format and other purposes related to the compact's activities. A technical or advisory committee appointed by the compact shall not be subject to the provisions of the Federal Advisory Committee Act (P.L. 92-463, as amended).

(i) Allow a variance from the provisions of this compact or rules or regulations adopted by the compact pursuant to this Article. A variance shall be based on a showing by the person or entity seeking the variance that the activity allowed under the variance will have no regional impact 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.

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

ARTICLE VI

Pacific Ocean Resources Compact Organization

The compact shall select a chairperson and a vice chairperson. After the initial chairperson and vice chairperson are selected, the compact shall establish a rotation for the selection of the chairperson and vice chairperson 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

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

(2) Each representative shall be entitled to one vote. No action or decision of the compact shall be approved unless the action or decision receives a majority of the votes of the representatives, including at least one affirmative vote from each party.

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 shall be construed to limit the powers of any party or to repeal or prevent the enactment of any legislation or the enforcement of any requirement imposing additional conditions and restrictions to conserve

ocean resources.

ARTICLE X

Absence

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

ARTICLE XI

Funding

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

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

(3) 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 legislative body of the signatory parties.

(4) 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.

SECTION 3. One member of the Senate appointed by the President of the Senate and one member of the House of Representatives appointed by the Speaker of the House of Representatives shall act as the representatives of the State of Oregon on the Pacific Ocean Resources Compact in accordance with the powers and duties set forth in the compact.

SECTION 4. (1) In addition to and not in lieu of any other appropriation, there is appropriated to the Emergency Board, for the biennium beginning July 1, 1991, out of the General Fund, the sum of $25,000 which may be allocated by the Emergency Board only for the purpose of funding the costs of contributing to the support of the Pacific Ocean Resources Compact activities, once the compact becomes operational.

(2) If all of the moneys referred to in subsection (1) of this section are not allocated by the Emergency Board prior to December 1, 1992, such moneys on that date become available for any other purpose for which the Emergency Board lawfully may allocate funds.

SECTION 5. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1991.

PMSA

December 20, 1991

TO: G. Kraatz
K. Oxley
J. Maslen
A. Stephens
D. McCormack
C. Halen
G. McMahon

FROM: Leo Brien

SUBJECT: Pacific Compact Legislation - Alaska

During the Pacific Conference, I had an opportunity to meet with Senator Sam Cotten, Alaska (President of the Senate) and discuss the Pacific Compact. As you may be aware, he is carrying this legislation in Alaska. I expressed my concerns with the Compact concept, but could not specifically address his bill as I have never had an opportunity to review it. I assumed, however, that it is similar if not identical to Oregon and California.

He recognized some of my concerns and gave me the impression that he is willing to consider amendments to accomodate these concerns. I also had the impression that this issue is not a "life or death" issue for him and he does not appear to be emotionally attached to the concept.

Since I initiated this dialogue, I thought it would be beneficial to follow up with a letter, a copy of which is attached. You will note that most of the concerns I outlined were taken directly from my March 15, 1991 letter to Assemblyman Hauser. Since we all agreed with the text of that letter, I felt it was appropriate to advise Senator Cotten of those concerns.

Please advise of questions/comments.

cc: W. Lawrence
R. Ray

LRB:rc

PACIFIC MERCHANT SHIPPING ASSOCIATION
One Kaiser Plaza, Suite 420, Oakland, California 94612 Telephone (415) 839-9650 Fax (415) 839-2980

PMSA

December 20, 1991

Senator Sam Cotten
P. O. Box 770296
Eagle River, AK 99577

Dear Senator ~~Cotten~~ Sam:

During the Pacific Conference we had a brief opportunity to discuss the Pacific Compact legislation. While I have not had an opportunity to review the specific legislation you have introduced in Alaska, I thought it would be helpful if I outlined some of the concerns PMSA noted with respect to similar (I believe) legislation (AB393-Hauser) introduced in California.

The Pacific Ocean Resources Compact, as it is entitled in California, goes well beyond traditional compacts by extending the geographic scope of state jurisdiction.

This raises a number of issues:

* The U.S. Congress, Alaska, California and Washington state enacted comprehensive oil spill prevention legislation in 1990 and 1991. Each provides a high degree of protection for the marine environment. Much of the regulatory proceedings necessary to implement the provisions of this legislation is still being completed. It seems premature to consider additional regulation until we have had an opportunity to evaluate the impact of the legislation so recently enacted.

* The proposed compact appears to violate the constitutional principals that reserve admiralty and maritime jurisdiction to the federal government.

* The Alaska legislature enacted, I believe, very comprehensive legislation that dramatically increased the State's authority over the shipping and handling of oil. Is Alaska prepared to

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relinquish some of this new authority to an intermediate bureaucracy not directly accountable to the Alaskan electorate?

- Industry, and ultimately, the consumer, is already providing significant funding for federal and state oil spill prevention laws. As additional unspecified funding is required for this interstate compact, it is unrealistic and unfair to expect industry and consumers to pay yet another assessment. Will general funds be available for this proposal? Given the deficit situation facing many states, the availability of general funds appears highly doubtful.

- The power to enact and enforce regulations governing activities off the coasts has inherent foreign policy implications, and there is a constitutional limit on the extent to which Congress may authorize a state to exercise that power. The delineation of that federal limit has been the subject of international debate and that controversy would likely be intensified if authority out to 200 miles were granted to states through the creation of this compact.

PMSA does support the concept of uniformity of maritime law and regulation throughout the United States. The U. S. Coast Guard currently provides that uniformity, as they alone have the authority over such subjects as vessel design, navigation and manning requirements. Our industry is international in scope, and we therefore believe a single agency approach is absolutely critical.

The compact language, as prepared by California (and enacted by Oregon) moves well away from this concept by creating a regulatory body with the authority to impose an unnecessary additional layer of regulations. PMSA cannot support the regulatory provisions encompassed by this legislative language. On the other hand, PMSA does recognize the value of interstate communication and cooperation in addressing oil spill prevention, planning and response. We are supportive of increased coordination among states on such issues.

Accordingly, we believe Compact legislation should be strictly advisory in nature, emphasizing interstate cooperation and eliminating regulatory authority/requirements which go well beyond the long standing bounds on states' authority to regulate interstate and foreign commerce.

Some of the concerns I have raised may not be applicable to your legislation. I did, however, want you to be aware of our concerns with the California Compact legislation.

I would be happy to discuss this issue with you at your convenience.

Sincerely yours,

Leo Brien
President
Pacific Merchant Shipping Association

Though the attached article may also be of interest.

LRB:rc

Voluntary Agreement concerning Liability for Oil Pollution) and CRISTAL (Contract Regarding a Supplement to Tanker Liability for Oil Pollution) — met at the end of October in Norway and agreed to extend these agreements for two years to February 20, 1994. These agreements are voluntary commitments to pay cleanup and compensation costs promptly to spill victims. TOVALOP, whose member companies represent 97% of the world's total tank-vessel tonnage, makes available a maximum of $70 million for any one incident. CRISTAL, comprised of about 750 oil companies, raises that figure to $135 million. According to a spokesman for the International Tanker Owners Pollution Federation, members chose to revisit the issue in no more than two years because of these "uncertain times given the new Oil Pollution Act of 1990 (OPA 90) and the debate over the protocols."

The protocols that he referred to are 1984 International Maritime Organization (IMO) protocols to the 1969 Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage. At a recent diplomatic conference in London, participants asked the IMO to adopt new protocols in place of the 1984 protocols, which have been ratified by only two of the eight countries needed for enactment (OPA 90 discouraged any hope of the US ratifying these protocols). The International Oil Pollution Compensation Fund Assembly recommended that the IMO reduce the number of countries required to adopt the protocols to make it easier for the protocols to go into effect. The assembly had earlier rejected a suggestion that the liability limits be raised to $283 million (currently the limit is $80 million; the 1984 protocols would have raised the limit to $191 million).

Five States Discuss the Need for Cooperation in the Gulf of Mexico

Kicking off the Clean Gulf '91 conference in Austin, Texas, on October 29, representatives from the five Gulf states — Texas, Louisiana, Mississippi, Alabama, and Florida — began talks on drawing up a memorandum of understanding (MOU) to "pool their resources" regarding oil spill preparedness and response. They discussed the need for a "good communications network," which would include sharing data and coordinating training, research, contingency planning, and other requirements to avoid unnecessary duplication. In discussing what form this cooperation should take, the representatives ruled out a formal compact, since such an agreement would require congressional approval. And, as was evident on the West Coast, where a similar compact gained little support, it would be faced with too many obstacles (see "Outlook for Western States' Compact Looks Bleak," *OSLR*, June 1991). Representatives instead voiced their support for an MOU and possibly a task force that could meet on a regular basis.

Hotline: On October 29, the US Senate consented to the ratification of two IMO treaties: the International Convention on Oil Pollution Preparedness, Response, and Cooperation, 1990; and the International Convention on Salvage, 1989 (see *OSLR*, August 1991) . . . The US Coast Guard (USCG) has received more than 120 comments on the advance notice of proposed rulemaking concerning vessel response plans, but one USCG officer reviewing the comments said that they were not as specific as the USCG had hoped (see *OSLR*, October 1991) . . . Around the first of October, Washington State Governor Booth Gardner appointed Barbara Herman as the new administrator of the state's Marine Safety Office. Herman was formerly the chief litigator for the state of Alaska in the Exxon Valdez case . . . For more information on any article in this issue, contact the Oil Spill Hotline: (617) 641-5110 or 648-8700; Fax: (617) 648-8707.

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Statement of the
Alaska Forest Association
to the
House Resources Committee on HB 135

April 9, 1992

STATUS OF LEGISLATION

The Pacific Ocean Resources Compact was proposed in the wake of the Exxon Valdez grounding. The Alaska State Legislature directed most of its attention and energy to bills affecting Alaska only in the latter part of the 1989 session and during the 1990 and 1991 sessions. HB 135 and SB 102 were introduced in 1991, but both were held in their respective committees of first referral until the last two weeks when both were reported out. PORC is being considered by the Western States Legislative Council, primarily being pushed by Senator Bradbury of Oregon.

The Pacific Ocean Resources Compact as interpreted by both the Senate and House versions would establish an interstate compact presently suggested to include the states of Alaska, Hawaii, Washington, Oregon and California. British Columbia would be allowed to join if permitted by treaty, other federal law or Canadian law. Oregon has adopted authorizing legislation. Washington's legislature has adjourned its session without acting on the proposal and California has indicated that it will not become a party to the compact because it would probably be assessed about half of the cost of operating the compact. Washington legislators are, apparently, viewing PORC as not in that state's best interest. Legislators in Hawaii are expressing interest.

Oregon's legislation provides that the compact would become effective upon adoption by three states. HB 135 provides that the compact becomes effective as to Alaska upon ratification by two or more of the states of Hawaii, Washington, Oregon and California. SB 102 contains a similar provision.

CONCERNS OF MINING AND FORESTRY INDUSTRIES

Of primary concern to both the mining and forestry industries will be the shipment of bulk petroleum products and chemicals. PORC would affect the industries in the same ways that Alaska's existing oil and hazardous substance spill and response legislation and federal law do with respect to the marine transport of commodities. If the costs of the compact must be borne by the maritime industry, the impact will be of concern.

A point that apparently has not been addressed is the involvement of the coastal zone management program. The CZM program has sought a decisive role in the regulation of the

transport of crude petroleum, but the advisory committees established under the Oil Pollution Act of 1990 (OPA 90) seem to have occupied the field. If PORC were to take over regulation, rather than become a multistate advisory body, the CZM issues may emerge as preeminent.

Another issue of concern to all industries is that without the participation of either California or Washington, the need to impose the terms upon Alaska at this time is not apparent. A major influence on the enactment of Alaska's oil spill response legislation has been Congressman George Miller of California, chairman of the House Interior Committee, and his staff. Whether or not Congressman Miller plays a role in the proposed Alaska legislation cannot be answered at this time.

PURPOSE AND AUTHORITY OF THE COMPACT

The Pacific Ocean Resources Compact in HB 135 proposes that PORC address and resolve "prevention of oil and hazardous substance spills; transportation of oil and other hazardous substances; oil and hazardous substance spill response planning; and environmental monitoring and research." Its purposes would include, among others, "to provide uniform regulation of the transportation of oil or hazardous substances within the compact zone (includes the Exclusive Economic Zone (EEZ) which extends 200 miles seaward of the coast); regulate "certain" ocean activities; direct federal agencies to act in the best interest of the region; recommend uniform safety standards for routes, crews and equipment; and promote more coordinated management of ocean resources that are of mutual concern."

UNRESOLVED ISSUES

A number of questions arise that neither the House nor the Senate has as yet answered that may have implications for the mining and forestry industries. The extraordinary lack of information makes it difficult to predict the impact of the provisions of either bill. PORC would either regulate or advocate regulation of shipment of hazardous substances in addition to oil and petroleum products. The Coast Guard presently may set standards for the carriage of hazardous substances, and does, and it is unclear from either bill the extent to which that regulatory effort would be expanded under PORC. Some of the issues causing concern to shippers and carriers, and probably affecting the mining and timber industries, are as follows:

1. Funding. Each state is responsible for its proportionate share of the costs. There has been no definition of what those costs may be, what proportions will be used, nor the source of funds. Funds may be procured through fees payable by vessels, from the "470" fund or some other mechanism not yet adopted. The "470" fund's source of revenue is primarily the

$0.05/barrel tax on each barrel of crude from Alaska. If the "470" fund is used to finance Alaska's participation in PORC, the crude producers will be primarily responsible for support. They would, of course, object to having to bear the full burden. If fees are the primary source of funding, all vessels required to submit contingency plans will be required to pay for the state's participation.[1]

2. Contingency plan standards. Neither house has indicated what standards would be adopted for contingency plans. If Oregon and Alaska are the only members--Hawaii's interest may arise because of the expansion of authority into the territorial sea and the EEZ--standards for contingency plans could be even more stringent than Alaska's. Alaska's liability laws governing response action contractors appear to be a major obstacle to entry of the MSRC into Alaska. Without MSRC participation, Alaska's ability to respond to oil spills is diminished. If Oregon adopts Alaska's standard, for example, the availability of MSRC assistance in a spill on either coast is doubtful. Passage of HB 540 may change the attitude of MSRC, something that would be of significance to all areas of the state except Prince William Sound.

3. Financial responsibility. Alaska has stringent requirements for financial responsibility. We do not have information as to Oregon's requirements, if any.

4. Standards to be chosen. There has been some concern that PORC members will pick the most stringent standard now in place by any of the members and apply that standard without consideration of the implications.

5. "Ocean resources" to be regulated. The findings and purpose stated in Article I of the House version refer to the "migratory nature of many important living marine resources," "the economic reliance on renewable resources," "a regional interest in providing a stable environment for those communities dependent on ocean resources and ocean trade," and contain a disclaimer of interest in regulating fisheries. It is unlikely, however, that fisheries would not be a focus of primary attention, at least as far as Alaska is concerned.

6. Implications for foreign-bottomed vessels. Neither Alaska law nor the provisions of the compact deal with the issues arising out of trade using vessels of foreign registry. At the

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[1]Most chemicals shipped by industry are soluble in water or sink. Petroleum products are among the few that would remain on the surface of the marine environment long enough to warrant a spill response. Because of this, costs to shippers and carriers of hazardous substances that will not float may be determined through fines and penalties, rather than response costs.

present time, all of the ore and timber shipped to foreign markets are carried on foreign bottoms. One oil company, Amerada Hess, has authority to use foreign bottoms to carry North Slope crude from Valdez. All of the cruise lines use foreign bottoms exclusively in the Alaska trade.

LEGAL STATUS OF COMPACTS

The U.S. Constitution permits the formation of interstate compacts. Article I, Section 10 provides:

> Restrictions upon powers of states.***No state shall, without the consent of Congress...enter into any agreement or compact with another state, or with a foreign power...

Alaska belongs to several compacts, including the Multistate Tax Compact and the WICHE compact. The usual purpose for an interstate compact is to solve purely state problems of mutual concern. For example, the Multistate Tax Compact performs audits of multistate corporations for the use of the members, thus sparing both the states and the corporations multiple audits. WICHE permits students of certain states to attend institutions of higher education in other member states upon the same financial footing as residents.

Congress gives relatively perfunctory attention to compacts that do not implicate federal jurisdiction. When compacts impinge on federal law, Congress is loathe to divest itself of its authority to regulate commerce among the several states. When international law is implicated, Congress seldom accedes to the request of the compact members. A question that has never been fully and finally answered is whether or not Congress could cede its Constitutional authority to "regulate commerce with foreign nations..." (Article I, Sec. 8) It is unlikely, although not impossible, that Congress would approve the provision permitting British Columbia to join PORC because of its reluctance to permit the states to regulate foreign commerce and because of the exclusive jurisdiction granted by the Constitution over admiralty and maritime matters. Some question exists as to whether or not Congress could Constitutionally delegate treaty-making powers to the states. This question arises because there are treaty-making implications in PORC.

When a compact is approved by Congress, it becomes federal law and is federally enforceable. The procedure used is that upon ratification of enough members of the compact to make the compact effective, the compact is submitted to Congress for approval. Congress may make any changes it wishes to make in the compact. Many compacts have been proposed that have never been approved.

Alaska presently has authority to regulate matters within its borders which include waters seaward 3 miles from the mean high water mark, that are not preempted by federal law. The House version would push that boundary, not just to the territorial sea (12-mile limit), but also to the limits of the EEZ.

The focus of the Senate and House committees considering the bills has been the oil industry. Very little information has been made available to the committees on the implications for other exporting industries or for the domestic coastwise trade involving other commodities.

REASONS WHY THIS LEGISLATION SHOULD RECEIVE ADDITIONAL WORK

1. There remain too many unresolved issues (see page 2).

2. Alaska should not enact legislation until Washington and California have expressed a desire to join the compact.

Alaska, through Governor Cowper and Commissioner Kelso. was an early, if not the first, proponent of a compact. The effectiveness of a compact depends, however, on the participation of Washington and California as all but a small percentage of Alaska's crude production is transported to Washington and California ports. The issues of scope of authority and cost should be more fully resolved before Alaska undertakes, with its fragile economic base, the support of an organization over which it will have limited control.

3. Costs and sources of funding should be determined before enactment.

The avoidance of any serious discussion of how the compact would be funded has obviously caused California to resist joining. Fiscal concerns may well be the influencing factor for Washington. It is fundamentally unfair to Alaska industries to enact legislation for which they must bear the burden without providing cost information.

4. The scope of regulatory authority or advocacy should be explained.

The House version would empower the compact to regulate contingency plans and spill response. The inclusion within the bill of "other ocean resources" suggests that it is the desire of the House proponents to establish a regulatory environment on an interstate basis similar to that contemplated in HB 355, the in-stream flow bill, which authorizes allocation of all water resources in lakes, rivers, streams and ground for fish and wildlife habitat.

While the Senate version does not contemplate actual regulatory effort, its advocacy of marine regulations could assume importance on an interstate basis that advocacy of the in-stream flow/water reservation provisions of HB 355.

The opportunities for broad regulation, potentially very harmful to Alaska industries, exist within the provisions of either bill. Alaskans are entitled to a full explanation of the intended activities of the compact before it becomes effective in Alaska.

CONCLUSION

The Alaska Forest Association urges most strongly that these concerns be addressed fully and that Alaskans be given ample opportunity to consider them before enactment. The consequences of a less than prudent decision on this bill can be very damaging to Alaska's economic future.

STATEMENT OF
EXXON SHIPPING COMPANY
TO THE
HOUSE RESOURCES COMMITTEE

ON HB 135
APRIL 9, 1992

Exxon Shipping Company appreciates the opportunity to provide comments on House Bill 135.

The proposed legislation seeks to have Alaska ratify the creation of a multi-state Pacific Ocean Resources Compact. The Compact has various stated purposes. They range from very specific regulatory provisions to broad, undefined regulatory provisions to coordination of mutual interest activities of Compact parties. A key aspect of the Compact would provide for the extension of states' jurisdictional authorities out to 200 miles offshore. The compact would vest comprehensive authority to its appointed administrative body regarding activities, regulatory powers, staffing and funding.

There is some merit associated with an interstate advisory group to work with state and federal governments to improve coordination in oil spill response planning, environmental monitoring, and research activities. However, Exxon Shipping Company opposes the proposed legislation due to the specific marine regulatory provisions and the broadly worded regulatory provisions for undefined ocean activities. The Company also opposes the broad authority which the Compact would have to adopt other regulations. In addition, we have concerns regarding what we believe will be the likely jurisdictional constitutional and regulatory conflicts arising from the proposed Compact territorial expansion.

This statement will address the reasons for our position and concerns.

The Compact specifically provides for uniform regulation of oil and hazardous substance transportation, including the establishment of standards for routes, crews, and equipment for vessels and for vessel contingency plans. Comprehensive oil spill prevention and response legislation was passed in 1990 at the federal level (Oil Pollution Act of 1990) and in Alaska through a package of laws in 1989, 1990, and 1991. Implementation of these legislative efforts is well underway at both the federal and state levels through the development of extensive regulations. Compact provisions for development of an additional layer of regulations for these purposes is both unnecessary and inappropriate. At best, such an effort would be duplicative of Alaska and federal work; at worst, it could result in totally confusing layers of regulations under various authorities. It seems logical to allow the industry and states to operate under the statutes being developed before deciding whether additional or modified regulations are needed.

The Compact also provides for regulation of certain ocean activities within the Exclusive Economic Zone, and for adoption of all regulations necessary to exercise its authority. This broadly worded authority to regulate, without definition or limitation of the activities/areas to be regulated, is inappropriate, especially for an appointed body. Such regulatory authority would likely duplicate or conflict with existing federal and state agencies roles, responsibilities and regulatory powers.

The U.S. Coast Guard has primary authority for marine transportation in U.S. waters and is responsible for establishing vessel safety and design standards, training and manning requirements, routing, and traffic control. Exxon Shipping Company firmly supports the concept of uniformity of maritime law and regulations throughout the United States. Adding other regulatory authority for marine transportation through the proposed Compact could lead to confusion among domestic and international shippers as to which agency has primary jurisdiction over safety standards for vessels transporting oil or hazardous materials.

We understand that over 200 compacts have been adopted by states and approved by Congress. These compacts generally tend to facilitate uniformity of law and regulation associated with interstate commerce and cooperation. The proposed Compact seeks to extend the geographic scope of states' jurisdiction into federal jurisdictional domain. We are concerned that this Compact would not have the intended effect of greater uniformity, but would rather result in significant constitutional disputes over admiralty and maritime jurisdiction with disruptive impacts on national and international shipping.

The proposed Compact would be authorized to conduct hearings, promulgate regulations, negotiate with the federal government, provide technical assistance, conduct environmental monitoring and research, and apply sanctions and penalties for violations. Its liberal wording grants, to an appointed board, extensive authorities equal to or exceeding those generally delegated to elected state and federal legislative bodies. With all this apparent authority, there is no clear indication or direction as to how these powers are to be exercised or implemented, or how the funding to enforce the authority would be developed.

The premise that there are no effective means for adjoining states to address mutual concerns related to the transport of oil and hazardous substances is not accurate. Such concerns can be addressed by state governments and through the federal government agencies (U.S. Departments of Transportation and State) which, in turn can represent appropriate concerns to international bodies such as the International Maritime Organization.

In conclusion, Exxon Shipping Company supports the concept of uniformity of maritime law and regulations throughout the United States. Our industry is multi-state and international in scope, and therefore we believe uniformity of approach to such issues is absolutely critical.

The Compact would move away from this concept by creating a regulatory body with the authority to impose an unnecessary layer of regulations. Exxon Shipping Company cannot support the regulatory provisions encompassed by the legislative language. These regulatory provisions are inappropriate - especially in view of the recent state and federal legislation now being implemented.

Accordingly, Exxon Shipping Company urges this Committee to oppose the passage of HB 135.

MEMORANDUM

State of Alaska
Department of Law

TO: Deborah Behr
Legislative Attorney
Department of Law -- Juneau

DATE: April 8, 1992

FILE NO:

TEL NO 269-5274

SUBJECT SB 102 - Pacific Ocean Resources Compact

FROM: Breck C. Tostevin BCT
Assistant Attorney General
Environmental Section

This memorandum reviews the legal impact of SB 102 on the State of Alaska's ability to regulate the transportation of oil and hazardous substances on its navigable waters.

SB 102 would approve a Pacific Ocean Resources Compact between California, Hawaii, Oregon, Washington and potentially the Province of British Columbia. The Compact would take effect after one or more of the above states ratify the compact in substantially the same form and the Compact receives the consent of the United States Congress.

The consent of Congress is required by the federal Constitution for such compacts between the States that might alter the political power of the states affected, and thus expand into an area of federal concern, or compacts that involve foreign governments. U.S. Const. Art. I, Sec. 10; Texas v. New Mexico, 462 U.S. 554, 568 (1983); Seattle Master Builders Ass'n v. Pacific Northwest Elec. Power and Conservation Planning Council, 786 F.2d 1359 (9th Cir. 1986). Once approved by Congress, a compact becomes federal law, can be enforced in federal court and supersedes state law. See Cuyler v. Adams, 449 U.S. 433, 439-40 (1981); Vacation &

Holiday Fund v. New York Waterfront Comm'n, 732 F.2d 292 (2d Cir. 1984); State ex rel Intake Water Co. v. Board of Nat. Res. & Conserv. of the State of Montana, 645 P.2d 383, 387 (Mont. 1982), cert. denied, 459 U.S. 969 (1982).

In general, the Compact established in SB 102 would simply establish a forum for cooperative efforts of the party states and would not limit the internal regulatory powers of the member states. However, three provisions in Article V of the Compact have the potential to significantly alter the State of Alaska's regulation of oil and hazardous substance transportation in state waters. In particular, Article V(a)(2) would create an unified "Compact region" in which the Compact would establish and enforce oil and hazardous substance contingency plans for vessels. Pursuant to this article, the Compact would adopted uniform regulations for the region that are "consistent" with response plan requirements established under the federal Oil Pollution Act of 1990. [1] Once in place, the "compact contingency plans" would supersede individual state plans. Individual state contingency plans approved prior to the adoption of compact plan regulations would remain in effect until their expiration, at which point they would be subject to the compact plan regulations. Article V(a)(10) would allow the compact to establish sanctions for violations of

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1 These federal response plans will not be in place until the U.S. Coast Guard adopts regulations establishing the planning standards applicable to these vessels and barges.

the rules and regulations of the Compact and impose those sanctions pursuant to standards of review established in the federal Administrative Procedures Act.

The Compact provides that the Compact will "work closely with officials of the [member States] to assure that the vessel contingency plans required under this compact include all subject areas included by the member parties." However, there is no assurance that the requirements of Alaska's Oil Spill Contingency Law [2] will be fully included in the Compact's contingency plan regulations. It is worth noting that the Oil Pollution Act of 1990 does not preempt state law in the area of vessel contingency planning. See 33 U.S.C. § 2718. However, once adopted, these Compact plans would preempt state individual requirements. See Art. V(3), p. 8 lines 8-9.

Second, Article V(b)(6) would empower the Compact to enter into an agreement with the United States Coast Guard to administer compliance with the federal government's proof of financial responsibility under the Oil Pollution Act of 1990. However, once delegated to the Compact these federal requirements would supersede individual state financial requirements. Again, it should be noted that Congress in the Oil Pollution Act of 1990 specifically granted the States authority to impose their own unique financial responsibility requirements. See 33 U.S.C. §

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2 AS 46.04.030 and the implementing regulations at 18 AAC 75.

2718. The State would be giving up its right to impose requirements different from the federal provisions and would not necessarily gain a more uniform tougher standard along the Pacific Coast.

Finally, article V(b)(9) would allow the Compact to grant variances from compact rules or regulations. A variance would be based upon a showing that the activity allowed will have no regional affect and that the variance is economically necessary. The variance would not be allowed if the result would be less stringent requirements than those imposed under federal law. However, under the above standard a variance could be granted or denied when the affected state disagrees and when the activity only affected that one member state. Thus, a variance could be granted to a requirement of Alaska law that is more strict than federal law but that would not affect Washington or California. Such a result would clearly present a major departure from existing law under which each coastal state controls its own destiny in the absence of explicit federal preemption. The federal Oil Pollution Act of 1990 confirms that the State of Alaska can maintain its own individual oil pollution liability, contingency planning and financial responsibility requirements. 33 U.S.C. §§ 1321(o), 2718.

BCT:bkn

cc: Craig Tillery

32910-14.19

MAR. 25. 1991

Ms. Christine Gregoire, Director
Washington Department of Ecology
Mail Stop PV-11
Olympia, Washington
U.S.A., 98504-8711

Dear Ms. Gregoire:

Re: Proposed Interstate Compact

I have now had a chance to review the proposed Compact and have the following comments.

It appears that British Columbia cannot become a Party to the proposed Interstate Compact. The Compact makes assumptions and statements with respect to the jurisdiction of the Parties that are not correct as a matter of law when applied to British Columbia.

One of the main purposes of the Compact, "providing uniform regulation of the transportation of oil or hazardous substances within the compact zone" is beyond the Province's constitutional and territorial authority. The differences between our constitutional division of powers and that of the United States makes it difficult if not impossible to join with the states in an effort to jointly (co-operatively) exercise this regulatory authority.

Further, the proposed Compact creates a legal entity which has actual law making authority as well as enforcement authority. While such Compacts are recognized and authorized by the U.S. Constitution, they do not have such recognition in the Canadian Constitution. The Government of Canada has authority over External Affairs and would be the only order of government which could enter into an agreement creating an entity such as this.

Paragraph (2) of Section 1 of the draft Act refers to B.C. becoming an "associate party to the compact", and to the possibility of B.C. requesting full party status. For the reasons given above, B.C. could not request such membership. Therefore it may be appropriate to remove the references to British Columbia from the draft Act.

.../2

We are, however, still interested in continuing cooperative work with the other states on matters of mutual concern such as protection of marine and coastal resources. This includes attending as observers any meetings of the Western Legislative Conference to which we are invited.

By copy of this letter I am informing other Task Force members of our position on the Compact.

Yours truly,

ORIGINAL SIGNED BY

Richard L. Dalon
Deputy Minister

cc: Mr. John Sandor, Alaska
Mr. Fred Hanson, Oregon
Mr. Michael Kahoe, California

Secretariat

WOLFERSTAN/dj
bcc: Dr. Sheila Wynn, ADM
Director, Environmental Emergency Services
Mr. Vick Farley, Intergovernmental Relations

Province of British Columbia

Office of the Premier

MEMORANDUM

JB

Mr. Richard Dalon
Deputy Minister
Ministry of Environment

March 7, 1991

Re: Proposed Interstate Compact

004955

Bill Wolferstan of your Ministry has asked our Branch to review the Interstate Compact proposed by Washington for consideration by the States/B.C. Oil Spill Task Force. John Bones has forwarded a copy of the proposed Compact and related correspondence from the Washington Department of Ecology.

It is my understanding that officials in your Ministry, the Ministry of Energy, Mines and Petroleum Resources and the Ministry of Regional and Economic Development do not support full membership for B.C. in the Interstate Compact. They support observer status for B.C. as the appropriate alternative.

Our Branch agrees that B.C. should participate only as an observer. Indeed, it is my opinion that B.C. could not become a Party to the Compact even if we wished to do so. Without entering into an exhaustive analysis here, the Compact makes assumptions and statements with respect to the jurisdiction of the Parties that are not correct as a matter of law when applied to B.C. (eg. Article I. A. (4)). Further, one of its main purposes, "providing uniform regulation of the transportation of oil or hazardous substances within the compact zone" is beyond the provinces constitutional and territorial authority. That is, B.C. does not have constitutional authority to regulate navigation and shipping, and it does not have authority (beyond the boundary of the Province) over Canada's territorial sea or Exclusive Economic Zone. The differences between our constitutional division of powers and that of the United States makes it difficult if not impossible to join with the States in an effort to jointly (co-operatively) exercise this regulatory authority. The Province does not have the necessary jurisdiction.

.../2

Further, the proposed Compact creates a legal entity which has actual law making authority as well as enforcement authority. Article V confers on the Pacific Ocean Resources Compact the ability to create regulations and to establish sanctions and civil penalties. While such Compacts are recognized and authorized by the U.S. Constitution, they do not have such recognition in the Canadian Constitution. The Government of Canada has authority over External Affairs and in my view would be the only order of government which could enter into an agreement creating an entity such as this.

Paragraph (2) of Section 1 of the draft Act refers to B.C. becoming an "associate party to the compact, without voting power", and to the possibility of B.C. requesting full party status. For the reasons given above, B.C. could not request such membership. Therefore, it may be appropriate to remove the second sentence of that paragraph from the draft Act. If it remains in the Act, it probably should be amended to include a reference to the approval of the Government or Parliament of Canada if not actual federal membership. In any event, the draft Act and Compact should be sent to External Affairs Canada for review, together with an indication of what the Province's position is on the matter.

I realize that you are well aware of these jurisdictional differences and difficulties as is indicated in your memorandum of December 17, 1990, to Chris Watts. I forward the above comments in response to the request for our review of the proposed Compact and to record our Branch's view of the matter.

I am advised that Cabinet approved your Ministry's Cabinet Submission on the B.C. Action Plan for Implementation of the Recommendations of the Report of the States/B.C. Oil Spill Task Force. Two points in that Submission apparently addressed this issue. It recommended on page 6 (#6) that Cabinet endorse pursuing Report Recommendation 42 on the Interstate Compact. Recommendation 42 was for cooperative work with the Western Legislative Conference to evaluate the advantages and disadvantages of such a Compact. I assume that the cooperative work can continue without B.C. becoming a full Party to the Compact.

Point 2 of your Submission recommended that B.C. not join the Western Legislative Conference as a member, but attend, when invited, as an observer. The descriptive paragraph regarding the WLC and the "proposed compact agreement" seems to combine the proposed Compact under consideration here with the invitation to B.C. to join the Western Legislative Conference. As I understand it, the two issues are separate.

.../3

In conclusion, it is my view that B.C. cannot become a full Party to the proposed Interstate Compact. Further, in my opinion, the draft Act should be amended to remove the reference to B.C. possibly being a full Party to the Compact. Further the Act should be forwarded to External Affairs for their review, even if B.C. only intends to participate as an observer. Finally, B.C. should obtain clarification of what is intended by Washington officials by the term "associate member", including what obligations that would place on the Province.

I hope that this will be of assistance. Should you have any questions, please do not hesitate to contact me.

Robert Vick Farley
Senior Advisor
Constitutional Affairs
Intergovernmental Relations

cc: Mr. Jack MacDonald
Mr. Bill Wolferstan
Mr. John Bones

ATTACHMENT 1

OIL SPILL MEMORANDUM OF CO-OPERATION

Between the

Province of British Columbia

the

State of Washington

the

State of Oregon

the

State of Alaska

and the

State of California

June 1989

OIL SPILL
MEMORANDUM OF CO-OPERATION

Whereas the Province of British Columbia (the "Province") and the States of Washington, Alaska, Oregon and California (the "States") have a mandate to enhance the environment and protect it from oil spills; and

Whereas the Province and the States share and manage common transboundary fish and wildlife particularly in and near the waters of the Pacific Ocean; and

Whereas the Province and the States concur that such fish and wildlife and the supporting environment must be given the fullest protection from damage caused by spills and other discharges of oil; and

Whereas it is paramount to maintain and improve a co-ordinated response to prevent, reduce, or overcome the effects of an oil spill in our respective waters, within the framework of the Canada–U.S.A. Joint Marine Pollution Contingency Plan; and

Whereas the future requires continued need for co-operation in preventing or abating oil spills in the aforementioned waters, including the participation of the Federal Governments of Canada and the United States;

Now therefore, in recognition of the spirit of co-operation which has characterized their efforts thus far, the Province of British Columbia, through its Premier, the Honourable W. N. Vander Zalm, and the State of Washington, through its Governor, the Honorable Booth Gardner, the State of Oregon, through its Governor, the Honorable Neil Goldschmidt, the State of Alaska, through its Governor, the Honorable Steve Cowper, and the State of California, through its Governor, the Honorable George Deukmejian, join together in this memorandum of co-operation pertaining to the resolution of mutual problems of oil spill pollution in the aforementioned waters. In this regard the Province and the States have formed an Oil Spill Task Force to develop co-ordinated programs for oil pollution prevention, abatement and response.

The Task Force is chaired jointly by the British Columbia Deputy Minister of Environment, the Washington Director of Department of Ecology, the Oregon Director of Department of Environmental Quality, the California Environmental Affairs Agency, and the Alaska Commissioner of Department of Environmental Conservation. To ensure future effective co-ordination of intergovernmental efforts, representatives of each government will be appointed to maintain this memorandum. This responsibility will be included in the job descriptions of these representatives and written notification of their appointment will be provided to all other parties to this memorandum. These representatives will meet annually to review progress and plan future co-operation. Four subcommittees have been established to address:

(1) Prevention Alternatives

(2) Technology Sharing

(3) Emergency Response

(4) Financial Recovery.

Issues addressed by the subcommittees will include:

(1) the creation of a joint emergency response plan;

(2) an evaluation of capabilities and technologies for spill prevention, response and containment;

(3) a review of tanker safety, routes and operating requirements;

(4) an inventory of equipment, material, and personnel available to either the Province or the States for use in oil spill control and clean-up operations;

(5) joint spill response drills and training.

The duration of this memorandum is intended to be perpetual, but each party may terminate at will its agreement by giving written notice to the other parties.

The parties do not intend by this memorandum to create any separate legal or administrative entity.

Each party shall bear its own expenses of co-operating pursuant to this memorandum.

Signed this 16th day of June 1989.

The Honourable W. N. Vander Zalm
Premier, Province of British Columbia

Signed this 16th day of June 1989.

The Honorable Booth Gardner
Governor, State of Washington

Signed this 3rd day of August 1989.

The Honorable Steve Cowper
Governor, State of Alaska

Signed this 3rd day of July 1989.

The Honorable Neil Goldschmidt
Governor, State of Oregon

Signed this 9th day of November 1989.

George Deukmejian

The Honorable George Deukmejian
Governor, State of California

STATES/B.C. TASK FORCE

Membership includes Alaska, British Columbia, Washington, Oregon and California. Commissioner Sandor serves as Task Force member representing State of Alaska. Staff needed to complete Task Force functions provided voluntarily from all jurisdictions if available.

Task Force organized in aftermath of Nestucca barge spill and Exxon Valdez disaster. Organization formalized by a Memorandum of Cooperation completed in November, 1989. During formation of the Task Force, meetings at the Commissioner level were held quarterly. The Task Force now holds an Annual Meeting, scheduled this year for Portland, Oregon on May 28. Staff meetings occur quarterly.

Immediate goal of Task Force was realized with completion of Final Report in October, 1990. Report includes 46 joint recommendations requiring implementation at the State, Provincial and federal levels. To date many of these recommendations have been implemented in Alaska.

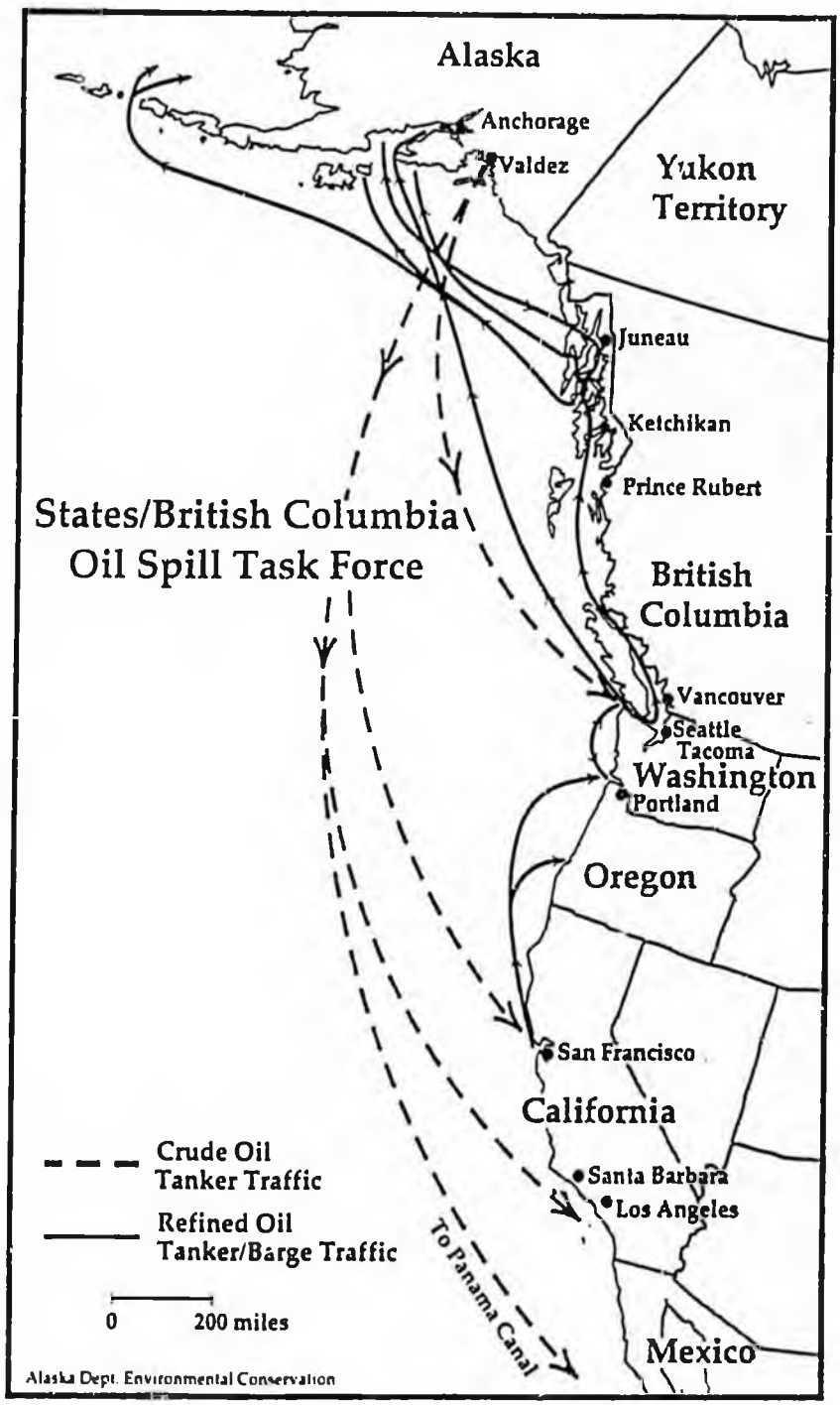
Current focus of Task Force centers on implementing Annual Action Plan through four subcommittees: Prevention, Rules Coordination, Technology, and Emergency Response. Subcommittees serve as important clearinghouses for information sharing and rulemaking consistency.

Prevention remains the primary goal of Task Force, requiring continuous re-evaluation of preventative lessons learned from recent spills (such as the Tenyo Maru and the Kenai Pipeline spills) and identification of specific technology and research needs.

Rules coordination also receives significant emphasis from the Task Force. Recent efforts have focused on providing consolidated input into federal rulemaking pursuant to OPA 90. The Task Force's goal is to provide a level regulatory playing field and the best possible regulatory standardization, not only for benefit of industry, but for public and the environment. The present Task Force structure dictates that this is to be achieved voluntarily through existing legal mechanisms within individual jurisdictions.

Technology efforts have focused on developing standards for geographic information systems and to serve as a clearinghouse for coordinating the multitude of research and development efforts of Task Force members among each other and the federal governments. In this way, individual member efforts can be "leveraged" for greater common benefits.

Emergency response efforts are concentrating on upgrading mutual aid agreements, terms and conditions among individual members. Alaska has much to gain from aid agreements to provide emergency response resources, and from sharing information of mutual concern, such as providing departing tank vessel inspection reports in return for ballast water shipment information.



Four Pacific coast states and the Province of British Columbia have combined resources to form the States/B.C. Oil Spill Task Force. The map shows important transboundary marine transportation routes for crude and refined oil that may potentially impact Task Force members.

States / British Columbia Oil Spill Task Force

John Sandor	Gerry Armstrong	Michael Kahoe	Fred Hansen	Christine Gregoire
Alaska	British Columbia	California	Oregon	Washington
Dept. of Environmental Conservation	B.C. Environment	Office of Environmental Protection	Department of Environmental Quality	Department of Ecology

August 15, 1991

Honorable Walter J. Hickel, Governor, State of Alaska
Honourable Rita Johnston, Premier, Province of British Columbia
Honorable Pete Wilson, Governor, State of California
Honorable Barbara Roberts, Governor, State of Oregon
Honorable Booth Gardner, Governor, State of Washington

Dear Sirs and Mesdames:

We are pleased to announce the inauguration of the 1991–1992 Action Plan for the States / British Columbia Oil Spill Task Force. This plan is intended to maintain and expand the Task Force's leadership in marine oil spill prevention and response. It will also guide us in working together with industry, our federal governments, and others to avert the serious environmental and economic consequences of major marine oil spills. A copy of the Action Plan is enclosed for your information.

The Task Force was established in the spring of 1989 and was formalized by the *Oil Spill Memorandum of Cooperation*, signed by the Premier of British Columbia and Governors of Washington, Alaska, Oregon and California. It is charged with the resolution of mutual concerns related to pollution caused by marine oil spills, and the coordination of our individual efforts in order to achieve a consistently high level of protection and response capability for the Pacific Coast of North America.

The Task Force has been very successful in addressing its first phase agenda. During 1990, we accomplished a major milestone with the publication of the *Final Report of the States / British Columbia Oil Spill Task Force*, and we have received national attention for our leadership in the arenas of spill prevention and response. Moreover, the "final report" and its many supporting technical studies have been used successfully, in every one of the Task Force members' jurisdictions, as a resource and point of departure for significant new legislative, policy and technical initiatives.

We are now embarking on another major step forward as we begin a second phase of Task Force activities. This challenging phase will focus on cooperation between the member governments to ensure consistency in our individual marine oil spill prevention and response policies and regulations, in order to minimize the burdens placed on industry without compromising the scope and effectiveness of the standards. Despite the progress we have made in the past two years, much more work also remains to be done to fully address the recommendations presented in our "final report". Pursuant to the goals expressed in the recommendations, we have incorporated a list of priority activities into our Action Plan.

The United States Congress passed the *Oil Pollution Act of 1990* (OPA) last summer; and in Canada, the report of the Brander-Smith inquiry on oil spills was released. These initiatives are changing the federal regulatory climates for oil spill prevention and response, in part by acknowledging the vested interests and inherent prerogatives of the state/provincial governments. These developments are particularly important to us since the implementation of a Pacific Ocean Resources Compact, which requires passage of enabling legislation by at least two of the member states' legislatures, will not occur this year. The Task Force will advance many of the objectives of the Compact and will collaborate in representing our interests to federal agencies.

In view of the Exxon Valdez disaster and other major oil spills in recent years, we and our mutual federal governments must never again become complacent about the potential for environmental catastrophe. Prevention measures provide by far the most effective means of protecting our valuable waters, shorelines, and natural resources, and the contributions they make to our economies. Our Action Plan therefore emphasizes coordination with our federal governments to ensure that their efforts in the prevention of oil spills are pro-active and provide an adequate level of protection.

With your continued leadership and support, the States / British Columbia Oil Spill Task Force will execute our 1991–1992 Action Plan and further our fundamental objective of preventing oil spills through inter-governmental cooperation and concerted advocacy. We will report to you next year on our progress in this second phase of our effort. Please let us know of any other issues you would like us to address.

Yours sincerely,

John A. Sandor, Commissioner,
Alaska Department of
Environmental Conservation

Gerry Armstrong, Deputy
Minister, British Columbia
Ministry of Environment

Christine Gregoire, Director,
Washington Department of
Ecology

Fred Hansen, Director,
Oregon Department of
Environmental Quality

Michael Kahoe, Assistant
Secretary, California Office of
Environmental Protection

enclosure: Task Force Action Plan

States/British Columbia Oil Spill Task Force
1991 - 1992 Action Plan

The States/British Colun bia Oil Spill Task Force was created in response to the December 1988 Nestucca oil spill off the Washington coast and the Exxon Valdez disaster in Prince William Sound. As fate would have it, the first meeting of the Task Force was on March 23, 1989, the day before the Exxon Valdez spill. The group's membership now incorporates the four Pacific West Coast States of the United States and the Province of British Columbia, Canada.

The Final Report of the State/British Columbia Oil Spill Task Force was published in October 1990. This report adopted of a comprehensive set of recommendations which, if implemented, would minimize the probability of major and catastrophic spills and help assure an effective response to such incidents.

With the recent change in 4 out of 5 of the west coast State/Provincial Administrations, the passage of major spill related legislative packages, and the completion of the final report, the Task Force is taking this opportunity to review its mission and renew its commitment to be an advocate for effective oil spill prevention and response under the Oil Spill Memorandum of Cooperation (1989).

The theme for activities in 1991 will be cooperation and information sharing among the members in an effort to improve regulatory consistency and efficiency. This theme is particularly important at this juncture given the large number of state/provincial and federal rules which are currently being developed. This rule development process provides an unusual opportunity for the Task Force members to share expertise and coordinate individual actions to achieve consistency, and to provide unified input into federal rule making. Input into federal rules will assure that they address West Coast needs and that these rules are effectively integrated with state/provincial initiatives. The Task Force has also reaffirmed its commitment to focusing on spill **prevention**, recognizing that response efforts can not effectively eliminate the impact of large oil spills. Although the Task Force has decided not to address hazardous substances as part of its mission, many of the findings may prove applicable to the prevention and response to this type of spill event.

The Action Plan will be implemented primarily through the efforts of the four Task Force subcommittees. The subcommittees have completed their original tasks, and have therefore been restructured. During 1991 - 1992, the Task Force subcommittees will also place particular emphasis on institutionalizing coordination among the Task Force members.

The membership and objectives of subcommittees are slightly modified and the Chairs have been rotated. The Task Force will establish one set of key Task Force "advisors" who will be available to consult with the subcommittees and review draft reports prepared by the Task Force. The advisors will be: the Canadian and United States Coast Guards, the United States Environmental Protection Agency, and Environment Canada. In the event that subcommittees need additional input, the chairs may ask a philosophically balanced group of representatives from industry, environmental organizations, local

government, native peoples, or other appropriate entities to provide the benefit of their expertise and valuable experience. Mexico and the state of Hawaii will be invited to participate as observers.

The Task Force public involvement process will continue to be addressed through existing mechanisms in each state/province, in conjunction with normal public review and rule adoption processes. Wherever possible, subcommittees will meet concurrently to minimize travel and other costs.

A new Rules Coordination and Review subcommittee is being established to coordinate the development of regulations and provide consistency. This subcommittee will replace the Financial Recovery subcommittee which completed its final report last fall. Coordination between subcommittees will be facilitated by the fact that the same staff are generally working on each subcommittee. The subcommittees will report on their accomplishments at the Task Force meeting next spring. The new structure of Task Force subcommittees is outlined below.

Prevention Subcommittee (California Chair)

MEMBERSHIP:

Roger Dunstan, CA - Chair
Bruce Sutherland, OR
Bill Wolferstan, BC
Chris Pace, AK
Jon Neel, WA

OBJECTIVE AND SCOPE OF ACTIVITIES:

- The Prevention Subcommittee will serve as the mechanism to evaluate new technologies/systems which may be effective in preventing oil spills. The Subcommittee will focus on policy issues and utilize the following sources of information to evaluate the need for preparing new draft recommendations:

  A. Evaluations of the causes of major oil spills;

  B. The findings of the Technology and Research Subcommittee;

  C. Special studies by the Task Force; and

  D. Other sources of information.

TASKS AND MAJOR MILESTONES:

- Develop a list of potential key Task Force advisors for review and approval by the Task Force. (Schedule for completion - August 1991).

- Provide a mechanism for States and British Columbia to coordinate on prevention policy issues. (Schedule for completion - Ongoing).

- Evaluate the need for prevention related studies in specific geographic areas.

- Serve as a focal point for evaluating and drafting additional Task Force spill prevention recommendations. This task will be accomplished in part through participation in the debriefing process after major spills have occurred. (Schedule for completion - January 1992).

- Review and provide coordinated input into the International Maritime Organization's (IMO) deliberations by providing comments to the respective Coast Guards and State Departments. (Schedule for completion - dependent upon IMO addressing key issues).

Emergency Response Subcommittee (B.C. Chair)

MEMBERSHIP:

Dean Monterey, BC - Chair
Bruce Sutherland, OR
Chris Pace, AK
Jon Neel, WA
Roger Dunstan, CA

OBJECTIVE AND SCOPE OF ACTIVITIES:

- The Emergency Response Subcommittee will continue to assure the rapid notification of Task Force members during major interjurisdictional spills and facilitate mutual aid. In order to accomplish this objective, the Subcommittee will revise and update the Task Force Emergency Response Guide. The Subcommittee will also develop a mutual aid plan to facilitate rapid interjurisdictional deployment of equipment and response personnel during catastrophic spills. The Emergency Response Guide and equipment lists will be updated as new response techniques are identified by the Technology and Research Subcommittee and response capabilities change.

TASKS AND MAJOR MILESTONES:

- Review the capability of the Marine Spill Response Organization (MSRC- the replacement for PIRO), Burrard Clean and other industry spill response cooperatives and their ability to provide adequate spill response coverage. (Schedule for completion of final report - Spring 1992 Task Force Meeting).

  Milestone 1: Develop a standardized process and criteria for the review of the capability and effectiveness of industry sponsored cleanup cooperatives. (Schedule for completion - September 1991).

  Milestone 2: Review the capability of MSRC (WS), Burrard Clean (BC), Clean Sound (WA), Clean Seas (C[illegible]vers (OR/WA), Clean Coastal Waters (CA), Clean Bay (CA), Hu[illegible] Coop (CA), SE AK Petroleum Resource Organization (AK), Cook Inlet Spill Prevention and Response Inc (AK), Alaska Clean Seas (AK), and the Alyeska Response Organization (AK). (Tentative schedule for completion - December 1991).

- Update and revise the Task Force Spill Response Plan's equipment list and response guide, and upgrade it to a formal mutual aid plan. (Schedule for completion - January 1992).

  Milestone 1: Update response equipment lists.
  (Schedule for completion - August 1991).

Milestone 2: Prepare and distribute a draft mutual aid plan.
(Schedule for completion - December 1991).

- Serve as a focal point to report on joint spill drills and the results of major spill responses. (Ongoing activity).

Rules Coordination and Review Subcommittee (Washington Chair)

MEMBERSHIP:

Lin Bernhardt, WA - Chair
Bruce Sutherland, OR
John Bones, BC
Lynn Kent, AK
Roger Dunstan, CA

OBJECTIVE AND SCOPE OF ACTIVITIES:

- This Subcommittee will serve as a forum to assure consistency in the development of oil spill related regulations on the West Coast. The focus will be to coordinate contingency planning, prevention and natural resource damage assessment rules, policies and studies. The subcommittee will ensure that the rules and policies developed by the states and province are as consistent as possible.

TASKS AND MAJOR MILESTONES:

- Develop a list of state/provincial rules proposed for development and a companion list of EPA, USCG, and Canadian federal (e.g. implementation of the Brander-Smith Inquiry) regulations with their respective schedules. (Schedule for completion - August 1991).

- Exchange all draft and final state/provincial oil spill related rules among members that directly relate to the committee mission statement. (Schedule for completion - Ongoing).

- Evaluate Task Force member's respective rules for consistency and work to minimize differences while emphasizing federal consistency. (Schedule for completion - ongoing activity).

  Milestone 1: Alaska's and Washington's rule will be reviewed for consistency. (Schedule for completion - August 1991).

  Milestone 2: Other milestones to be established by subcommittee.

- Develop a streamlined protocol for developing consensus comments on draft federal documents among the members on technical and policy issues (including consideration of input from advisors), and forwarding them to the key decision makers. This protocol should have application to other subcommittees especially Technology and Research. (Schedule for completion - August 1991).

• Evaluate and provide unified input on draft USCG, EPA, and OSHA regulations required under OPA/OSHA, and on draft Canadian federal regulations. (Schedule for completion - dependent on federal outputs; consolidate and forward comments within 60 days of receipt of regulations).

• Prepare an annual report which describes the Task Force's progress and evaluates how well it has met its objectives. (Schedule for completion - February 1992).

• Review the existing Task Force Memorandum Of Agreement and recommend changes where appropriate. (Schedule for completion - February 1992).

• Identify and evaluate alternatives for providing additional funding for Task Force spill prevention and response activities including the possibility of Federal grants and specific state legislative / provincial parliament appropriations.

Technology and Research Subcommittee (Alaska Chair)

MEMBERSHIP:

Chris Pace, AK - Chair
Jon Neel, WA
Bill Wolferstan, BC
Roger Dunstan, CA
Bruce Sutherland, OR

OBJECTIVE AND SCOPE OF ACTIVITIES:

- The Technology and Research Subcommittee will evaluate oil spill prevention and response reports and studies, and provide coordinated input into the development of these documents. The Subcommittee will forward information on effective technologies to the Task Force members for individual action; and forward recommendations as appropriate to the Prevention and Emergency Response Subcommittees. The Subcommittee will also address emerging technologies of benefit to Task Force members such as geographic information systems and will use this opportuni y to encourage the Federal Governments to expedite the review and approval of new technologies.

TASKS AND MAJOR MILESTONES:

- Develop a list of state/provincial technical reports proposed for development and a companion list of EPA, USCG, and Canadian federal technical reports with their respective schedules. (Schedule for completion - August 1991).

- Ensure information developed as a result of these studies is immediately forwarded to all Task Force members. (Schedule for completion - dependent on schedule developed in above task).

- To the extent possible, provide unified and coordinated input into the Federal studies regarding spill prevention and response (several reports and studies are required by the USCG, EPA and Science Advisory Board as a result of OPA 1990). (Schedule for completion - dependent on schedule developed in task 1 above).

- Share information on the development of oil spill environmental sensitivity computer information systems. (Schedule for completion - British Columbia, March 1992; Oregon, August 1991; and Washington, September 1991).